

BACKGROUND: Patty and Michael had four children, ages 12, 10, 9, and 8. Michael worked full-time for his father in a truck towing business and Patty worked part-time at Arby's. Shortly after Michael and Patty separated, Patty became involved in a romantic relationship with another woman, Stephanie. Patty testified that she is an alcoholic and had other substance abuse problems. Patty was charged with drunk driving before the marriage and intoxication and assault on her husband after the marriage.

TRIAL COURT'S DECISION: Frank represented Patty at trial. Patty's mother and sister (a registered nurse) testified against Patty at trial, both calling Patty a liar. The trial court granted Patty custody of all four children and granted Michael every other weekend and Wednesday visitation. The trial court ordered Michael to pay Patty child support, alimony and attorney fees. Patty also received the family home. Michael did not appeal.

115-655

IN THE IOWA DISTRICT COURT IN AND FOR [REDACTED] COUNTY

1995 JUN 28 PM 2:50

FILED
CLERK OF DISTRICT COURT

UPON THE PETITION OF
MICHAEL A. [REDACTED]

Petitioner,

AND CONCERNING
PATRICIA A. [REDACTED]

Respondent.

No. [REDACTED]

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECREE

Trial in the above-captioned matter commenced on April 17, 1995. Evidence was taken on the 17th, 18th and 19th. At all times the Petitioner, Michael [REDACTED], appeared in person with attorney Karla Wolff. The Respondent, Patricia [REDACTED], appeared in person with attorney Frank Nidey.

The parties agreed all their personal property had been divided except for the pool table, which was an issue at trial. The parties agreed to joint custody of their four minor children. However, primary physical care was an issue tried to the Court, as well as child support, visitation, alimony, real estate, attorney fees, court costs, debts and a possible tort suit by the Respondent against the Petitioner. Evidence was taken and the matter was taken under advisement.

The Court having considered all of the evidence presented, testimonial and documentary, finds as follows:

FINDINGS OF FACT

1. The Court has jurisdiction of the parties and the subject matter. Both parties have been residents of this State for more than one year.
2. Further counseling and conciliation procedures would not be successful in saving this marriage.
3. There has been a breakdown of the marriage relationship to the extent that the legitimate objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved.

4. The parties, Michael and Patricia, were married May 1, 1982. Four children were born of the marriage: M [REDACTED], DOB [REDACTED] 83, now 12; J [REDACTED], DOB 7-[REDACTED] 84, now ten; S [REDACTED], DOB [REDACTED]-85, nine; K [REDACTED], DOB [REDACTED]-87, eight. The parties separated in late March of 1994 and lived separately since that time. It was the first marriage for each of them.

5. The Petitioner, Michael Alan [REDACTED], was born [REDACTED], 1960. He is age 34. He is residing with his parents at [REDACTED], Iowa. He graduated from [REDACTED] High School and went to work for [REDACTED] Construction doing concrete work. He met the Respondent Patty two years after high school graduation. [REDACTED] helped build a Casey Store in [REDACTED]. Patty was working there. They started dating in December of 1981. He was raised in the Presbyterian religion. Patty was raised as a Catholic. Petitioner converted to Catholicism because of the marriage.

After they were married they lived in [REDACTED] for a while in a house Michael had purchased from his father on contract (Exhibit P). He was employed then for a well drilling operation. The Respondent became pregnant right away. In fact, they had four children fairly quickly with only about a year and a half inbetween each. Michael then went to work doing construction so he could be closer to home. During the fourth pregnancy they moved back to [REDACTED]. They purchased their current home for \$53,000. He went back to work for [REDACTED] Construction and then went to work for his father. He and his brother are planning to take over the family business, which has been run by his father, [REDACTED]. His 1994 W-2 shows he had wages of \$30,710. However, his financial affidavit shows him with an income of \$29,640 for 1995.

6. The Respondent, Patricia Ann [REDACTED], was born [REDACTED], 1960. She is age 35. She is living in the family home at [REDACTED], Iowa. She grew up in the [REDACTED] area and went to high school in [REDACTED]. At age 13 she went to work at [REDACTED]. She worked at a nursing home when she was 16 or 17, and also at a [REDACTED]. She went to the [REDACTED] Bible School in [REDACTED], Missouri. She was employed at St. John's Hospital in [REDACTED] at age 20 as a scrub tech for two and a half years. She got in trouble there for alcohol use and inhaling Halothane, was fired, and eventually returned to Iowa. She was working at [REDACTED] and was age 21 when she met the Petitioner.

She is employed at [REDACTED] during the school year, which gives her flexibility with regard to the children. However, she only nets about \$350 per month when she is working. Since the separation she has been placed on the [REDACTED] list for nursing classes. She hopes to become an RN and work in trauma. She is certified as an EMT and is enrolled in advanced EMT courses and wants to be employed in the health care field.

7. As indicated above, the parties have four children. Each of them wants primary physical care of those children. The oldest child is M [redacted], also known as M [redacted]. He is described as smart, sensitive, headstrong, intense. He has had allergies and sinus problems throughout his life. He has one eye that is almost blind and needs glasses. He is small for his age but is a very fast runner. In order to deal with his own anger, his mother got him involved as a conflict manager at school and he is doing well in that role.

The second child, J [redacted], is ten. She is independent and smart but likes to take on other's problems and apparently acts as a peace maker. She tends to suppress her emotions. She needs a lot of love and care. She also has allergies.

S [redacted], who is nine, has been described as a loner, likes to keep to herself, but she is fun. She can be an instigator. She is good in school. She needs to learn to share and to join in with other children.

The youngest child, K [redacted], is eight. She is described by everyone as a fun child, perky, bubbly, happy-go-luck, and very smart.

Both M [redacted] and J [redacted] are involved in band. S [redacted] is playing a recorder. K [redacted] is learning the guitar. All three girls will play softball this year and M [redacted] will play baseball. The Respondent coached the girls last year but will not do so this year so she can attend more games.

The children and their mother were involved in some counseling during 1994 to help them deal with the separation, dissolution and Patty's new relationship.

8. It is somewhat difficult in this case to determine what the real truth is about the parties' past. The Respondent has, by her statements at trial and by statements to others, indicated she is an alcoholic. She is in recovery now and going to AA twice a week. She had been charged with OWI immediately prior to the marriage. She was charged with assault and intoxication during the marriage, in January or February of 1992. After she stopped drinking, she developed panic attacks which have been treated successfully. During her hospitalization at Sedlacek, she told Mike she was involved in an abusive sexual relationship with another woman in Missouri, she was raped as a child, she smothered an old woman in a nursing home at the woman's request, she had an affair with his sister-in-law [redacted] and she was in jail because of bad checks in Missouri. If all of this is true, it is almost too much for one person to bear. It is hard to tell whether it is accurate or embellished, and whether the Respondent might have a propensity to "role play" to get attention.

The Respondent's mother and sister think Patty is a liar. Her mother indicates the incident at age 12 was a faked rape and Patty later admitted it was a lie. She also does not think Patty is an alcoholic or that she needed treatment.

On the other side, Mike is described by numerous people as a fine person, a good father, a good husband; yet Patty indicates he was physically abusive to the children and sexually and physically abusive to her. In fact, she indicates he forced her to have sex right away after the children were born, both regular and anal sex, and she has some permanent scarring and disabilities from those incidents and there is a founded child abuse report on Mike in April of 1994 for physically abusing the children.

Apparently Mike's sister, [REDACTED] who is an RN never suspected any difficulties between Patty and Mike nor any abuse on the children, nor did his sister [REDACTED], who had quite a bit of contact with the children.

What is real in this case is despite what her prior problems might have been, Patty has been by everyone's description, including her mother and Michael, a good mother to the children. Her primary job has been as the child caretaker. What is also real is there is a founded physical abuse report against Michael and the some-time daycare provider for the children, Jeannie [REDACTED], suspected the abuse, and called the school about it. She described the children as being far calmer and more normal since the parties' separation. They are no longer "covering up" about any injuries they receive.

Patty after the parties' separation became romantically and intimately involved with Stephanie [REDACTED] in a gay relationship. By those who have viewed it, they are not acting inappropriately in front of the children, and it does not appear to be a violent or abusive relationship. However, Stephanie has a very strong personality and Patty will need to take care that she does not allow Stephanie to take over her life or the children's lives.

Based on the fact the Respondent has been the caretaker for the children throughout their lives and the fact she is described by everyone as being a good mother, the Court determines primary physical care should remain with her.

9. With regard to the parties' property, their personal property except for the pool table has been divided. They could not agree as to what should be done with the house. The Respondent wants to stay in the house. There is a credit card debt in dispute. The Respondent is requesting alimony, which the Petitioner does not want to pay.

CONCLUSIONS OF LAW

The statutory provisions governing the dissolution of marriage proceedings are found in Chapter 598 of the Iowa Code, as amended; and particular reference is made to Sections 598.17 and 598.21. The Court may grant joint custody of the children to the parties. The guidelines for joint custody are set forth in Section 598.41 of the Iowa Code

With regard to the custody of the minor children, the ultimate question is the best interest of the children and which parent can best minister most effectively to the long-range interest of the children. In Re: Marriage of Sparks, 232 N.W.2d 264 (Iowa App. 1982).

The conduct of the parties, good and bad, is admissible in evidence as it bears on and reflects the character and fitness of the respective parties for the custody of the children. In Re: Marriage of Bare, 203 N.W.2d 551 (Iowa 1973).

In considering an award of alimony, the Court must consider the earning capacity of each party, the present standard of living, the ability of one to pay balanced against the relative needs of the other. In Re: Marriage of Estlund, 344 N.W.2d 276 (Iowa App. 1983).

The justified division of property in a dissolution action is one that is equitable under the circumstances. In each case the Court must consider the husband's earning capacity in deciding whether to award alimony and in making a proper division of the property. In Re: Marriage of Stewart, 356 N.W.2d 611 (Iowa App. 1984).

The determination of what is equitable depends on the facts of each case, precedent having relatively little value with regards for the resolution of problems in the situation that may be unique. In Re: Marriage of Wallace, 315 N.W.2d 827 (Iowa 1981).

With regard to the award of attorney fees, it is not a matter of right but depends on the relative needs and abilities of the parties. In Re: Marriage of Fish, 350 N.W.2d 226 (Iowa App. 1984).

In connection with this case I have considered all of the various criteria as set out in the statutory provisions, as well as the current case law. I have also listened to and viewed the parties. I have considered their testimony, demeanor, credibility, sincerity, values, abilities to communicate and abilities to make appropriate decisions for the children.

DECREE OF DISSOLUTION

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. Dissolution: A Decree of Dissolution of Marriage is hereby granted to the Petitioner, Michael Alan [REDACTED], and the Respondent, Patricia Ann [REDACTED], and the marriage relationship previously existing between the parties is dissolved.
2. Conciliation procedures are waived by the Court for good cause shown.
3. Custody: The parties are granted joint legal custody of their four minor children: M [REDACTED]; J [REDACTED]; S [REDACTED], [REDACTED]; and K [REDACTED]. Primary physical care of all four children is awarded to the Respondent subject to reasonable and liberal visitation by the Petitioner, which is set out in the next-numbered paragraph below.

If the Respondent is unable to care for the children for a period of two hours or more for some reason other than employment, the Petitioner shall be the first choice as the alternate caretaker. Further, neither party shall use physical discipline on any of these children.

The Respondent is to keep the Petitioner advised as to the children's activities, academic progress, and religious training. She shall make sure he is listed as the joint parent and person to contact on all school and medical records, and make sure he is advised of all conferences related to the children. In the event she is unable to attend any necessary appointments, meetings or conferences with regard to the children, the Petitioner shall be the first choice as to the alternate person to attend.

4. Visitation: The Petitioner is entitled to the following visitation as a minimum with the children.:
 - A. Regular: Every Wednesday evening from immediately after school (or 5:00 p.m. in the summer) until Thursday morning prior to school (or 9:00 a.m. in the summer) commencing Wednesday, July 5, 1995.

Every other weekend from Friday at 6:00 p.m. until Sunday at 6:00 p.m. commencing on Friday, July 7, 1995.

- B. Holiday: The parties will alternate the following holidays: New Year's Day, Easter, Memorial Day, July 4th, Labor Day, Halloween, Thanksgiving Day, Christmas

Eve Day, Christmas Day, New Year's Eve Day. The Respondent is entitled to have the children July 4th of 1995 and the alternating will begin thereafter. The Petitioner is always entitled to have the children on Father's Day irrespective of other visitation. The Respondent is always entitled to have the children on Mother's Day irrespective of other visitation. The parties shall cooperate with regard to the children's birthdays so that each of them may spend time with the child on the child's birthday or the day immediately before or the day immediately thereafter. Holiday visitation is from 9:00 a.m. until 9:00 p.m.

In addition, the Petitioner is entitled to one-half of school vacations for spring break and for the Christmas break.

C. Summer: For the summer of 1995 the Petitioner is entitled to have the children for the weeks of August 6 and August 13. Beginning in the summer of 1996 the Petitioner is entitled to have the children for two weeks in the month of June, two weeks in the month of July, and two weeks in the month of August. He shall give written notice to the Respondent no later than May 15 of 1996 and each year thereafter as to the time in which he wishes to exercise the visitation.

D. Other: The Court also strongly encourages the parties to cooperate and communicate with regard to increased visitation or contact between the Petitioner and the children, and to arrange as much as possible for each of the parents to have individual time with each of their children.

5. Child Support:

A. Regular: The Petitioner shall pay to the Respondent \$915.15 per month as child support for the support of the minor children. This support amount will commence on July 1, 1995. It may be paid weekly if he so desires and notifies the Child Support Recovery Unit. Support will continue until a child reaches the age of 18 or graduates from high school, whichever occurs later, or dies or becomes emancipated, whichever occurs sooner. When a child is no longer eligible for support, the parties shall communicate and cooperate and re-establish support for the remaining children based on their incomes at that time and the child support guidelines in effect at that time.

Said payments shall be paid to the Office of the Linn County Clerk of Court through the Office of the Friend of Court, 120 Third Avenue SW, Cedar Rapids, Iowa, 52404, or to the Collection Services of the Department of Human Services if he is so notified by that Department.

Immediate withholding of income for payment of support is hereby authorized pursuant

to Iowa Code Section 252D.8. If support payments are not paid as ordered and if they become delinquent in an amount equal to the payment for one month, the Court or Child Support Recovery Unit may order an assignment of income sufficient to pay the support obligation. The amount of the assignment of income shall not exceed the amount specified in 15 U.S.C., Section 1673(b).

B. Post-High School Support: In the event any of the children qualify for post-high school support under Chapter 598 of the Iowa Code, the parties shall communicate and cooperate and to the best of their abilities provide assistance to their children for post-high school education.

C. Medical Support: The Petitioner shall provide medical health care insurance coverage for the children as long as it is available to him at a reasonable cost and dental coverage if available to him at a reasonable cost. Any uninsured medical or dental expenses shall be paid one-half by each party.

D. Tax Exemption Dependency: As long as he is current as of December 31 of any year in which the Respondent makes \$10,000 or less gross annual income, the Petitioner is entitled to claim all four children as dependents for tax exemption purposes.

For calendar years in which the Respondent makes a gross annual income of between \$10,000 and \$20,000, she is entitled to claim the youngest child as a dependent for income tax purposes and the Petitioner may claim the remaining three children. If the Respondent makes over \$20,000 gross annual income, for those years she is entitled to claim the two youngest children as dependents for income tax purposes and the Petitioner is entitled to claim the two oldest children.

6. Alimony: The Petitioner shall pay to the Respondent as alimony to go towards her education \$100 per month commencing July 1, 1995, and for 36 months thereafter.

Said payments shall be paid to the Office of the Linn County Clerk of Court through the Office of the Friend of Court, 120 Third Avenue SW, Cedar Rapids, Iowa, 52404.

Immediate withholding of income for payment of support is hereby authorized pursuant to Iowa Code Section 252D.8. If support payments are not paid as ordered and if they become delinquent in an amount equal to the payment for one month, the Court or Child Support Recovery Unit may order an assignment of income sufficient to pay the support obligation. The amount of the assignment of income shall not exceed the amount specified in 15 U.S.C., Section 1673(b).

7. Lawsuit Reservation: The Court hereby reserves to the Respondent her right to file a

civil tort action against the Petitioner for injuries occurring to her during their marriage.

8. Real Estate: The parties stipulated the home in which the Respondent is residing is valued at \$82,000. There are two mortgages on the house: the first for \$50,000; the second for \$2,500. The monthly house payment on the parties' marital home is \$483. The Court determines it would be difficult for the Respondent to find other suitable housing for herself and four children given her minimal income at this time, especially as reasonable economically as this house, and determines she should be allowed to stay in the family residence for a period of time to allow her to complete her schooling and obtain full-time employment. The Court hereby awards the property located at [REDACTED], Iowa, and legally described as:

[REDACTED]

to the Respondent subject to a judicial (judgment) lien against the property in favor of the Petitioner for one-half of the equity. A lien in favor of the Petitioner against the property is hereby established in the amount of \$14,750 plus interest at the legal rate.

This amount shall be paid to the Petitioner when the Respondent vacates the premises as her primary residence and/or sells the residence, but in no case later than July 1 of the year 2000. The Petitioner is not allowed to enforce this judgment lien against the property unless one of those three occurrences takes place. The Respondent shall be responsible for both mortgages on the property.

9. Personal Property: The parties have previously divided their personal property. Each may keep as their own the property in their possession at the time of trial except the Court determines the pool table now to be a premarital asset of the Petitioner and it is awarded to him. He shall make arrangements to remove it from the residence within 30 days from the entry of this Decree.

10. Debts: With regard to the debt owed to the Petitioner's parents, the Court determines it to be a premarital debt of the Petitioner. He is ordered to pay same.

With regard to the credit card debt, since it was used for family necessities, each party is to be responsible for one-half of that amount. At the time of trial the amount was \$5,700. The parties are responsible for any other debts they have incurred in their own names.


11. Attorney Fees: Because of the parties' disparate financial conditions and the fact the Respondent will be responsible for the four children and their needs, the Court orders the Petitioner to pay \$1,000 of the Respondent's attorney fees to Respondent's attorney. The

Respondent shall be responsible for the balance of her attorney fees. The Petitioner shall be responsible for his own attorney fees.

12. Court Costs: Each party shall pay one-half of the court costs.

ALL OF WHICH IS ORDERED, ADJUDGED AND DECREED THIS 28 DAY OF JUNE, 1995.

Clerk to notify.


[REDACTED]
JUDGE, [REDACTED] JUDICIAL DISTRICT OF IOWA

MAILED/DELIVERED ON 6-28-95
BY km TO: Karla Wolff
Frank Nadey
FOC