

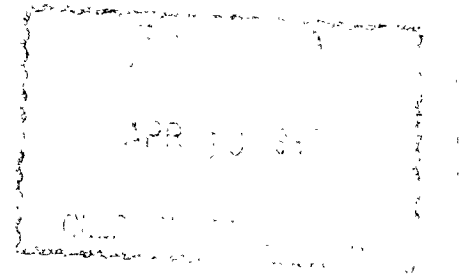
IN THE COURT OF APPEALS OF IOWA

No. 7-054 / 95-1402

**IN RE THE MARRIAGE OF ELSE LILLI LANSMAN
AND RANDALL DAVID LANSMAN**

Upon the Petition of
ELSE LILLI LANSMAN,
Petitioner-Appellant/Cross-Appellee,

And Concerning
RANDALL DAVID LANSMAN,
Respondent-Appellee/Cross-Appellant.



Appeal from the Iowa District Court for Audubon County, Charles L. Smith, III,
Chief Judge.

Petitioner appeals and respondent cross-appeals from the entry of the dissolution
decree. **REVERSED AND REMANDED.**

J.C. Salvo and Richard C. Schenck of Salvo, Deren, Schenck & Lauterbach,
P.C., Harlan, for appellant.

Michael J. Winter, Council Bluffs, for appellee.

Heard by Habhab, C.J., and Huitink and Streit, JJ.

STREIT, J.

Petitioner appeals and respondent cross-appeals from the entry of the dissolution decree. Petitioner contends the court erred in awarding her inadequate alimony and placing a lien on the homestead in favor of respondent. She also requests appellate attorney fees. Respondent urges the court erred in (1) awarding petitioner excessive alimony, (2) ordering him to pay petitioner's attorney fees, and (3) applying the child support guidelines.

Else and Randall Lansman met while Else, a Denmark citizen, was traveling in the United States. After their marriage, the parties resided in Iowa, and their first child was born in 1976. In 1978, the parties moved to Denmark, and Else resumed her employment with the government. The parties returned to Iowa in 1979 after Else had complications with her second pregnancy. Randall purchased his parents' agricultural business, and the parties remained in Iowa. Else was employed at various part-time jobs during the marriage, and was the primary caretaker of the parties' three children: Preben, born April 17, 1976; Palle, born February 1, 1979; and Torben, born June 12, 1982.

On August 12, 1993, Else filed a dissolution petition. Trial commenced in June 1995. At that time, Else was forty-five years old, Randall was forty-three, Preben was nineteen, Palle was sixteen, and Torben was thirteen. Randall was employed by Cenex, the company that purchased the parties' agricultural business, as a manager. He earned

a gross income of \$50,000 per year, not including bonuses, approximately \$2000 per year from farming, and \$2000 to \$3600 per year in interest from a fund set aside for any future environmental cleanup resulting from the parties' agricultural business. Else had just obtained her license to practice massage therapy. The parties agreed that Else should have primary physical care of Preben and Torben, and Randall should have primary physical care of Palle.

The court ordered Randall to pay monthly child support of \$1095, and monthly rehabilitative alimony of \$300 for three years. In dividing the property, it ordered, among other things, that Else receive the homestead subject to the \$10,000 mortgage and a lien in Randall's favor of \$11,500.

Else appeals, and Randall cross-appeals.

Our review of this equitable action is de novo. Iowa R. App. P. 4. *In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa App. 1995). We are not bound by the district court's findings of fact, but we do give them deference because the district court had the opportunity to view the demeanor of the witnesses firsthand. *Id.*; *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992).

I. Alimony. 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). 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 relative needs of the other." *In re Marriage of Miller*,

524 N.W.2d 442, 445 (Iowa App. 1994); *In re Marriage of Estlund*, 344 N.W.2d 276, 281 (Iowa App. 1983) (citation omitted).

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Miller*, 532 N.W.2d at 162; *In re Marriage of Whelchel*, 476 N.W.2d 104, 110 (Iowa App. 1991); *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976). The discretionary award of alimony is made after considering the factors listed in Iowa Code section 598.21(3)(1995). See *In re Marriage of Hayne*, 334 N.W.2d 347, 350 (Iowa App. 1983). Alimony may be used to remedy the inequities in a marriage and to compensate a spouse who leaves the marriage at a financial disadvantage. *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993); *In re Marriage of Earsa*, 480 N.W.2d 84, 86 (Iowa App. 1991).

Following a marriage of long duration, we have affirmed awards of both alimony and substantially equal property distribution, especially where the disparity in earning capacity has been great. *In re Marriage of Geil*, 509 N.W.2d at 742; *In re Marriage of Hitchcock*, 309 N.W.2d 432, 438 (Iowa 1981). The court should also consider the feasibility of the party seeking alimony becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. *In re Marriage of Debbler*, 459 N.W.2d 267, 270 (1990); Iowa Code § 598.21(3)(f).

An alimony award will differ in amount and duration according to the purpose it is designed to serve. *In re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989). Rehabilitative alimony is awarded to support an economically dependent spouse

through a limited period of retraining. *Id.* The duration of this type of award depends on the particular needs of the dependent spouse. *Id.* at 63. Rehabilitative or transitional alimony is the support necessary to assist a person making a transition to a regular job. *In re Marriage of Christensen*, 543 N.W.2d 915, 919 (Iowa App. 1995); *In re Marriage of Berger*, 431 N.W.2d 387, 388 (Iowa App. 1988); *In re Marriage of Russell*, 473 N.W.2d 244, 247 (Iowa App. 1991).

Traditional or permanent alimony in contrast is usually payable for life or for so long as the dependent spouse is incapable of self-support. *Id.* at 62. The purpose of a traditional or permanent alimony award is to provide the receiving spouse with support comparable to that he or she would receive if the marriage continued.

In the last four years of the marriage Else did not earn more than \$5789. She testified of her hopes to start a massage therapy business, but lacked the start-up costs of \$15,000. The trial court awarded her \$300 per month for three years. We find that amount is inadequate considering the length of the marriage and the disparity in income between the parties. Given she has just learned a new trade of massage therapy, she will need some time before she can make the transition to adequately support herself and obtain a style of living similar to what she shared with Randall. *See In re Marriage of Christensen*, 543 N.W.2d 915, 919 (Iowa App. 1995); *In re Marriage of Berger*, 431 N.W.2d 387, 388 (Iowa App. 1988); *In re Marriage of Russell*, 473

N.W.2d 244, 247 (Iowa App. 1991). We find alimony should be increased to \$600 per month for three years. Randall's lien on the homestead shall remain.

II. Child Support. Randall claims the district court did not properly apply the child support guidelines in establishing his child support obligations and failed to use a set off method in a split custody arrangement. Randall has primary custody of Palle. Else has primary custody of Preben and Torben.

The district court calculated the amount of child support to be paid by Randall for two children based on a gross monthly income of \$3400. The court did not take into consideration the split-custody arrangement. We find the district court's calculations regarding Randall's gross monthly income were inaccurate as well as determination of the amount of child support owed by Randall. Utilizing the child support guidelines, we determine, after also deducting federal and state income tax liability along with social security and medicare tax liabilities, his net monthly income for the computation of child support is \$3091.¹

¹ In calculating Randall's net monthly income, before fixing child support, we did not deduct the alimony to be paid to Else, nor did the trial court. It is the discretion of the trial court whether to deduct alimony. *In re Marriage of Lalone*, 469 N.W.2d 695, 697 (Iowa 1991). Long-term alimony that is substantial is properly deductible in fixing child support. *See In re Marriage of Hardy*, 539 N.W.2d 729, 732 (Iowa App.1995); *In re Marriage of Benson*, 495 N.W.2d 777, 780 (Iowa App. 1992); *In re Marriage of Allen*, 493 N.W.2d 273, 275 (Iowa App. 1992). Alimony to be paid that is short in duration, however, has not been found an abuse of discretion by the trial court for failure to deduct. *See In re Marriage of McKamey*, 522 N.W.2d 95, 99 (Iowa App. 1994).

The calculations regarding Else's income must be modified. The district court found Else had a \$0 monthly net income. In Else's testimony, she admitted she believed her earning potential as a self-employed massage therapist was approximately \$500 per month. *See In re Marriage of Roberts*, 545 N.W.2d 340, 343-45 (Iowa App. 1996) (child support award may be based upon the party's earning capacity, as opposed to his or her actual earnings). We conclude a more accurate calculation of Else's net monthly income equals \$412, after deducting federal and state income tax liabilities, social security, and medicare tax liabilities.

Based upon Randall's net monthly income of \$3091 and Else's net monthly income of \$412, the guidelines require Randall to pay Else \$652 in child support for the benefit of Torben. Else is required to pay Randall \$50 for the benefit of Palle. Setting these amounts off against each other, we find that Randall is to pay Else \$602 per month in child support. At such time Palle becomes ineligible for child support, Randall's obligation to Else shall be increased to \$652 per month. *See In re Marriage of Will*, 489 N.W.2d 394,400 (Iowa 1992). Child support owed is dated back to the date of the dissolution trial. We do not disturb the district court's order awarding Randall the dependancy deduction for the children.

The oldest child, Preben, is attending college. The child support guidelines are not applicable to determine support for an unmarried adult child under twenty-two years of age who is a student. *In re Marriage of Lindberg*, 462 N.W.2d 698, 701 (Iowa App.

1990). We look to section 598.1(6) of the Iowa Code to determine a divorced parent's obligation to support his or her adult offsprings who are students. *See* Iowa Code § 598.1(6) (1997).

The duty to provide college support extends to both parents. *In re Marriage of Byall*, 353 N.W.2d 103, 107 (Iowa App. 1984). In assessing Randall and Else's obligation, we consider: (1) the ability of the child for college; (2) the age of the child; (3) the financial conditions of the parents; and (4) whether the child is self-sustaining. *Id.* The questions are what are Preben's needs and what are his parent's financial resources and abilities to pay. *Lindberg*, 462 N.W.2d at 702 (citations omitted). We remand to the district court for determination of support for Preben based on this criteria. Once Palle and Torben obtain college age, the same analysis should be applied.

III. Attorney Fees. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. *In re Marriage of Kern*, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. *In re Marriage of Castle*, 312 N.W.2d 147, 150 (Iowa App. 1981). We agree with the trial court's

allocation of fees and costs. Each party should pay his or her own attorney fees and court costs on appeal.

REVERSED AND REMANDED.