

**IN THE COURT OF APPEALS OF IOWA**

No. 6-847 / 06-0309  
Filed November 30, 2006

**IN RE THE MARRIAGE OF DAVID THOMAS  
SUCHOMEL, JR. AND JOANN MARIE SUCHOMEL**

**Upon the Petition of  
DAVID THOMAS SUCHOMEL, JR.,**  
Petitioner-Appellant/Cross-Appellee,

**And Concerning  
JOANN MARIE SUCHOMEL,**  
Respondent-Appellee/Cross-Appellant.

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Appeal from the Iowa District Court for Linn County, Thomas M. Horan,  
Judge.

Petitioner appeals and respondent cross-appeals from provisions of the  
decree dissolving their marriage. **AFFIRMED AS MODIFIED.**

Mona Knoll, Cedar Rapids, for appellant.

Stephen B. Jackson and Stephen B. Jackson, Jr., Cedar Rapids, for  
appellee.

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

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

**HUITINK, P.J.**

Petitioner David Thomas Suchomel, Jr. (Tom) appeals from the alimony provisions of the decree dissolving his marriage to respondent JoAnn Suchomel. JoAnn cross-appeals.

**I. Background Facts and Proceedings**

JoAnn and Tom were married in 1982. It was the second marriage for JoAnn; her first husband died in a work-related traffic accident in 1980, leaving her with three small children. Tom did not formally adopt the children, but acted as a father to them. The children are now adults and not subject to this action.

Tom is employed as Director of Field Operations for Mitchell International, a publishing company, earning \$85,000 per year. He has worked for Mitchell International since 1991. For five of the last six years, he has received bonuses of between \$17,000 and \$28,000 per year. He travels frequently for work and is reimbursed by his employer for all his travel expenses. He has a 401(k) through his employer. At the time of trial, Tom was fifty years old and in good health.

Since May 2005 JoAnn has worked as an executive assistant for Ready Mobile, L.L.C., a start-up telecommunications business, earning \$42,000 per year. Her employer offers benefits including participation in a 401(k) plan and health insurance. Her prior employment history includes positions with other telecommunications companies and part-time positions at UPS and a dental office. JoAnn was steadily employed full-time for at least the last ten years of the marriage, but did not earn more than \$30,000 per year until 1997. At the time of trial, she was fifty-three years old and in good health.

Tom filed a petition for dissolution of marriage in October 2004. A trial on the issues of property distribution and alimony was held in January 2006. The court filed its decree on January 18, 2006. The court divided the parties' assets and debts, resulting in an award of approximately \$235,000 to each party. In addition, the court set aside to JoAnn her inherited property, totaling approximately \$239,000. Finally, the court ordered Tom to pay spousal support of \$1500 per month to JoAnn until she reaches age sixty-six, dies, or remarries. It further ordered Tom to maintain life insurance with a death benefit of not less than \$230,000, naming JoAnn as beneficiary, to secure his alimony obligations. In its findings of fact, the court indicated the support award was "[t]o assist [JoAnn] in her attempt to support herself and provide herself with a retirement and to maintain her in a semblance of the lifestyle she has been accustomed to as Petitioner's spouse."

The sole issue on appeal is the alimony award. Tom does not dispute the appropriateness of an alimony award, but argues it should be reduced to \$750 per month for forty-eight months. He also asks that we modify the conditions upon which alimony will terminate to include cohabitation. JoAnn, in her cross-appeal, contends the alimony award should be increased to \$2000 per month until Tom reaches age sixty-six, then reduced to \$416 per month until Tom's death or JoAnn's death. Both parties request an award of appellate attorney fees.

## II. Standard of Review

Our scope of review in this equitable action is de novo. Iowa R. App. P. 6.4. We give weight to the fact findings of the district court, particularly when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 6.14(6)(g). We accord the trial court considerable latitude in resolving economic provisions of a dissolution decree and will disturb a ruling only when there has been a failure to do equity. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998).

## III. Alimony

An award of spousal support is a balancing of the equities. *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa Ct. App. 1998). 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).

The district court may award alimony after considering the factors in Iowa Code section 598.21(3) (2003). *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 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 § 598.21(3)(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 payable for life or for so long as the dependent spouse is incapable of self-support.” *Smith*, 573 N.W.2d at 926 (citation omitted). Rehabilitative or transitional alimony “serves to support an economically dependent spouse through a limited period of education and retraining.” *Id.* (citation omitted). Its objective is self-sufficiency. *Id.*

Based on our de novo review of the record, we conclude an award of traditional or permanent alimony, as requested by JoAnn on appeal, is inappropriate under the circumstances. It is clear from the record that JoAnn is capable of self-support. JoAnn leaves the marriage with \$239,000 of inherited property, in addition to net assets of approximately \$235,000. She is in good health and has a steady employment history. The division of the parties’ retirement and investment accounts, along with the award of inherited property, is sufficient to secure JoAnn’s retirement. For these reasons, we also find the district court’s thirteen-year award of alimony inequitable. Accordingly, we modify the alimony award to terminate five years from the date the decree was entered. The amount and other terms of the alimony award remain unchanged.<sup>1</sup>

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

An award of appellate attorney fees is not a matter of right, but rests within the court’s discretion. *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa Ct.

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<sup>1</sup> Tom requests the addition of a provision that alimony will terminate upon JoAnn’s cohabitation with another. However, this court has determined “it would be inappropriate to use cohabitation as an event to automatically terminate alimony in an original dissolution decree.” *In re Marriage of Wendell*, 581 N.W.2d 197, 200 (Iowa Ct. App. 1998).

App. 1997). We 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 district court's decision on appeal. *In re Marriage of Maher*, 596 N.W.2d 561, 568 (Iowa 1999). We deny both parties' requests for appellate attorney fees. Costs on appeal are taxed one-half to each party.

**AFFIRMED AS MODIFIED.**