

IN THE COURT OF APPEALS OF IOWA

No. 1-326 / 91-69

IN RE THE MARRIAGE OF DOUGLAS MONTY TRANK
AND PAMELA JOY TRANK

FILED

OCT 29 1991

CLERK SUPREME COURT

Upon the Petition of

DOUGLAS MONTY TRANK,

Petitioner-Appellee,

And Concerning

PAMELA JOY TRANK,

Respondent-Appellant.

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Appeal from the Iowa District Court for Johnson County,
William R. Eads, Judge.

Respondent appeals the economic provisions of a
dissolution decree. **AFFIRMED AS MODIFIED.**

Margaret T. Lainson of Mearson, Sueppel, Downer &
Hayes, Iowa City, for appellant.

Randall Willman of Leff, Leff, Hauptert & Traw, Iowa
City, for appellee.

Considered by Donielson, P.J., and Sackett and Habhab,
JJ.

SACKETT, J.

This is an appeal by respondent Pamela Trank from the economic provisions of a decree dissolving a twenty-three-year marriage. Pamela contends the alimony award is not sufficient in time or amount. She also contends petitioner Douglas Monty Trank should have been ordered to pay her child support for college-age children in addition to paying the children's college expenses. We affirm as modified.

Douglas Trank is forty-six years old and in good health. He is a tenured full professor at the University of Iowa, where he has been a faculty member since 1974. His teaching contract with the university was for the fall and spring semesters of the 1990-91 school year. He was paid \$52,250 for those semesters. He has taught summer school courses for additional compensation. He testified at trial further summer assignments would not be available because of decreasing enrollment at the university.

Pamela Trank is forty-five years old and in good health. She has attended various colleges, has over 120 hours of college credit but no college degree. Pamela has accepted the role of homemaker and mother during most of the marriage. She is employed by the Iowa City Community School system nine months a year as a teacher's aide. Her annual salary is \$6,548.

Pamela and Douglas were married in 1967, two months after Douglas received a B.A. degree. Pamela had just completed her sophomore year of college. After the marriage, Douglas taught junior high and high school for three years. He also continued to attend college, and in 1970 received his Masters degree. Pamela obtained a "special certificate" to teach retarded and handicapped children.

In 1970, Douglas and Pamela moved to Salt Lake City, Utah. Douglas entered a Ph.D program at the University of Utah and worked as a teaching assistant. A daughter, Heather, was born there in 1972.

In 1972, Douglas was offered a teaching position at Old Dominion University in Norfolk, Virginia. The family moved to Virginia. In the summer of 1973, Douglas received his Ph.D. In 1974, Douglas was offered a faculty position at the University of Iowa. The family moved to Iowa City where they now live. In 1976, a second daughter, Jessica, was born. After Jessica was in school full days, Pamela obtained employment with the school district as a teacher's aide.

At the time of trial, Heather was eighteen and a freshman at the University of Iowa. She was living in a dormitory. Heather comes to Pamela's home when ill, for weekends and for holidays. Jessica was fourteen years old and a freshman in high school. She continued to reside with Pamela.

Prior to trial, Douglas and Pamela entered into a stipulation dividing the property of the marriage on a nearly 50-50 basis. The house equity was \$50,750, and Douglas's retirement account had a value in excess of \$150,000. Thirty-two percent of the retirement was transferred to Pamela, and she received the equity in the house. She assumed responsibility for the home mortgage.

The stipulation also provided that Douglas could claim both daughters as dependents on his federal and state income tax returns. He was to pay \$643 child support for Jessica until she entered college. The parties agreed this amount was in accord with the child support guidelines as applied to his 1989 income.

During the time Pamela and Douglas were married, they had established savings accounts in the name of each daughter to be used for that daughter's college education. At the time of trial, Heather's account totaled approximately \$9,000. Jessica's account was about \$9,500. The stipulation required Douglas to pay for the children's college tuition, books, room, board and fees. To assist him in this, he was given complete discretion over each of the college accounts which were to be used toward these college expenses. The issue of the amount of support, if any, to be paid Pamela during the time the girls were in college, but still eligible for support under Iowa Code section 598.2(1), was submitted to the court.

In its decree, the district court ordered Douglas to pay Pamela "rehabilitative" alimony of \$250 per month for forty-seven months. This alimony would also terminate if Pamela were to remarry prior to its expiration. Douglas was also ordered to pay Pamela's tuition, books, and fees if she chose to attend an educational or vocational school. Douglas was not ordered to pay additional support for the children of college-age. Pamela appeals. We affirm as modified.

Our review is de novo. See In re Marriage of Janssen, 348 N.W.2d 251, 252 (Iowa 1984); Iowa R. App. P. 4.

I.

Pamela contends alimony of \$250 per month for forty-seven months is insufficient in amount and duration. An award of alimony to a former spouse is not an absolute right, but is dependent on the individual circumstances in each particular case. See In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). The criteria a court is to consider in determining whether alimony is appropriate, and for what period of time and the amount, are codified in Iowa Code section 598.21(3) (1989). We consider (1) the earning capacity of each spouse, and (2) their present standards of living and ability to pay balanced against their relative needs. See In re Marriage of Imhoff, 461 N.W.2d 343, 345 (Iowa App. 1990); In re Marriage of Boehlje, 443 N.W.2d 81, 83 (Iowa App. 1989).

The trial court awarded "rehabilitative" alimony to be paid for less than four years. This is a long-term marriage, life patterns have been set and the earning potential of both parties can be predicted with some reliability. The contributions and sacrifices of Pamela in enabling Douglas to attain two advanced degrees can easily be assessed.

Rehabilitative alimony is a most justifiable type of alimony. Rehabilitative alimony is not sufficient in all circumstances. Pamela has education, but she has employment at a salary substantially below Douglas. She does not have the pension and health benefits that come with university employment. Douglas's current pension benefits were allocated, but no value was given to FICA paid by Douglas during the marriage. His payments exceeded Pamela's, and as a result Douglas will receive substantially more benefits on retirement.

While the trial court provided for Pamela to get her college degree, there is no evidence obtaining a degree will necessarily improve her financial status. There are few entry level teaching positions available in the Iowa City area. The job Pamela would like to get would be a maintenance job at the university. A university job has excellent health and retirement benefits but does not require further education.

We modify the alimony to increase it to \$400 a month, and order it paid for five years.

II.

Douglas was ordered to pay the children's room, board and tuition. Pamela contends in addition to these amounts, because the children will allegedly spend time in her home in Iowa City, she should have child support. We find no inequity on this issue. See In re Marriage of Byall, 353 N.W.2d 103, 109 (Iowa App. 1984).

III.

Each party shall pay his or her own attorney fees. Costs on appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.