Nebraska Law Review

Volume 53 | Issue 1 Article 8

1974

Alimony Awards under No Fault Divorce Statutes: *Magruder v. Magruder*, 190 Neb. 573, 209 N.W.2d 585 (1973)

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Alimony Awards Under No Fault Divorce Statutes

Magruder v. Magruder, 190 Neb. 573, 209 N.W.2d 585 (1973).

Passage of Nebraska's new no fault divorce law[1] in April 1972 aroused speculation over its future application and interpretation by the courts. The alimony provisions,[2] for example, while providing a skeletal framework for attorneys, need judicial fleshing out before their impact will be understood. There is some question as to whether the new law by implication eliminates marital fault as a consideration from alimony proceedings in the same way it has eliminated fault as a ground for granting the decree of dissolution.[3] In *Magruder v. Magruder*[4], the first case to interpret the alimony section of the new law, the court could have provided an answer; unfortunately, it did not resolve the problem. As a result, it can only be suggested that marital fault may well still play a role in alimony awards under Nebraska's new law.[5]

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1. NEB. REV. STAT. §§ 42-347 to-379 (Supp. 1972).
2. When dissolution of a marriage is decreed, the court may order payment of such alimony by one party to the other as may be reasonable, having regard for the circumstances of the parties, duration of the marriage, and the ability of the supported party to engage in gainful employment without interfering with the interests of any minor children in the custody of such party. . . . Except as otherwise agreed by the parties in writing or by order of the court, alimony orders shall terminate upon the death of either party or the remarriage of the recipient.

   NEB. REV. STAT. § 42-365 (Supp. 1972).
3. According to NEB. REV. STAT. § 42-347 (Supp. 1972), the term "dissolution of marriage" is substituted for the traditional "divorce." The statute requires only a finding by the court that the marriage is "irretrievably broken" for a decree of dissolution. *See also* NEB. REV. STAT. § 42-361 (Supp. 1972).
4. 190 Neb. 573, 209 N.W.2d 585 (1973).
5. The Nebraska Supreme Court soon may give a more definitive answer to whether marital fault plays a role in alimony awards under Nebraska's new law. In a case recently appealed to the court, Ford v. Ford, No. 39206 (Neb., filed July 9, 1973), the attorneys for Mrs.

The future role of fault in alimony awards remains an issue in Nebraska for several reasons. First, no fault divorce does not logically necessitate no fault alimony. Evidence of the conduct of the parties during the marriage can be introduced at the point of the property settlement, at which time it would have no effect on the decision to grant the divorce itself. In addition, Nebraska's new no fault statute does not specifically eliminate evidence of fault from the alimony proceedings. Using Nebraska precedent, the marital conduct of the parties could easily be a factor under the new law's alimony provision which allows the court to order payment "having regard for the circumstances of the parties."[6] Finally, the problem exists because although the articulated basis of the *Magruder* opinion is not one of fault, indications are that fault may have indeed figured in the decision.

In *Magruder*, the plaintiff-husband originally filed suit under Nebraska's old divorce laws;[7] before any trial on the merits, however, the legislature enacted the new no fault provisions and the action proceeded under their terms.[8] This meant that the dissolution decree was granted without reference to evidence of marital fault on the part of either spouse. At the trial, the court found that every reasonable effort had been made to save the marriage and entered the decree on the grounds that the union was "irretrievably broken."[9] The court divided the property equally[10] be-

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Linda Ford have asked the court to rule as a matter of law that fault is not a basis for denying alimony.

6. NEB. REV. STAT. § 42-365 (Supp. 1972). Adoption of a no fault divorce law does not, of course, demand the court's complete break with precedent; on the contrary, it remains free to follow former decisions to the extent they do not conflict with the new law. Thus, in so far as Nebraska's new law does not specifically eliminate marital fault from the alimony proceedings, the court could find its continued use appropriate for deciding issues of property settlement and child custody. After all, the old law never required the court to consider either fault or marital conduct but the words of the statute were interpreted by the court to include both. Eno v. Eno, 159 Neb. 1, 65 N.W.2d 145 (1954); Ristow v. Ristow, 152 Neb. 615, 41 N.W.2d 924 (1950); Swolec v. Swolec, 122 Neb. 837, 241 N.W. 771 (1932).
7. Neb. Laws c. 16, § 1 *et seq.* (1866) as amended.
8. This procedure was provided for in the new law:

> Sections 42-347 to 42-379 shall apply to all pending actions and proceedings commenced prior to July 6, 1972 with respect to issues on which a judgment has not been entered. Pending actions for divorce or separation shall be deemed to have been commenced on the basis of irretrievable breakdown. . . .

NEB. REV. STAT. § 42-379(2) (Supp. 1972).
9. "Dissolution of marriage shall mean the termination of a marriage by decree of a court of competent jurisdiction upon finding that the marriage is irretrievably broken. . . ." NEB. REV. STAT. § 42-347(1) (Supp. 1972).
10. The court was following Nebraska precedent by dividing the prop-

tween the two spouses and granted the defendant-wife alimony of $416.66 per month to continue until either one of the parties should die or until Mrs. Magruder should remarry. Mrs. Magruder appealed the decision, claiming the award was inadequate; the plaintiff cross-appealed, declaring that the award was excessive and should not have been granted in the form of a lifetime annuity. Upon appeal to the Supreme Court of Nebraska, the decree was modified to award the defendant "monthly alimony in the amount of $833.33 for a period of ten years and two months."[11] The award was to terminate earlier if either party should die or Mrs. Magruder should remarry. The court stated that while the "defendant should receive monthly alimony for a shorter period of time [than had been allowed by the original award], . . . the present value of the award should be an amount approximately equivalent to that made by the trial court."[12]

The Magruder marriage represented a social pattern that is becoming both more common and more commonly recognized. The parties were married in 1962 when the plaintiff was 22 and the defendant 19. They were both in school—plaintiff ending a premedical course of study and defendant attending college half-days. Both parties worked with the defendant contributing the bulk of their funds. This mode of life continued while plaintiff finished medical school and defendant acquired a master's degree in addition to her undergraduate diploma. While the plaintiff was in medical school, the couple continued to live largely on the defendant's teaching salary; most of their property was obtained with the aid of her parents. After plaintiff's graduation from medical school, and until the present action, his earnings supported the marriage. At the time of the trial, the couple was childless; plaintiff was 32, defendant 29.

Writing for the majority, Judge Clinton set the tone of the opinion at the outset—a sense of continuity with the past. Looking at the trial court's alimony award in light of the new statute on spousal support, the judge found that, as with prior decisions under the old law, the amount of the award must be measured under a

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erty equally between the parties. While the court has often stated that there are no hard and fast rules for division of the property in divorce cases, it consistently has used a figure of between ⅓ and ½ as a judicial rule of thumb. *See* Junker v. Junker, 188 Neb. 555, 198 N.W.2d 189 (1972); Kula v. Kula, 181 Neb. 531, 149 N.W.2d 430 (1967); Loukota v. Loukota, 177 Neb. 355, 128 N.W.2d 809 (1964); Dwinnell v. Dwinnell, 165 Neb. 566, 86 N.W.2d 579 (1957). The supreme court did not modify this part of the original *Magruder* decision.

11. 190 Neb. at 578, 209 N.W.2d at 588.
12. *Id.* at 577, 209 N.W.2d at 588.

standard of "reasonableness."[13] He interpreted reasonableness as requiring the court to note "all the circumstances of the parties, as well as the duration of the marriage and the ability of the supported party to engage in gainful employment without interfering with the interests of any minor children of the parties in the supported party's custody."[14] He was quoting elements listed by the new law for the court to weigh in granting alimony.[15] By opening the case with this discussion, the court linked the new law to precedent, raising the possibility of those links extending to inclusion of marital conduct as an element in the alimony award.

Judge Clinton devoted only one paragraph to the size of the award, raising more questions than answers.[16] The decision seems to be based on what might be labeled the "investment theory" of marital contribution. This approach to the problem of property settlements and awards of spousal support stems from the idea that a woman[17] who contributes to her husband's education has invested in his future. This is particularly true where the choice results from a joint determination that both spouses will benefit from the husband's increased earning power and social status. Often the choice entails a positive sacrifice on the part of the wife; at the very least, it narrows her field of options. In such a situation, the wife deserves upon divorce to realize at least a portion of her investment. She deserves more than the mere return, dollar for dollar, of the wages or other property she contributed to the marriage. She has earned the right to some part of her ex-husband's future earnings since they were made possible partly through her efforts and since her choice of life-style during marriage was based on the assumption that she would also share in his future standard of living. Had she put her money into a different form of investment, she could have realized both interest and possible capital gains.

To be sure, this investment theory does not represent a completely new view of the problems of equitable alimony awards. In fact, a line of cases decided under the original divorce statutes in Nebraska adopted this very rationale; the leading one, *Prosser v. Prosser*[18] is a case much like *Magruder* in its factual pattern. In *Prosser,* the court was also faced with a wife who worked to send

13. *Id.* at 576, 209 N.W.2d at 587.
14. *Id.* at 577, 209 N.W.2d at 587.
15. *See* note 2 *supra.*
16. 190 Neb. at 577-78, 209 N.W.2d at 588.
17. This portion of the article has used sexual references which fit the majority of cases. It is understood of course, that the sexual roles could be reversed in any given case.
18. 156 Neb. 629, 57 N.W.2d 173 (1953).

her husband through school in order to ensure both a higher standard of living in the future. Not only did she contribute the earnings the couple lived on during the husband's years at the university, but she also helped him in his class preparations and aided him in his job as a grading assistant. In addition, the wife gave up her seniority rights with her employer when they moved to the town in which the husband had purchased a business interest. As in the *Magruder* case, the divorce occurred just as the husband's salary began to bear the fruit of their joint labors. The court in *Prosser* stated:

> It is clear that plaintiff [the wife] made a large investment in defendant's future, with the thought no doubt that it was of joint interest to the future of both. . . . We point out that this wife had a right to expect that in the years to come she would share in the benefits derived from the training and ability of the defendant, which she literally helped to bring about.[19]

After using the investment theory rationale, however, the *Prosser* court went on to consider the comparative marital fault of the parties.[20] While it is impossible to determine the relative importance to the decision of either element with any precision, the presence of the fault discussion weakens the strength of the investment theory. Still, the investment theory need not depend on the finding of fault but can and should stand on its own validity. At least some of the language in the *Magruder* opinion supports this view, for Judge Clinton pointed out:

> [T]he marriage did endure for about 9 years and during that time the defendant made substantial contributions to the future economic well-being of the parties. The parties at the time of the separation had just reached the point where they would begin to reap some of the economic rewards of their efforts.[21]

Throughout its discussion of Mrs. Magruder's contribution to the marriage, the court justified the alimony award with a rationale capable of existing independently of fault considerations. The court muddied the waters, however, by observing, "The defendant

19. 156 Neb. at 632, 57 N.W2d at 175.

20. In determining the amount of alimony to be awarded in the present case the relative or comparative fault of the parties is a material element. The age of the parties and the duration of the marriage have evidential value. The social standing, comforts, and luxuries of life which the wife probably would have enjoyed are to be weighed in fixing the amount. The earnings of the husband and his ability to earn are particularly important in this case when viewed in the light of the contributions made thereto by the wife. We cannot overlook the fact that defendant has seen fit to treat the marriage as a matter of convenience to be cast aside when the material fruits have been realized.
156 Neb. at 634, 57 N.W.2d at 176.

21. 190 Neb. at 577, 209 N.W.2d at 588.

would have liked to have had the marriage continue. These contributions [*i.e.*, the wife's investment in her husband's future and her unwillingness to see the marriage ended] lead us to believe that the alimony awarded the defendant should be substantial . . . ."[22] The net result of the court's approach is confusion; it is impossible to tell whether the words "the defendant would have liked to have had the marriage continue" were a comment on the extent of Mrs. Magruder's economic frustrations or whether they signified some element of fault in the court's decision.

Although the majority never addressed the fault issue, Chief Justice White, joined by two other dissenters, did interpret the majority's action as applying "sub silentio . . . the harsh and punitive considerations present in the traditional picture of a lifetime marriage, with family and children, in many of the cases citet [*sic*] by the court prior to the enactment of the 'no fault' divorce law."[23]

The chief justice's opposition[24] to what he perceived to be the basis of the majority decision is predicated on the assumption that no fault divorce necessarily means no fault alimony as well. Although Chief Justice White treated the issue as settled, in fact, the role of fault in alimony awards under no fault divorce laws is a subject of lively debate. The chief justice reinforced his position with experiences of courts in four other no fault jurisdictions: Florida, Oregon, California and Iowa. An examination of the cases cited

22. *Id.* at 577, 209 N.W.2d at 588. It is also clear from the way Judge Clinton set out the facts of the case that evidence of the parties' conduct during marriage was introduced and a reading of the attorneys' briefs confirms this.
23. *Id.* at 578, 209 N.W.2d at 588.
24. Chief Justice White contended that the court should confine its attention to

> two broad factors in determining alimony: Social surroundings and the ability to help oneself. Social surroundings includes the length of the marriage and present health and age. The ability to help oneself includes amount of assets, ability to obtain employment, and the size of the income of the supporting spouse.

Id. at 584, 209 N.W.2d at 591 (citation omitted). Chief Justice White feared that if the court looked beyond these particular elements, awards would create "alimony drone[s]"—women who live in a state of "secured indolence" on the earnings of ex-husbands while perfectly capable of supporting themselves. *Id.* at 584, 209 N.W.2d at 591. This threat of the alimony drone, however, is chimerical; in truth, abuses of alimony are in a minority. The major problem has been the inability of the courts to award and the inability of many ex-spouses to pay sufficient alimony to provide adequate support. H. CLARK, LAW OF DOMESTIC RELATIONS § 14.1 at 422 (1968). An interim study committee of the Nebraska Legislature heard testimony on this and other economic problems faced by women under the divorce law during October 1973.

by White, however, gives a somewhat different impression than left by the dissent. First, fault has not been completely eliminated from alimony proceedings in other no fault jurisdictions. And second, in one state where the court did feel compelled to this result, it safeguarded the interests of possibly injured spouses in other ways.

Chief Justice White first cited the case interpreting the Florida statute.[25] In *Lefler v. Lefler*,[26] the trial court awarded the plaintiff-husband his wife's interest in their home and personal belongings as alimony. The Florida Supreme Court decision is quite short and, like *Magruder*, ignored the question of whether alimony under the new law would be determined without regard to fault. The trial court was reversed because the husband could show neither entitlement nor need for the award. Given those determinations, the husband could not pass the threshold tests for alimony and the court found it unnecessary to consider fault; fault alone after all has never justified a grant of spousal support. Thus, while the Florida court eventually may decide that marital fault must not figure in property and alimony awards, the conclusion seems unwarranted that it has done so in the *Lefler* decision.[27]

The chief justice also quoted with approval the Iowa Supreme Court's statement that

> [t]he intent and purpose [of Iowa's no fault divorce statute] was to eliminate the fault concept as a standard for granting dissolution of the marital relationship and . . . not only the "guilty party" concept must be eliminated as a factor but evidence of the conduct of the parties insofar as it tends to place fault for the marriage breakdown on either spouse must also be rejected

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25. (1) In a proceeding for dissolution of marriage, the court may grant alimony to either party . . . . The court may consider the adultery of a spouse and the circumstances thereof in determining whether alimony shall be awarded to such spouse and the amount of alimony, if any, to be awarded to such spouse.
(2) In determining a proper award of alimony, the court may consider any factor necessary to do equity and justice between the parties.
FLA. STAT. ANN. § 61.08 (Supp. 1972).

26. 264 So. 2d 112 (Fla. Dist. Ct. App. 1972).

27. It also should be noted that the Florida statute gives the court the discretion to consider "*any factor necessary* to do equity and justice between the parties." FLA. STAT. ANN. § 61.08(2) (Supp. 1972) (emphasis added). In light of the Florida court's statement that "alimony['s] . . . basic nature and purpose remains the same [under the new law]," 264 So. 2d at 113, and the fact that Florida's statute does not specifically eliminate the use of fault, it seems reasonable that the court could decide to consider fault when necessary to do justice between the parties just as it did before.

> as a factor in awarding property settlement or an allowance of alimony or support money.[28]

This language seems to indicate Iowa's total rejection of all considerations of conduct in alimony proceedings. However, an examination of Iowa law shows that the parties' conduct is still a factor in Iowa alimony decisions. Traditionally, the court in Iowa, as in Nebraska, has defined the bases for alimony awards. Unlike the situation in Nebraska, however, Iowa's new divorce law[29] does not list any guidelines. Thus, Iowa courts have complete freedom to determine alimony and property settlement standards themselves. The leading Iowa case on the standards to be used is *Schantz v. Schantz*[30] where in 1968 the Iowa Supreme Court itemized a list of fifteen pre- and post-marital criteria for determining alimony and property settlements.[31] In *In re Marriage of Harrington*,[32] the Iowa Supreme Court held that after passage of the dissolution of marriage law, *Schantz's* fourth post-marital criteria—"conduct of the

28. *In re* Marriage of Tjaden, 199 N.W.2d 475, 477, referring to *In re* Marriage of Williams, 199 N.W.2d 339 (Iowa 1972).
29. "When a dissolution of marriage is decreed, the court may make such order in relation to the children, property, parties, and the maintenance of the parties as shall be justified." IOWA CODE ANN. § 598.21 (Supp. 1972).
30. 163 N.W.2d 398 (Iowa 1968).
31. A. PREMARITAL CRITERIA:
    1. Social position and living standards of each party.
    2. Their respective ages.
    3. Their respective mental or physical condition.
    4. What each sacrificed or contributed, financially or otherwise, to the marriage.
    5. The training, education and abilities of each party.

    B. POSTMARITAL CRITERIA:
    1. Duration of the marriage.
    2. Number of children, their respective ages, physical or mental conditions, and relative parental as opposed to financial needs.
    3. Net worth of property acquired, contributions of each party therto by labor or otherwise, net worth and present income of each party.
    4. Conduct of the spouses and particularly that of the guilty party.
    5. Present physical and mental health of each party.
    6. Earning capacity of each party.
    7. Life expectancy of each party.
    8. Any extraordinary sacrifice, devotion or care by either spouse in furtherance of a happy marriage or in preservation of the martial relationship.
    9. Present standards of living and ability of one party to pay balanced against relative needs of the other.
    10. Any other relevant factors which will aid in reaching a fair and equitable determination as to respective rights and obligations of the parties.

    Id. at 405.
32. 199 N.W.2d 351 (Iowa 1972).

spouses and particularly that of the guilty party"—was eliminated.[33] Yet, cases indicate that *Schantz's* eighth post-marital criterion—"any extraordinary sacrifice, devotion or care by either spouse in furtherance of a happy marriage or in preservation of the marital relationship"—is still intact in Iowa. In *Harrington*, for example, the court indicated it was considering the eighth criteria in determining the wife's alimony and property settlement.[34] And Justice Reynoldson, dissenting in *In re Williams*,[35] called attention to the fact that retention of the eighth criteria makes it "clear that evidence of good conduct is invited" in Iowa alimony proceedings.[36] Thus, it appears that although Iowa has eliminated evidence of fault as a factor in alimony proceedings, some evidence of a spouse's conduct is allowed, and the remaining *Schantz* criteria protect the interests of the party seeking spousal support in the absence of a fault standard. The detailed *Schantz* criteria used in Iowa alimony proceedings should be compared with the two factors which Chief Justice White suggested should be considered in Nebraska.[37]

The chief justice mentioned only two other decisions in the dissent, one each from Oregon and California.[38] In each of these cases, however, the court operated within a different statutory context than that in Nebraska where the law is silent on the role of fault. The Oregon statute specifically eliminates fault as a consideration in alimony.[39] In California, while the section of the statute on spousal support is silent on the role of fault, the statute explicitly rejects fault from the divorce proceedings in general. This specific statutory rejection of fault can be seen to apply to alimony hearings.[40] The breadth of these prohibitions is illustrated by both state statutes allowing an exception to the general rejection of fault where child custody is at issue. By thus circumscribing the

33. *Id.* at 354.
34. In discussing the factors it considered in making its award, the court stated: "The fact that she [defendant-wife] contributed to a happy marriage for ten years both by her labor and attention cannot be denied under this record." *Id.* at 355.
35. 199 N.W.2d 339 (Iowa 1972).
36. *Id.* at 351.
37. *See* note 24 *supra.*
38. *In re* Marriage of Rosan, 24 Cal. App. 3d 885, 101 Cal. Rptr. 295 (1972); Minovsky v. Minovsky, 500 P.2d 1234 (Ore. App. 1972).
39. (1) The doctrines of fault and of *in pari delicto* are abolished in suits for the annulment or dissolution of a marriage.
(2) The court shall not receive evidence of specific acts of misconduct, excepting where child custody is an issue and such evidence is relevant to that issue, or excepting at a hearing when the court finds such evidence necessary to provide irreconcilable differences.
ORE. REV. STAT. § 107.036 (Supp. 1971).
40. In any pleadings or proceedings for legal separation or dis-

role of fault, the Oregon and California legislatures have given notice that they have considered the fault issue and have decided to limit its application in this way.

It seems that Chief Jutice White based his conclusions about the role of fault in the *Magruder* majority decision largely on the amount of the award. He said, "I cannot come to any other conclusion but that the alimony award in this case is grossly excessive and is not harmonious with the present statute operating the 'no fault' provisions for the dissolution of a marriage."[41] Without an empirical study, however, there is no way of knowing if the size of the award is evidence that fault played a role in the court's determination. Without objective support, this assertion remains essentially conjecture.

The issue placed in contention by Chief Justice White, *i.e.*, the role of fault in the award of spousal support under a no fault divorce law, is important regardless of the correctness of his analysis of the *Magruder* majority opinion. Despite the impression given by the dissent, legal scholars, practicing attorneys and experts in family relations disagree on solutions to the problem.[42]

Those who argue against permitting a fault element in the alimony proceedings contend that to do so would subvert the principle of no fault divorce. First, fault allowed at any time during a divorce trial would re-introduce the hostility and exacerbate the tensions which the no fault system is designed to eliminate. Second, since in most divorces, the marriage breaks down due to complex social and psychological reasons, the idea that one party alone is at fault is unrealistic and should not influence the property arrangements.

Other parties however, claim there is no reason to reject evidence of marital conduct once the decision has been made to grant the dissolution. They argue that the no fault divorce laws were primarily designed to cure the evil of withholding divorces from couples whose marriages are no longer workable—not the problems attendant upon property settlements. Critics of a strictly no fault system point out that one spouse may very well suffer real damage,

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> solution of marriage under this part . . . evidence of specific acts of misconduct shall be improper and inadmissible, except where child custody is in issue and such evidence is relevant to that issue, or at the hearing where it is determined by the court to be necessary to establish the existence of irreconcilable differences.

CAL. CIV. CODE § 4509 (West 1970).

41. 109 Neb. at 578, 209 N.W.2d at 588.

42. *See, e.g.*, Clark, *Divorce Policy and Divorce Reform*, 42 COLO. L REV. 403 (1971); Kay, Book Review, 60 CALIF. L. REV. 1683 (1973); Note, *Does No-Fault Divorce Portend No-Fault Alimony?*, 34 U. PITT. L. REV. 486 (1973).

both physical and emotional from the conduct of the other. They would make compensation available through alimony or other property settlements in much the same way that damages are allowed in tort suits for pain and suffering and, in some places, for intentional infliction of emotional distress. Some critics claim the problem cannot be isolated from a concern for the status of women in society since their social and economic status is most apt to be affected adversely by divorce. Such critics contend it is manifestly unjust to create absolute equality in the divorce court when soon the ex-wife will be confronted with social and practical obstacles to her attempt to maintain herself in the style which her husband's preferred status would have assured her. A final objection to a strictly no fault system stems from the recognition that total rejection of fault in alimony proceedings means that it cannot be used to justify a denial of alimony either. Many people feel that allowing alimony without regard to the conduct of the party seeking support is terribly unfair to the spouse who will have to pay.[43] Retaining fault as an element in alimony awards is neither the only nor necessarily the best way of protecting injured spouses; but it does present the easiest method given the present state of American institutions.

CONCLUSION

Whether or not Chief Justice White is correct in his conclusions about the role of fault in alimony awards under a no fault divorce statute, he has performed the very important service of calling attention to the problem. It is now incumbent upon the court to clarify the confusion created by the *Magruder* decision and to devise an equitable system of granting alimony awards that will be consistent with the new law and yet responsive to the rights and needs of both parties.

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43. Iowa Supreme Court Justice Uhlenhopp's dissent in *In re* Williams, 199 N.W.2d 339 (Iowa 1972), expressed this particular point of view:

> The question may be brought into focus by two rather extreme but not rare examples, in which all factors are equal except the parties' conduct. In one, the husband in frequent fits of rage visits violent physical abuse on his blameless wife and children, eventually driving them from the home by his cruelty. In the other, the wife carries on with a paramour, frequently spending nights and weekends with him to the knowledge of the blameless husband and children. Is the court to be allowed to know these facts along with the other equities in the case in deciding upon a fair adjustment of the parties' financial rights and obligations? Or is the court to function in a vacuum so far as the parties' conduct is concerned?

Id. at 349.