

**FILED** 436  
SEP 20 1979

**IN THE COURT OF APPEALS OF IOWA** CLERK SUPREME COURT

**IN RE THE MARRIAGE OF MAX C. BURKEY AND GAIL BURKEY**

|                       |   |                          |
|-----------------------|---|--------------------------|
| Upon the Petition of  | ) |                          |
| <b>MAX C. BURKEY,</b> | ) | Filed September 20, 1979 |
| Petitioner-Appellee,  | ) |                          |
| And Concerning        | ) |                          |
| <b>GAIL BURKEY,</b>   | ) | 238                      |
| Respondent-Appellant. | ) | <u>2-61046</u>           |

---

Appeal from Polk District Court - A. B. Crouch, Judge.

Respondent-wife appeals the economic provisions of a decree dissolving her marriage to petitioner-husband. **AFFIRMED.**

Allan H. Rauch, Des Moines, Iowa, for respondent-appellant.

Max C. Burkey, on his own behalf.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

## PER CURIAM

Respondent, Gail Burkey, appeals the economic provisions of a decree dissolving her marriage to petitioner, Max Burkey. She asserts the trial court should have (1) awarded her \$10,000 in lump sum alimony; (2) required Max to pay a debt on the parties' joint charge account; and (3) granted her request for attorney fees. We disagree and affirm the decision of the trial court.

Max and Gail were married on May 26, 1973. Gail had just completed her second year of teaching junior high mathematics for the Ankeny School District. She continued this employment for the next three years and, at trial, she testified that her 1971 salary of \$7,100 "went up a little each year." Max graduated from the University of Northern Iowa in January of 1973 and started law school at Drake University the week after their marriage. He graduated in 1976 and was admitted to practice in Iowa. He received benefits from the G.I. bill for all but his last semester of schooling and also worked part-time at various legal jobs. In December of 1976, Max filed a petition for dissolution and the trial court dissolved the parties' marriage on July 26, 1977.

I. Our review is *de novo*. Iowa R. App. P. 4. Gail contends the trial court's denial of her request for a \$10,000 lump sum alimony award was not an equitable and just result. As a basis for this contention she argues that the law degree and certificate of admission to practice were conferred upon Max with the aid of her efforts and the future earning capacity derived therefrom constitutes a marital asset. This argument is similar to that presented in In re Marriage of Horstmann, 263 N.W.2d 885 (Iowa 1978). In that case the Iowa supreme court gave the working spouse a property settlement award based upon the value of her husband's educational skills which were acquired during the marriage as well as a nominal alimony award to preserve this issue for possible future modification.

Initially we must recognize that the circumstances of the contributions made by the working spouse in Horstmann were fundamentally different than those present in the case at bar. Gail had completed her education and was gainfully employed in the field of her training. She did not sacrifice her career in the hope that she would be rewarded later through her husband's potential increase in earning capacity. Gail's contributions, although beneficial to Max in his efforts to obtain a legal education, were not unlike the contributions she would have made had Max already completed his legal training and been practicing law when they were married. Her contributions were in the nature of

general contributions to the success of the marriage. This was, of course, due in part to another important factor which serves to distinguish this appeal from Horstmann, that being that Max, using funds generated by the G.I. Bill, loans, and part-time employment, was financially able to pay for his legal education without the aid of his wife's efforts. For these reasons Gail's efforts do not entitle her to treat Max's potential for increased earning capacity as an asset to be distributed by the court.

To resolve the issue of a lump sum alimony payment, we consider the guidelines of Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1969), as modified in In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972). When considering the credibility of witnesses' testimony, we give consideration to the fact findings of the trial court although we are not bound by them in our *de novo* review. Page v. Page, 219 N.W.2d 556, 557 (Iowa 1974). After reviewing the record, we conclude that the trial court was correct in refusing to award Gail a lump sum alimony payment.

The marriage of these parties was one of relatively short duration. No children were born of this union. At the time of the dissolution, Gail was 27 years of age and in good mental and physical health. She had graduated from college and, although earning only \$450 per month in her marginally successful employment in the insurance sales field, was fully qualified to teach junior high mathematics. Max was 29 at the time of the dissolution and also in good physical and mental health. He is a licensed attorney and was starting his second year of private practice which was earning him a net income of approximately \$475 per month. Although at the present time neither party was enjoying a substantial income, we recognize that both are young, healthy and qualified for careers in fields which should provide each with a comfortable income.

The value of the property accumulated by the parties during the marriage was a matter of dispute between the parties at trial. We find stronger support in the record for a valuation of approximately \$10,000. The division of the property effected by the parties shortly after they separated heavily favors Gail. She retained property valued at about \$9,000 while Max took property valued slightly in excess of \$1,000. The evidence also shows that Max furnished Gail with funds totalling \$977.58 since the parties separated. We believe that, in light of the parties' age, health and education, this property distribution constitutes a fair and equitable settlement in lieu of alimony and the trial court was correct in refusing to grant Gail a lump sum settlement.

II. Gail also contends that Max should be required to pay off the balance of the parties' Master Charge debt as of the date of the dissolution. She bases this contention on the fact that tuition for Max's last semester of law school was charged to this account. The evidence presented at trial indicates, however, that Max has paid in excess of \$1,000 on that debt since the parties separated. We find these payments are sufficient to cover the balance of this account attributable to tuition for his final semester of law school. Moreover, evidence also indicates Max borrowed \$3,000 from First National Bank of West Union to finance his educational expenses for the final semester. These funds were deposited in the parties' joint bank account. We uphold the decision of the trial court and require Gail to pay off the Master Charge debt.

III. Finally, Gail contends that Max should be required to pay her attorney fees. In light of our earlier discussion of the parties' financial conditions in division I, we decline to make such an award. It is apparent from the record Gail is financially able to pay for her own attorney. The decision of the trial court was fair and equitable in all respects and is hereby affirmed.

**AFFIRMED.**