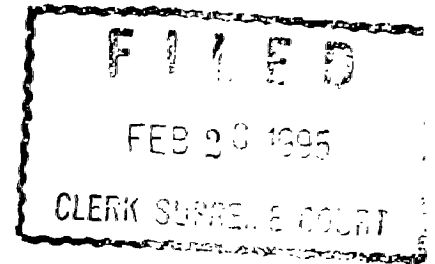


IN THE COURT OF APPEALS OF IOWA

No. 4-451 / 94-58



IN RE THE MARRIAGE OF DORIS A. WAGNER AND
ALLEN J. WAGNER

Upon the Petition of
DORIS A. WAGNER,

Appellant,

And Concerning
ALLEN J. WAGNER,

Appellee.

Appeal from the Iowa District Court for Linn County,
Lynne E. Brady, Judge.

Allen appeals the alimony provision of the dissolution
decree. **AFFIRMED AS MODIFIED.**

Sherry L. Schulte of White & Johnson, P.C.,
Cedar Rapids, for appellant.

Randall A. Nazette of Nazette, Marner, Good, Wendt &
Knoll, Cedar Rapids, for appellee.

Considered by Hayden, P.J., and Cady and Huitink, JJ.

HUITINK, J.

Allen Wagner appeals the alimony provision of the parties' dissolution decree. We affirm as modified.

Doris and Allen Wagner married in 1964. They have three grown children. At the time of trial Doris was fifty years of age and Allen was forty-nine. Both parties are in good health.

At the time of their marriage, Doris had completed two-and-one-half years of college. She left college to care for the parties' children. After the birth of her second child Doris started a sewing business out of the home and later worked as an interior designer. At the time of trial, Doris worked part-time as a store manager and had a net income of \$534 per month.

Allen has a technical associates degree and owned a construction business until it failed in the early 1980s. At the time of trial, Allen worked for Rockwell International as a technician and had a net income of \$1984 per month.

In December 1993 the district court entered a decree dissolving the parties' marriage. Doris and Allen had stipulated to everything except alimony. In a supplement to the decree, the court ordered Allen to pay Doris permanent alimony in the amount of \$700 per month until she reached the age of sixty-five and \$350 per month thereafter. The court based its decision on a finding that Doris had given up the ability to earn a pension and

advancement in the job market when she ended her college career to get married.

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

Allen challenges the alimony award. He contends the trial court erred in both the duration of the alimony award and the amount awarded. We agree.

Alimony is an allowance to the former spouse in lieu of a legal obligation to support that person. See In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981). Alimony is not an absolute right; it depends upon the particular circumstances of each case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). When determining the appropriateness of alimony, the court must consider (1) the earning capacity of each party, and (2) present standards of living and ability to pay balanced against the relative needs of the other. In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3). See In re Marriage of Hayne, 334 N.W.2d 347 (Iowa App. 1983).

The record in this case does not support an award of permanent alimony. Doris has earned an income in some form since 1971. Currently she is not working up to her earning capacity as she is employed only part-time. In the past

Doris has earned approximately \$12,500 working full-time as a seamstress. Doris is currently in good health and capable of working full-time. Therefore it is not unreasonable to expect her to obtain full-time employment in the future.

The district court failed to consider these facts and in doing so lost sight of Allen's ability to pay when it determined the alimony award. See In re Marriage of Mott, 444 N.W.2d 507, 510 (Iowa App. 1989). The district court's award of alimony amounts to \$115,000 over the next fourteen years, the time Doris reaches sixty-five years of age. We believe this amount is excessive under the circumstances of this case.

Our de novo review of the record leads us to conclude Doris is entitled to a reasonable amount of rehabilitative, rather than permanent, alimony. Rehabilitative alimony is structured to support an economically dependent spouse through a limited period of further education or retraining following divorce. In re Marriage of Francis, 442 N.W.2d 59, 63 (Iowa 1989). The record shows employment as a part-time seamstress is not the best opportunity for Doris to become self-supportive. Rehabilitative alimony coupled with full-time employment will allow Doris the opportunity to become self-supportive.

We therefore modify the decree and award Doris \$450 per month for the next five years. Although the parties will not be able to maintain the same standards of living as

enjoyed during their marriage due to their limited incomes, each should be able to meet his or her current obligations.

The district court is affirmed as modified. Each party shall be responsible for his or her own costs of this appeal.

AFFIRMED AS MODIFIED.