

IN THE COURT OF APPEALS OF IOWA

No. 6-505 / 95-995

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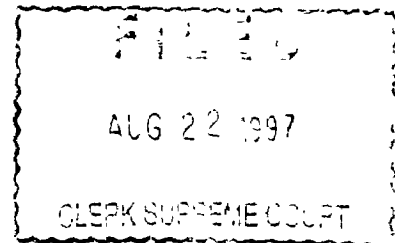
**IN RE THE MARRIAGE OF FRANCES IRENE CHRISTIANSON
AND GREGORY ALLEN CHRISTIANSON**

Upon the Petition of
FRANCES IRENE CHRISTIANSON,

Appellant,

And Concerning
GREGORY ALLEN CHRISTIANSON,

Appellee.



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

Frances appeals various economic provisions of the parties' dissolution decree.

AFFIRMED AS MODIFIED.

Randall B. Willman of Leff, Haupt, Traw & Willman, L.L.P., Iowa City, for
appellant.

Matthew J. Petrzela and Webb L. Wassmer of Simmons, Perrine, Albright &
Ellwood, P.L.C., Cedar Rapids, for appellee.

Heard by Habhab, C.J., and Sackett, and Cady, JJ.

CADY, J.

Frances and Gregory Christianson were married on December 14, 1974. They had two children. Allison was born on October 15, 1975 and Garrett was born on April 11, 1979. Frances had two children from a previous marriage. They lived with the parties during most of the marriage.

Gregory obtained employment as a transport driver for Growmark Industries around the time of the parties' marriage. He was employed there for sixteen years. In 1989, he accepted a position with the Teamster's Local 238 in Cedar Rapids as a business agent. He earned a gross income of \$42,016 in 1994.

At the time of the marriage, Frances was attending night classes in elementary education at the University of Iowa. However, she quit taking classes at the end of the semester after the parties married. During the marriage, Frances was the primary caretaker of the parties' two children as well as her two children from her previous marriage. Additionally she worked at a variety of jobs throughout the marriage, including secretarial work, child care provider and selling Tupperware. At one point Frances engaged in some minor real estate investing. Frances returned to school in 1993 to continue her pursuit of an elementary education degree. She currently works part-time for the University of Iowa while attending school.

Frances filed a petition for dissolution on April 19, 1994. The trial court entered its decree following trial. Pursuant to the decree Gregory was ordered to pay \$618.41 per month for Garrett's support. Further Gregory was ordered to pay all

expenses incurred by Allison while in college in excess of her loans and scholarships. Gregory was also ordered to pay seventy-five percent of all uninsured medical and dental expenses for Garrett.

The court determined Frances should receive nominal alimony in the amount of \$1.00 per year. In making this determination the court reasoned Gregory did not have sufficient funds to pay additional alimony. It concluded Frances had the ability to earn income while in school and Gregory may be in a better position to pay alimony after his child support obligation terminated.

During the marriage the parties acquired two major assets. First, they own a homestead and an adjoining 2.5 acres valued at \$88,000 and \$12,000 respectively. The homestead has a \$44,000 encumbrance. Second, Gregory has a pension valued at between \$21,000 and \$40,000. Frances was awarded the homestead and Gregory was awarded the 2.5 acres lot. The court awarded Gregory a 16,000 lien upon the homestead representing his share of the equity in the homestead minus Frances' corresponding share of the 2.5 acres. The court ordered the pension to be divided equally pursuant to a qualified domestic relations order.

Frances was ordered to be responsible for debts totaling \$38,415. Of this amount, \$18,000 was a loan taken out for educational expenses for her son from her previous marriage, and \$11,500 represented her student loans taken out during the marriage. Gregory was ordered to pay \$6695 of the marital debt. In assigning

Frances responsibility for her student loans the district court reasoned the debt was incurred solely for her benefit as opposed to a family or marital benefit.

Frances appeals. She contends the district court erred in only awarding her a nominal alimony award. She maintains her income is only \$340 per month from her university job. She argues her student loans were not acquired solely for the purpose of paying for her education but also to help out with family living expenses. She requests the court award her five years of rehabilitative alimony in the amount of \$380 per month. Frances next contends she should have been awarded all the marital real property and Gregory should have been awarded his pension. Frances lastly requests an award of appellate attorney fees. Gregory also seeks appellate attorney fees.

I. Scope of Review

Our scope of review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the district court, especially in determining the credibility of the witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. Property Division

The division of property in a dissolution of marriage is based on each partner's right to a just and equitable share of the property accumulated as a result of their joint efforts. *In re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989). What is just and equitable in each particular case is determined after careful consideration of our statutory criteria. *In re Marriage of Robison*, 542 N.W.2d 4, 5-6 (Iowa App. 1995).

The property division must be equitable, but it need not be equal. *In re Marriage of Wiedemann*, 402 N.W.2d 744, 747 (Iowa 1987).

Frances asserts the trial court improperly assigned her full responsibility for her school loan debt.¹ The trial court found this debt was incurred solely for her benefit as opposed to a family or marital goal. We disagree. Frances testified she used some of the funds to help support the family financially. Furthermore, the loan proceeds used for tuition prevented depletion of marital assets. Finally, Frances's advanced education was a benefit to the marriage. We consider the school loans Frances took out prior to the dissolution as a marital debt.

Frances further asserts the trial court should have awarded her all of the real property, and Gregory should have received all his pension. We find the division made by the district court equitable except for its failure to consider Frances's student loans to be a marital debt. Furthermore, in our de novo review, we do not believe it is necessary to award Gregory the 2.5 acres adjoining the homestead. This creates a potential for problems. We agree with Francis this would not be the most advisable geographic situation for former spouses.

¹ Gregory argues Frances has waived appeal of the trial court's determination regarding the student loans because she did not specifically assert the issue in an issue heading. We disagree. Frances appealed the property division. The division of marital debts inheres in the property division. *In re Marriage of Johnson*, 299 N.W.2d 466, 467 (Iowa 1980).

We modify the decree by awarding Frances the 2.5 acre lot. Gregory will have a lien upon the property in the amount of \$22,000. This amount considers our treatment of the student loan as a marital debt, as well as the award of the acreage to Frances. We otherwise affirm the property division.

III. Alimony

Alimony is not an absolute right, but must be determined based upon the facts and circumstances of each case. *In re Marriage of Brown*, 487 N.W.2d 331, 334 (Iowa 1992). It is an allowance to a spouse in lieu of the legal obligation to support that person. *In re Marriage of Misol*, 445 N.W.2d 411, 413 (Iowa App. 1989). The award of alimony is to be made after considering the factors listed in Iowa Code section 598.21(3) Iowa Code § 598.21(3) (1993). The factors to be considered in reaching the amount of alimony to be awarded include the length of the marriage, the age and physical health of the parties, the distribution of the property, the educational level of each party, the earning capacity of the parties, the feasibility of becoming self-supporting at a standard of living reasonably compatible to that enjoyed during the marriage, the tax consequences, and the financial service contributions by one party or the other. Iowa Code § 598.21(3).

Rehabilitative alimony is awarded to support an economically dependent spouse through a limited period of additional education or retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-sufficient. *Francis*, 442 N.W.2d at 59 (citing Joan M. Krauskopf, *Rehabilitative*

Alimony: Uses and Abuses of Limited Duration Alimony, 21 Fam. L. Q. 573, 581 (1988) (hereinafter Krauskopf). It is generally awarded for a limited period of time. *Id.*

The trial court determined alimony would be appropriate, but Gregory was not in a financial position to pay it. We agree the facts present a situation where alimony is appropriate. *See* Iowa Code § 598.21(3) (1995). This is a marriage of long duration, over 20 years. Frances discontinued pursuit of her undergraduate degree early in the marriage to have children with Gregory and care for his ailing grandmother when necessary. She generally stayed home and cared for the children. Although Frances worked at a variety of jobs during the marriage, her pursuit of a “career” was limited by the parties’ desire that she maintain the ability to care for the children.

Frances returned to college to pursue an elementary education degree prior to the parties’ separation. Gregory argues Frances should not receive rehabilitative alimony because she could be self-sufficient if she obtained a full-time secretarial job. He pointed out she will not make substantially more money working as a teacher or counselor. We reject Gregory’s argument. First, there is insufficient evidence in the record to determine, with any degree of certainty, Frances’s prospective income as a full-time secretary. Second, Gregory’s argument fails to recognize that part of the “self-sufficiency” aspect of rehabilitative alimony involves compensation for lost opportunity. *See* Krauskopf, 21 Fam. L. Q. at 583. Frances put her educational goals

on “hold” shortly after the parties married in order to stay home and take care of the children. She resumed her education when the youngest child entered his teens. Rehabilitative alimony is appropriate in this case to assist Frances in her pursuit of this lost opportunity.

Further, we disagree with the finding by the trial court that Gregory should not have to pay more than one dollar alimony because it appears from his financial affidavit he cannot afford to pay alimony at this time. Gregory’s financial situation appears to be restrictive at this point, but Frances’s financial situation is equally restrictive.

[A]fter a long-term traditional marriage, if the income-producer cannot fully meet the homemaker’s need-income gap without reducing his own standard of living, then a reduction in his standard to equalize the parties’ standards of living may be required to fully compensate for the previous transfer of earning power. In that situation, reasonable needs for both former spouses would be set at less than required to meet expenses of the former standard of living. A shortfall in funds for both could equalize the standard of living of ex-spouses following long-term marriages.

Krauskopf, 21 Fam. L. Q. at 587. We agree with the trial court’s decision to award Frances alimony. We conclude, however, Gregory should pay Frances \$200 each month for three years. This strikes a better balance between Frances’s needs and Gregory’s ability to pay alimony. See *In re Marriage of Siglin*, 555 N.W.2d 846, 850 (Iowa App. 1996).

IV. Appellate Attorney Fees

Both parties request an award of attorney fees. An award of attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Kern*, 408 N.W.2d 387, 390 (Iowa App. 1987). An award of attorney fees on appeal may be granted depending upon the parties' respective abilities to pay. We order Gregory to pay \$1000 toward Frances's attorney fees. Costs are split evenly.

AFFIRMED AS MODIFIED.

Habhab, C.J., concurs; Sackett, J., specially concurs without opinion.