

**IN THE COURT OF APPEALS OF IOWA**

No. 6-503 / 05-2108  
Filed October 11, 2006

**IN RE THE MARRIAGE OF KAREN CATHERINE FOWLKES AND RAYMOND  
CHARLES FOWLKES**

**Upon the Petition of  
KAREN CATHERINE FOWLKES,**  
Petitioner-Appellee,

**And Concerning  
RAYMOND CHARLES FOWLKES,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Buchanan County, Bruce Zager,  
Judge.

A husband appeals the award of alimony in the parties' dissolution decree.

**AFFIRMED AS MODIFIED.**

Terry D. Parsons of Olsen & Parsons Law Firm, Cedar Falls, for appellant.

Karla M. Wolff, Cedar Rapids, for appellee.

Heard by Huitink, P.J., Mahan, J., and Hendrickson, S.J.\*

\*Senior Judge assigned by order pursuant to Iowa Code section 602.9206  
(2005).

**HENDRICKSON, S.J.**

Respondent Raymond Charles Fowlkes appeals from the amount of alimony and the duration of alimony provided in the decree dissolving his marriage to Karen Catherine Fowlkes. We affirmed as modified.

**I. Background Facts & Proceedings**

Raymond and Karen Fowlkes were married in 1970. They have three adult children. Karen filed a petition for dissolution of marriage in March 2005. The parties were in bankruptcy proceedings at the time of the dissolution, but the automatic bankruptcy stay was lifted for purposes of the dissolution proceedings. The parties agreed to a division of property, and that Karen would receive one-half of Raymond's Navy pension.

Raymond was fifty-three years old at the time of the dissolution hearing. He dropped out of school in ninth grade. Raymond retired from the Navy after serving twenty years. Thereafter, he obtained a custodial job for minimum wage, then went to IBP in Waterloo, where he works in maintenance.<sup>1</sup> Raymond earns \$13.20 per hour, and is able to work overtime. He also receives a military pension of \$1210 per month. Raymond is in good health.

Karen was fifty-four years old at the time of the hearing. She graduated from high school. Karen worked at temporary jobs while Raymond was in the Navy. After the parties moved to Iowa in 1990, Karen also got a job at IBP. She left that job in 1996 to work at Iowa Ham in Independence.<sup>2</sup> Karen earns \$10.85 per hour. Recently, Karen's hours have been cut and she only works four days

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<sup>1</sup> The IBP facility in Waterloo was bought by Tyson in about 2000.

<sup>2</sup> The Iowa Ham facility in Independence was also purchased by Tyson.

per week. She testified there were rumors the Independence facility might close. Karen has a twenty-five pound lifting restriction. She smashed some of the fingers of her left hand in a work-related accident, which caused the loss of some parts of those fingers. Otherwise she is in good health.

The district court issued a dissolution decree for the parties on November 28, 2005. The court determined Raymond should pay Karen alimony of \$400 per month until either party dies, or Karen remarries. The court noted this was a long-term marriage. Also, Karen may be limited in future employment due to her lifting restriction and the injury to her hand. The court found:

It is clear that [Karen's] earning capacity at this time is substantially less than Raymond's, and the Court doubts that absent some award of alimony, she will ever become self-supporting at or near the standard of living reasonably comparable to that which she enjoyed during the course of her marriage of Raymond.

## **II. Standard of Review**

Our review in this equitable action is de novo. Iowa R. App. P. 6.4. "In equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the district court, but is not bound by them." Iowa R. App. P. 6.14(6)(g).

## **III. Alimony**

Raymond argues that the district court should not have awarded alimony to Karen. In the alternative, he argues the amount and/or duration of the alimony award was excessive. Raymond asserts that Karen has adequate income to meet her needs. He points out that Karen has a high school diploma, while he does not. Raymond believes there was insufficient evidence to show the stability

and viability of Karen's continued employment at the Independence facility was in question.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Kurtt*, 561 N.W.2d 385, 387 (Iowa Ct. App. 1997). The discretionary award of alimony is made after considering those factors found in Iowa Code section 598.21(3) (2005). We consider the length of the marriage, the age and health of the parties, the parties' earning capacities, the levels of education, and the likelihood the party seeking alimony will be self-supporting at a standard of living comparable to the one enjoyed during the marriage. *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa Ct. App. 1998).

When reviewing an alimony award, we give considerable latitude and discretion to the district court, and will disturb its ruling only when there is a clear failure to do equity. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). We find the award of traditional alimony in this case was not inequitable. The parties had a lengthy marriage of thirty-five years. Karen has some health problems due to her lifting restriction and the loss of parts of some fingers on her left hand. While Karen's educational level is higher than Raymond's, this has not held him back in his field of employment. It is clear Raymond's earning capacity exceeds that of Karen.

On our de novo review, however, we find the amount of alimony awarded was excessive under the facts of this case. We note the division of property and the fact Karen will receive one-half of Raymond's military pension. By reducing

Raymond's alimony payment to \$200, each party will receive a similar amount of income. We determine Raymond should pay alimony of \$200 per month to Karen until Karen becomes eligible for maximum Social Security benefits, or until she dies or remarries, or Raymond dies, whichever first occurs.

#### **IV. Attorney Fees**

Karen seeks attorney fees for this appeal. An award of appellate attorney fees is not a matter of right, but rests within our discretion. *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa Ct. App. 1997). We consider the needs of the party making the request, the ability of the other party to pay, and whether the party was required to defend the district court's decision on appeal. *In re Marriage of Wood*, 567 N.W.2d 680, 684 (Iowa Ct. App. 1997). We determine each party should pay his or her own appellate attorney fees.

We affirm the decision of the district court, as modified. Costs of this appeal are assessed one-half to each party.

**AFFIRMED AS MODIFIED.**