

**IN THE COURT OF APPEALS OF IOWA**

No. 8-015 / 07-0555  
Filed May 29, 2008

**IN RE THE MARRIAGE OF VICKI L. MURKEN  
AND MELVIN E. MURKEN**

**Upon the Petition of  
VICKI L. MURKEN,**  
Petitioner-Appellee,

**And Concerning  
MELVIN E. MURKEN,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Polk County, Karen A. Romano,  
Judge.

Melvin Murken appeals the alimony and trial attorney fee provisions of the  
trial court's decree dissolving the parties' marriage. **AFFIRMED AS MODIFIED.**

Susan L. Ekstrom, Des Moines, for appellant.

Deborah McKittrick, Ankeny, and Jeanne K. Johnson, Des Moines, for  
appellee.

Heard by Sackett, C.J., and Huitink and Mahan, JJ.

**HUITINK, J.**

Melvin Murken appeals the alimony and trial attorney fee provisions of the trial court's decree dissolving the parties' marriage. We affirm as modified.

**I. Background Facts and Proceedings**

Melvin (Mel) and Vicki Murken were married in June 1977. Vicki filed for divorce on January 18, 2006. Their case was tried on January 23, 2007. At the time this case was tried, Mel was sixty-five years of age. He retired from teaching in 2000. Mel's monthly income includes \$2001.49 in IPERS and \$1242 in Social Security retirement benefits. Mel has worked part-time at various jobs since retirement, but was not working as of the trial date.

Vicki was sixty years of age. She has no postsecondary education or job training. Vicki worked part-time during most of the marriage. Her last full-time employment was in 2003 in a clerical position with Principal Insurance Company. Her Social Security statement indicates her annual earnings during her two-and-one-half-year employment with Principal ranged from \$16,400 to \$18,300. Vicki was also not working at the time of trial.

The trial court's February 20, 2007 decree awarded Vicki \$657.63 of Mel's monthly IPERS benefit. That decree also provides in relevant part:

Vicki worked on and off during the course of the marriage. Her employment was typically through temp services. It appears that her longest period of employment was two and one-half years with Principal. The evidence appears to show that she did not have consistent full-time employment so that she could follow Mel's sports teams. The long term plan for the parties, even after Mel retired, was that he would take care of Vicki and she would not have to work. It is clear that Vicki is employable in some capacity. It is unclear what her earning capacity is. Mel's gross income from social security and his share of his IPERS pension will be \$2,585.86 per month; whereas Vicki's sole income will be her share

of Mel's IPERS pension in the gross amount of \$657.63 per month. At age 62, Vicki can also draw social security benefits in the amount of \$698.00 per month, which would increase her monthly income to \$1,355.63. The court finds that Vicki is incapable of self-support at this time and is entitled to an award of alimony. In determining the amount of alimony, the court considers the statutory factors as well as the amount of the property division, earning capacity of each party, Vicki's need of support and Mel's ability to pay and any other relevant information.

After considering all of the factors and considering the parties' stated monthly expenses as set forth on their respective Affidavits of Financial Status, the court finds that Vicki should be awarded alimony in the amount of \$1,000 per month until age 62 when she can begin drawing her social security in the amount of \$698.00 per month. This results in a monthly income to Vicki of \$1,657.63, and monthly income to Mel of \$1,585.86. When Vicki reaches age 62, Mel's alimony obligation shall be reduced to \$600.00 per month. This will result in a monthly income to Vicki of \$1,955.63, and a monthly income to Mel of \$1,985.86.

On appeal, Mel claims the record does not support an award of alimony. He alternatively contends both the amount and duration of the alimony awarded are excessive. Mel also contends the record does not support an award of attorney fees and the trial court abused its discretion by concluding otherwise.

## **II. Standard of Review**

We review the provisions of a dissolution decree de novo. Iowa R. App. P. 6.4. We examine the entire record and decide anew the legal and factual issues properly presented and preserved for our review. *In re Marriage of Reinhart*, 704 N.W.2d 677, 680 (Iowa 2005). We accordingly need not separately consider assignments of error in the trial court's findings of fact and conclusions of law but make such findings and conclusions from our de novo review as we deem appropriate. *Lessenger v. Lessenger*, 261 Iowa 1076, 1078, 156 N.W.2d 845, 846 (1968). We, however, give weight to the trial court's findings of fact, especially when considering the credibility of witnesses, but we

are not bound by them. Iowa R. App. P. 6.14(6)(g). Prior cases have little precedential value; therefore, we must base our decision on the particular facts of this case. *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983).

### III. Alimony

Alimony is “a stipend to a spouse in lieu of the other spouse’s legal obligation for support.” *In re Marriage of Probasco*, 676 N.W.2d 179, 184 (Iowa 2004) (quoting *In re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989)). It is not an absolute right; an award of alimony depends on the circumstances of the particular case. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). Although we review the trial court’s award of alimony de novo, “we give that court considerable latitude in making this determination.” *Id.* We will disturb the trial court’s alimony determination “only when there has been a failure to do equity.” *Id.*

The trial court may award alimony after considering the factors in Iowa Code section 598.21A(1) (Supp. 2005). *In re Marriage of Weinberger*, 507 N.W.2d 733, 735 (Iowa Ct. App. 1993). These factors include: (1) the length of the marriage, (2) the age of and physical and emotional health of the parties, (3) the property distribution, (4) the educational level of the parties at the time of the marriage and at the time the dissolution action is commenced, (5) the earning capacity of the party seeking alimony, and (6) the feasibility of the party seeking alimony becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. Iowa Code § 598.21A(1)(a)-(f).

“An alimony award will differ in amount and duration according to the purpose it is designed to serve.” *In re Marriage of Hettinga*, 574 N.W.2d 920,

922 (Iowa Ct. App. 1997). Traditional or permanent alimony “is usually payable for life, or for so long as the dependent spouse is incapable of self-support.” *Id.* Its purpose “is to provide the receiving spouse the support comparable to what he or she would receive if the marriage continued.” *Id.* In appropriate circumstances, the obligation to pay traditional alimony may continue after retirement. *See, e.g., In re Marriage of Bell*, 576 N.W.2d 618, 623 (Iowa Ct. App. 1998), *overruled on other grounds by In re Marriage of Wendell*, 581 N.W.2d 197, 200 (Iowa Ct. App. 1998) (holding wife was unable to work and needed husband’s support even after he retired); *In re Marriage of Hayne*, 334 N.W.2d 347, 353 (Iowa Ct. App. 1983) (holding wife had no source of support other than alimony, and age (fifty-seven) was an impediment to substantial employment).

Based on our de novo review of the record, we conclude the foregoing factors weigh in favor of an award of traditional alimony. We, however, find the amount awarded excessive. We agree with the trial court’s finding that Vicki is able to work. Additionally, Vicki’s Social Security statement discloses both a significant employment history and earning capacity. Although Vicki’s prospects for self-sufficiency are diminished by her age and limited employment skills, she nevertheless can and should be expected to apply her earning capacity to her self-sufficiency. We accordingly modify the trial court’s alimony award by reducing it to \$500 per month until Vicki reaches age sixty-two and \$300 per month thereafter. In all other respects, including the duration of the award, we affirm on this issue.

**IV. Attorney Fees.**

Attorney fees are not recoverable as a matter of right, but rest within the discretion of the trial court and depend upon the parties' respective financial needs and ability to pay. *In re Marriage of Sprague*, 545 N.W.2d 325, 328 (Iowa Ct. App. 1996). Based on our review of the record, we are unable to say the trial court's award of \$3000 attorney fees to Vicki was an abuse of discretion. We decline to award either party appellate attorney fees. Costs will be shared equally by parties.

**AFFIRMED AS MODIFIED.**