

**IN THE COURT OF APPEALS OF IOWA**

No. 9-703 / 09-0008  
Filed September 17, 2009

**IN RE THE MARRIAGE OF JAMES W. TUCKER  
AND THERESE M. TUCKER**

**Upon the Petition of  
JAMES W. TUCKER,**  
Petitioner-Appellant/Cross-Appellee,

**And Concerning  
THERESE M. TUCKER,**  
Respondent-Appellee/Cross-Appellant.

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Appeal from the Iowa District Court for Mills County, Charles L. Smith,  
Judge.

James Tucker appeals from the district court's award of alimony. Therese Tucker cross-appeals from the district court's award of alimony and seeks appellate attorney fees. **AFFIRMED.**

Jon E. Heisterkamp, Sarah J. Millsap, and Scott Peters of Peters Law Firm, P.C., Council Bluffs, for appellant.

Michael J. Winter, Council Bluffs, for appellee.

Considered by Vogel, P.J., and Potterfield, J., and Huitink, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**POTTERFIELD, J.****I. Background Facts and Proceedings**

James and Therese Tucker were married on August 13, 1983. They had three children during their marriage: Keith, who was twenty-one at the time of trial; Kevin, who was nineteen; and Rachel, who was fourteen. Rachel was living with Therese, and Keith and Kevin were attending Iowa State University.

James was forty-six at the time of trial. He has a bachelor's degree from Iowa State University. He is a shareholder in three corporations: (1) Glenwood Home Services, Inc.; (2) Cyanet, L.L.C.; and (3) Professional Health Care Support Services Corporation, from which James derives his primary income. James's most recent reported earnings were \$151,009 in 2006. His earnings have risen steadily since 2001, when he earned \$130,000.

Therese was forty-seven at the time of trial. She is a high school graduate. Therese was employed by Mutual of Omaha from 1979 to 1994. In 1994, when Rachel was born, James and Therese agreed it would be best for their family if Therese stayed home to take care of the children. At the time she left her job in 1994, Therese was working in marketing research. In 2000, all of the Tucker children were in school, so Therese returned to work, working at James's office and on the special education bus at Glenwood schools. At the time of trial, Therese continued to work on the bus and also worked as a special education associate at Glenwood schools. Between these two jobs, Therese earned \$14,033 in 2007. Therese's highest earnings were \$21,943 in 1992 when she worked at Mutual of Omaha.

James filed a petition for dissolution of marriage on September 8, 2007. The parties agreed, without court assistance, on a property division that distributed approximately \$193,335 of assets and \$26,400 of debt to Therese. The agreement distributed approximately \$315,417.57 of assets and \$440,682.21 of debt to James. James's debts included payment of college expenses for the parties' sons, payment of the mortgage on the house where the boys live, and his assumption of Therese's mortgage and car loan, which require monthly payments of \$1200 and \$500, respectively.

After trial, James was ordered to pay Therese \$1160 per month in child support for Rachel.<sup>1</sup> The district court also ordered James to pay Therese permanent alimony of \$2000 per month until Therese remarries or dies. James appeals, arguing the district court required him to pay too much alimony and should have ordered short-term rehabilitative rather than traditional alimony. Therese cross-appeals, arguing the district court should have awarded her \$4000 per month in permanent alimony. Therese also seeks appellate attorney fees.

## **II. Standard of Review**

We review equity cases de novo. Iowa R. App. P. 6.4. We examine the entire record and adjudicate rights anew on the issues presented. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). We give weight to the district court's findings of fact, especially when considering the credibility of witnesses, but are not bound by them. *In re Marriage of Anliker*, 694 N.W.2d 535, 539 (Iowa 2005). While our review is de novo, we give the district court considerable

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<sup>1</sup> The parties do not dispute the property distribution or award of child support on appeal.

latitude in making its determination and will “disturb that determination only when there has been a failure to do equity.” *Id.* at 540.

### **III. Alimony**

Both parties argue the district court erred in determining the proper amount of alimony. Alimony is not an absolute right. *Id.* The district court may grant alimony at its discretion after considering the particular facts of the case and the factors listed in Iowa Code section 598.21A (2007). *In re Marriage of Hansen*, 733 N.W.2d 683, 704 (Iowa 2007). These factors include: (1) the length of the marriage; (2) the age and physical and emotional health of the parties; (3) the property distribution; (4) the educational level of each party at the time of the marriage and at the time the action is commenced; (5) the earning capacity of the party seeking alimony; and (6) the feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and the length of time necessary to achieve this goal. Iowa Code § 598.21A.

There are three different types of alimony: traditional, rehabilitative, and reimbursement. *In re Marriage of Probasco*, 676 N.W.2d 179, 184 (Iowa 2004). The district court found that Therese was entitled to traditional alimony. Traditional alimony is “payable for life or so long as a spouse is incapable of self-support.” *Id.* (internal quotations omitted). Its purpose is to provide Therese with support comparable to what she would have received if the marriage had continued. *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997). Therese is entitled to be supported “in a manner as closely resembling the standards existing during the marriage as possible, to the extent that that is

possible without destroying [James's right] to enjoy at least a comparable standard of living as well." *In re Marriage of Hayne*, 334 N.W.2d 347, 351 (Iowa Ct. App. 1983).

James argues Therese should have been awarded rehabilitative alimony. Rehabilitative alimony is "a way of supporting an economically dependent spouse through a limited period of re-education or retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting." *Probasco*, 676 N.W.2d at 184 (internal quotations omitted). Inherited property and marital assets can be considered in making an alimony award. *In re Marriage of Voss*, 396 N.W.2d 801, 804 (Iowa Ct. App. 1986).

We find the district court's alimony award was equitable. Therese is unlikely to become self-supporting at a standard of living comparable to that enjoyed during the marriage. We agree with the district court that traditional alimony is necessary, considering the length of the parties' marriage and Therese's level of education and earning capacity. The district court's award allows Therese support without compromising James's ability to enjoy a comparable standard of living as well.

James asserts that Therese is not earning up to her potential and that the district court's award encourages Therese to remain dependent on him. James's monthly payments will decrease in roughly four years once he no longer has to pay child support or Therese's car payments. Those four years will give Therese an opportunity to increase her earning ability and to find employment with higher compensation. Considering the length of the parties' marriage, the parties' ages, the parties' levels of education, Therese's lower earning capacity, and Therese's

ability to become self-supporting at a standard of living comparable to the one enjoyed during the marriage, we conclude the district court's award of alimony is equitable.

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

Therese argues James should pay her appellate attorney fees. An award of attorney fees is not a matter of right, but rests within the court's sound discretion. *In re Marriage of Wood*, 567 N.W.2d 680, 684 (Iowa Ct. App. 1997). The court considers the needs of the party making the request, the ability of the other party to pay, and whether the party making the request is obligated to defend the trial court's decision on appeal. *In re Marriage of Gaer*, 476 N.W.2d 324, 330 (Iowa 1991). After considering these factors, we award Therese \$1000 in appellate attorney fees.

**AFFIRMED.**