

IN THE COURT OF APPEALS OF IOWA

No. 1-639 / 91-844

FILED

JUN 25 1992

CLERK SUPREME COURT

IN RE THE MARRIAGE OF DIXIE GRANBERG AND
ROBERT GRANBERG

Upon the Petition of
DIXIE GRANBERG,

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Appellant,

And Concerning
ROBERT GRANBERG,

Appellee.

Appeal from the Iowa District Court for Black Hawk
County, Alan L. Pearson, Judge.

Dixie Granberg appeals the economic provisions of a
district court decree of dissolution. **AFFIRMED.**

David H. Correll of Correll & Sheerer, Cedar Falls, for
appellant.

John W. Sabbath of Reed-Merner & Mershon, Snow & Knock,
Cedar Falls, for appellee.

Considered by Oxberger, C.J., and Donielson and Hayden,
JJ.

HAYDEN, J.

Robert and Dixie were married in Las Vegas on August 29, 1984. No children were born of this marriage, but Dixie has children by prior marriages.

Robert, born in 1938, has been employed by John Deere for over thirty years. In 1990 his gross income was around \$74,000.

Dixie, born in 1940, was working as a chemical dependency counselor at the time of the decree. Dixie earned approximately \$20,000. Previously, Dixie worked as a cosmetologist. One of Dixie's children, Jeff, is twenty-two and is mentally and physically handicapped.

Dixie filed a petition for dissolution of marriage on October 5, 1990. At trial Dixie sought to introduce evidence concerning Robert's physical and sexual abuse of her son, Jeff. She attempted to offer this alleged misconduct to establish alimony and enhance the division of property for her. The district court refused to consider this evidence. She made an offer of proof. Following trial the district court entered its decree of dissolution. No alimony was awarded. Robert was required to pay Dixie \$10,000 to equalize the division of property and \$1200 for attorney fees. Dixie appeals. We affirm. Dixie also seeks attorney fees for this appeal.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented.

In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

Dixie argues the trial court erred by failing to consider evidence of Robert's misconduct. We find no merit in this. The "guilty party" concept has long since been eliminated. "Fault" or "conduct" is not a factor for consideration by the court when awarding property, alimony, or support money. In re Marriage of Williams, 199 N.W.2d 339 (Iowa 1972). We do not sanction a rationale which says but for the conduct of one party, the dissolution would not have taken place.

Next, Dixie contends the trial court erred by denying her request for alimony. When determining the appropriateness of alimony, the court must consider (1) the earning capacity of each party, and (2) their present standards of living and ability to pay balanced against their relative needs. In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983). Alimony is an allowance to the ex-spouse in lieu of a legal obligation to support that person. See In re Marriage of Hitchcock, 309 N.W.2d 432 (Iowa 1981). Alimony is not an absolute right; an award depends upon the circumstances of each particular case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). 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). Based on the short duration of the marriage, Dixie's level of education, and her earning capacity, we affirm the trial court on this issue.

Dixie further challenges the property division determined by the trial court. The partners in the marriage are "entitled to a just and equitable share of the property accumulated through their joint efforts." In re Marriage of Havran, 406 N.W.2d 450, 452 (Iowa App. 1987). The distribution of the property of the parties should be that which is equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(1). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983). Upon consideration of these criteria, we determine the trial court's division of property was equitable. We affirm the trial court on this issue.

Finally, Dixie requests attorney fees on appeal. 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).

Based on these factors, we deny Dixie's request for appellate attorney fees and assess costs on appeal to her.

AFFIRMED.