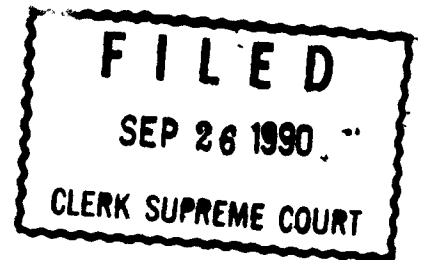


IN THE COURT OF APPEALS OF IOWA

No. 0-231 / 89-1078

**IN RE THE MARRIAGE OF GARY DEAN VAN ENGELBURG and
RENEE MARIE VAN ENGELBURG**

Upon the Petition of

GARY DEAN VAN ENGELBURG,

Appellee,

And Concerning

RENEE MARIE VAN ENGELBURG,

Appellant.

Appeal from the Iowa District Court for Bremer County,
Stephen P. Carroll, Judge.

Respondent wife appeals from the child support,
alimony, and attorney fee provisions of the trial court's
decree of dissolution of marriage. **AFFIRMED AS MODIFIED.**

Gaylen V. Hassman of Engelbrecht, Ackerman & Hassman,
Waverly, for appellant.

Frances L. Gohlke of Carney & Gohlke, Waverly, for
appellee.

Considered by Donielson, P.J., and Schlegel and Hayden,
JJ.

DONIELSON, J.

Gary and Renee Van Engelenburg were married on March 1, 1969. Both parties had completed their undergraduate work at Iowa State University, and Gary had just completed his first year of veterinary school. During the first three years of the marriage Renee worked to provide an income for the family while Gary completed his studies. Renee worked on a small-town newspaper, and also worked in the Perry and Nevada school systems as a teacher. In April of 1970, however, Renee was diagnosed as having Hodgkin's disease and for the next three years received cancer treatment. Renee, despite her illness, missed only twelve weeks of employment.

Upon Gary's graduation from veterinary school, the parties moved to Winston-Salem, North Carolina, where Gary sought employment in a small animal hospital. The parties then moved to Hollywood, Florida, to look for greater opportunities. In 1974, they moved to Sumner, Iowa, in order to raise their two children in a more healthy environment. Gary became an employee of the Sumner Animal Hospital and, in 1980, became sole proprietor of this veterinary practice. In 1982, Gary expanded his business by buying out another practice in Tripoli. During the period from 1982-1985 Renee worked for the animal hospital.

In September 1987 Renee obtained a full-time teaching position in Fredricksburg teaching special education. To maintain the job, Renee was required to obtain

certification. She attended the University of Northern Iowa two nights a week for one semester and was certified to teach grades 7 through 12. Gary, in addition to his veterinary practice, also invested in real estate, a dog kennel business called Hickory Ridge Kennels, and a hog feeding business called Hacey Distributing. At this time the parties had acquired a nice home, furniture, and enjoyed a comfortable lifestyle.

Gary filed the present action on September 10, 1986, and the matter came for trial in February 1988. The court left the record open for deposition testimony until May 10, 1988. At trial Renee argued that Gary's business could be earning more per year if Gary undertook certain corrective business practices. Though Gary argued that his business interests had virtually no actual worth due to over two hundred thousand dollars of debt on the various properties, Renee argued the lending institutions must have faith in Gary because they made several loans to pursue his business interests. She argued Gary's income was between \$30,000 and \$40,000 per year, while her income was approximately \$1034 per month. Also, Renee argued Gary's net income of ten percent to twelve percent of the gross income of \$300,000 was artificially low compared to similar practices, which generally net twenty percent to thirty-four percent.

The trial court entered its decree on February 17, 1989. The court ordered Gary to pay Renee \$200 per month

in alimony until June 1, 1989. The court additionally ordered Gary to pay \$350 per month per child, to be paid in two monthly installments. Gary was awarded his veterinary practice, Hacey Distributing, Hickory Ridge Kennels. The trial court concluded that the debt owed in connection with the animal hospital and dog kennels totaled \$181,591.65. The court also found a \$76,227 contract balance owed on the kennels, bringing total liabilities on those businesses to \$257,818.65. The court found Hacey Distributing had no net market value at the time of trial. Thus, the court found these businesses to have a net fair market value of negative \$23,718.65. Gary was also awarded his current home, which is fully encumbered, a 1981 motorcycle valued at \$1000, a 1984 pickup truck valued at \$5000, a 1988 pickup truck, also fully encumbered, \$2308 in Merrill-Lynch accounts, \$4000 in household goods, and a one-half interest in an IRA valued at \$6230, exclusive of accumulated interest.

Renee received the marital home valued at \$23,000, a 1982 Mercury valued at \$6000, half the IRA (\$6230, exclusive of accumulated interest), Renee's \$5000 inheritance, and household contents worth \$15,000.

Renee subsequently filed a motion to reconsider, requesting an order as to the parties' 1987 Iowa income tax refund of \$2284, and challenging the court's division of the IRA account and award of the Merrill Lynch account to Gary. The court filed its order on June 9, 1989. The

court awarded Renee the Iowa income tax refund because Gary had breached an agreement to give Renee one-half of the federal income tax refund. Otherwise, the division of property remained unchanged. Renee has appealed.

On appeal Renee challenges the court's award of alimony and child support. Renee contends Gary's income and net worth have been artificially deflated in calendar years 1987 and 1988 due to several new loans extended to Gary. Renee cites to some "red flag" areas, such as the acquisition of additional business and personal items in the few months preceding the trial, as evidence that Gary's income is actually much greater than he admits. Additionally, Renee maintains that if Gary would incorporate his business, or move his practice elsewhere, he could realize a greatly increased income. Even without changes to the business, Renee contends the farm economy has improved significantly and, therefore, business profitability should improve. Renee seeks (1) child support of \$450 per month per child, (2) alimony of \$1100 per month until she reaches age sixty-five or dies, (3) full payment of trial attorney fees, and (4) appellate attorney fees.

I. SCOPE OF REVIEW. Our scope of review in dissolution actions is de novo. Iowa R. App. P. 4. While this court is not bound by the trial court's factual findings, we do give considerable weight to them, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7).

There are no hard and fast rules governing the economic provisions of a dissolution action and precedent, though helpful, is of little value. In re Marriage of Wiedemann, 402 N.W.2d 744, 747 (Iowa 1987). Our goal is to do equity under all of the circumstances.

II. CHILD SUPPORT. Iowa Code section 598.21(4) sets out factors utilized by the court in setting child support awards. We hardly need repeat that both parents have a legal obligation to support their children and this obligation should be apportioned according to the ability of each parent to contribute. Id.; In re Marriage of Schettler, 455 N.W.2d 686, 689 (Iowa App. 1990).

The district court set the child support at \$350 per month per child. This award is to continue beyond high school if the children attend an approved school as provided by Iowa Code section 598.1. The district court also ordered Gary to provide medical insurance for the children. Both parties, in their briefs, make reference to the Uniform Child Support Guidelines. The trial court did not have the benefit of the guidelines as they were not adopted by the supreme court until September, 1989. We find the child support award set by the district court reasonable and appropriate, mentioning only in passing that the child support award is not contrary to the guidelines.

III. ALIMONY. In support of her claim for additional alimony, Renee notes her almost twenty-year marriage, the suggestion of Gary's businesses being more profitable than

they appear, and the possibility the profit margin could be increased if Gary were to make some changes in his business practices.

Alimony is an allowance to the spouse in lieu of the legal obligation to support. In re Marriage of Sjulín, 431 N.W.2d 773, 775 (Iowa 1988). An award of alimony, however, is not an absolute right. Id. "Ideally, spousal support is awarded in an amount sufficient to maintain the standard of living comparable to that enjoyed during the marriage. However, this is not possible when the parties have limited income." In re Marriage of Mott, 444 N.W.2d 507, 510 (Iowa App. 1989).

The trial court found Gary's net income for 1986 and 1987 to be between \$30,000 and \$40,000 per year, however, Gary's debt obligation on his businesses is substantial. The trial court concluded Gary's financial situation was not amenable to quick solutions. While we do not disagree with the trial court's conclusions, we find rehabilitative alimony of \$200 per month for three months inadequate under the circumstances. Considering the length of the marriage, Gary's higher earning capacity, and the division of property, we find an award of alimony in the amount of \$250 per month for a period of five years warranted and within Gary's ability to pay.

IV. ATTORNEY'S FEES. The district court ordered Gary to pay \$2000 of Renee's attorney's fees. Renee claims the district court abused its discretion in not requiring Gary

to pay the full amount of her attorney's fees. She also asks that Gary be ordered to pay all appellate attorney fees.

Iowa trial courts are permitted considerable discretion in allowing attorney's fees and costs in dissolution actions. In re Marriage of Morehead, 224 N.W.2d 242, 245 (Iowa 1974). 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 will not disturb the trial court's award.

In considering the award of attorney fees in appellate proceedings, we look to 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). Guided by these general principles, Renee's request for attorney fees is denied.

For the foregoing reasons, the decision of the district court is affirmed as modified. The costs of this action are to be divided equally by the parties.

AFFIRMED AS MODIFIED.