FILED
FEB 26 1991
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-389 / 89-1574

338

**IN RE THE MARRIAGE OF JOAN S. STRULOWITZ AND STEVEN J. STRULOWITZ**

Upon the Petition of
**JOAN S. STRULOWITZ,**

Petitioner-Appellee/Cross-Appellant,

And Concerning
**STEVEN J. STRULOWITZ,**

Respondent-Appellant/Cross-Appellee.

---

Appeal from the Iowa District Court for Scott County, James R. Havercamp, Judge.

Respondent appeals and petitioner cross-appeals from economic provisions along with child support and alimony of trial court's decree. **AFFIRMED IN PART, MODIFIED IN PART, AND REMANDED WITH DIRECTIONS.**

Seymore M. Raben, Davenport, for appellant.

Dennis D. Jasper of Stafne, Lewis, Jasper, Alexander, and Preacher, Bettendorf, for appellee.

Considered by Schlegel, P.J., and Hayden and Habhab, JJ.

**HABHAB, J.**

Joan and Steven were married in 1971. Two children were born of the marriage: Jennifer, born in 1971, and Megan, born in 1973.

Steven is forty-one years old and a college graduate. Following the parties' marriage in 1971, Steven worked in Joan's father's business. In 1984, he formed his own corporation in which he is the sole stockholder, director, officer, and principal employee. Steven's corporation is a nickel metals brokerage. The corporation has a book value of $746,458. Steven earned an annual income of $107,000 in 1988, and $97,000 in 1989.

Joan is a forty-year-old high school graduate. She attended the University of Iowa for two years, University of Tel Aviv for one year, and some part-time attendance at Scott Community College. She majored in art and English, but did not receive a degree. During the marriage, Joan's primary responsibilities were in the home. She was an active member of the Junior League and performed duties as a volunteer buyer for a design shop. Joan also started a small interior design business which did not prove to be successful. She is currently employed as a manager trainee for The Limited, earning $5.75 per hour.

Throughout the parties' marriage, and especially subsequent to Steven's incorporation of his business, Joan and Steven lived a luxurious and costly life-style. They flew numerous times to visit each other's families in New

Jersey and Georgia, and on several occasions chartered a plane to see and pick up their children at summer camp.

Joan and Steven purchased large amounts of clothing, spending several thousand dollars each on one excursion. They belonged to the best private clubs in Davenport and often entertained, if not lavishly, at a minimum often and expensively. Steven purchased numerous items of jewelry for Joan, including a matching diamond bracelet and necklace worth over $8,000, and a ring bought on a trip to Israel for $4,500.[1] Steven also purchased a mink coat for Joan for $6,500 two years prior to the divorce. It is valued for insurance purposes at over $17,000.[2]

Joan and Steven commissioned an artist to do an oil portrait of their family. The parties often spent hundreds of dollars on gifts for family, friends, and employees. Joan and Steven bought each other gold Rolex watches worth several thousand dollars. They extended this lavish spending on their children, taking them on shopping trips to Rodeo Drive in Beverly Hills and to Chicago, buying them expensive gold bracelets, and sending them to an expensive summer camp each season. They drove Mercedes automobiles, both equipped with car telephones.

The parties agreed to joint custody of their children,

---

1. Steven claims Joan bought this ring after it was agreed not to.

2. Steven claims this coat was purchased at a time of marital discord and was done in an effort to save the marriage.

with Joan having primary care. The district court entered a decree dissolving the parties' marriage, finding that Steven's corporation had a value of $1,300,000. It ordered Steven to pay Joan alimony of $1,000 per month for as long as Joan lives or until she remarries, which obligation will be a charge against Steven's estate if he predeceases Joan, and ordered Steven to pay child support of $860 per child per month.

Steven appeals the economic provisions of the decree. He contends the district court overvalued his corporation by improperly using the capitalization of earnings method rather than the book value. Steven argues he should not be ordered to pay alimony. Alternatively, he claims the length of payment is excessive. He further urges when awarding alimony the district court failed to consider his tax consequences and the recent increase in Joan's standard of living. Finally, Steven argues that the child support is excessive.

On cross-appeal, Joan contends the district court undervalued Steven's corporation. Joan desires a greater portion of the property. She also requests an increase in the amount of child support and alimony. Finally, Joan requests her appellate attorney fees. We affirm.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa

1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. 14 (f)(7).

Corporate Valuation. Steven first contends the trial court erred in valuing his corporation. He argues the trial court incorrectly valued his corporation by using the capitalization of earnings method of valuation calculated by Joan's expert Otto Thomas. Steven argues there is only one asset to offer in any potential sale of his business, that being himself. Steven maintains he has no sale agents, and manufactures no product. He argues the company has no fixed assets to speak of, except capital reserves which are invested on the company's behalf. Steven expounds that the business would die immediately without him at the helm, since the selling and trading of nickel is such a specialized business, requiring a great deal of time and effort in cultivating customers, who are not exclusively his. Steven points out that his business expanded greatly during the years 1986-1988 due to the wild volatility of the world nickel market. He contends the world market has softened, and that he stands to earn much less than in previous years. He argues the true value of his corporation is the book value of $746,458.

Joan, however, asks this court to revise the trial court's valuation of $1,300,000 upward to $1,875,000. She maintains the corporation has liquid assets of $1,909,000,

with profits of $770,000 the first nine months of 1988. She believes her expert valuator, Otto Thomas, has a long and qualified career in valuing companies, and that his methodical approach to valuating Steven's business should be afforded great credibility.

In In re Marriage of Wiedemann, 402 N.W.2d 744 (Iowa 1987), the supreme court discussed the difficulty in the valuation of a closely-held corporation. The Wiedemann court noted the "valuation of a closely held corporation operated by one person is difficult, especially when it is highly profitable, manufactures an unusual product and has weak lower management." 402 N.W.2d at 747. The court noted two problems when attempting to obtain valuation by using capitalization of earnings: (1) it is assumed the owner will continue to contribute his or her expertise and effort; and (2) this method may benefit the owner when either personal expenses or normal capitalization costs are included to a great degree in operating expenses, reducing net profits and estimated value. Id. at 748. The court noted the owner often channels normal living expenses through the corporation or to overvalue or undervalue inventory, which would decrease profits while raising the owners standard of living. Id. Despite such reservations, the supreme court approved the capitalization of earnings method used in the case, holding that "[w]hile we do not necessarily adopt the trial court's methods, we believe the

findings were well within the evidence and should not be disturbed on appeal. Id. at 748.

Upon close examination of the record, we cannot say the trial court erred in placing a value of $1,300,000 on Steven's business. While we agree with Steven that there are a number of other methods of valuation, the trial court undoubtedly considered all the evidence offered at trial. While a better method may have been used to value the business, we believe the findings were well within the range of the evidence and should not be disturbed on appeal. Weidemann, 402 N.W.2d at 748. We therefore affirm the trial court's award of $500,000 to Joan.

**Division of Property.** Joan contends the trial court erred in fashioning a division of the marital property. According to Joan, the trial court awarded Steven assets of $2,064,545, and liabilities of $102,923, for a net award of $1,961,622. Joan contends she received assets of $167,420, less her liabilities of $90,294, resulting in a net balance of $77,126. She asserts Steven should be credited for receiving $10,408 in cash from an insurance policy and also that Steven should be credited with a $5,000 payment from his brother for repayment of a marital loan. She additionally argues that though she received the household goods valued at $26,616, Steven got to pick the "plums" from the household, including the sterling silver, a marble table, and china.

Throughout this opinion we have attempted to set forth the various arguments and contentions of the parties. In some small measure perhaps we have succeeded. There is, however, an extremely wide chasm as to how the marital property should be divided. Except for the valuation of the corporation, there does not appear to be a significant dispute as to other valuations. As we pointed out in footnotes one and two, there is an argument as to the circumstances surrounding the purchase of those items. There is also a dispute concerning the reasons for the purchase of other items.

Since the division of marital assets also bears on alimony, we consider it wise, although admittedly somewhat cumbersome, to set forth the respective positions of the parties as to how they view the division. We take the parties' positions from the briefs submitted to us.

The petitioner-appellee in her brief states:

> The following is a comprehensive list of the valuations of property attempting to reduce those pretax values to after tax values. It is only appropriate to consider the tax consequences and the subsequent reduction in value of the assets after taxes have been paid. The following is an itemization of these assets and respective values agreed upon by the parties and ordered by the trial court.

| | | Steven |
|---|---|---|
| Furniture in S property | | $ 2,303 |
| Six Plex | | $ 93,000 |
| New York Life Insurance | | $ 14,000 |
| Northwest Bank-checking | | $ 1,000 |
| Community Savings-checking | | $ 750 |
| Corporation, SJS, Inc. | | $ 1,875,000 |
| TOTAL | (a) | $ 1,986,053 |

Joan

| | | |
|---|---|---|
| Home | | $106,000 |
| Oil Paintings | | $ 3,000 |
| Silver Plates | | $ 100 |
| 1982 Mercedes | | $ 16,150 |
| N.W. Bank chckng. | | $ 100 |
| Filing Cabinet/ Luggage | | $ 2,000 |
| Sterling silver | | $ 5,465 |
| 20 shares stock | | $ 775 |
| NY Life Ins. | | $ 5,000 |
| TOTAL | (1) | $138,590 |

The next list includes the pretax items that were awarded to the parties as follows:

Steven

| | |
|---|---|
| IRA Piper, Jaffrey | $ 12,213 |
| Deferred profit sharing | $ 23,492 |
| | $ 6,065 |
| | $ 15,249 |
| TOTAL | $ 57,019 |

Joan

| | |
|---|---|
| Deferred Profit | $ 738 |
| IRA, Piper, Jaffrey | $11,184 |
| TOTAL | $11,922 |

According to Steven's motion filed with the trial court, his tax would be thirty-four percent on his last dollars earned. Therefore, it is appropriate to reduce the above pretax values by thirty-four percent resulting in Steven receiving a value of $37,633 and Joan receiving $7,869.

| Steven | | Joan | |
|---|---|---|---|
| $57,019 | | $11,922 | |
| - 34% | | - 34% | |
| (b) $37,633 | | (2) $ 7,869 | |

Joan asserts there should be additional value considered. Testimony at trial indicates Steven had distributed $17,000 to his profit sharing, but was not included anywhere on his financial statement. Again applying the thirty-four percent reduction for tax consequences, he received an additional $11,220. He should also be credited

with receiving $10,408 in cash value of his insurance policy. During the dissolution proceedings he did not pay the premium on the insurance policy and elected to apply the cash value to buy paid up insurance of $101,000. The brother of Steven repaid a marital debt to him of $5,000 during the dissolution proceedings that was not considered by the Court. In re Marriage of Muelhaupt, 439 N.W.2d 656 (Iowa 1989). The trial court determined his pension has a value of $8,576.

| Steven |
|---|
| $11,220 |
| $12,408 |
| $ 5,000 |
| $ 8,576 |

TOTAL $ 35,204 (c)

There were household goods in the homestead valued at $26,616. The trial court included all of this amount to Joan. However, in its ruling the court awarded Steven his request for special items from these amounts totalling $5,655. It is obvious Steven picked the plums from the items from the home. It is asserted Joan should be awarded the marble table, the triangular table, the china as there are items that are most important to Joan and the children. For the purposes of this argument, Joan received $20,961 (3) of household goods and Steven received the remaining $5,655 (d).

It is only appropriate to deduct the debts of the parties as awarded by the Court and are as follows:

| | Steven |
|---|---|
| Mastercard | $ 4,491 |
| Sak's Fifth Ave. | $ 647 |
| Piper Jaffrey | $ 35 |
| Davenport Ped. Gr. | $ 72 |
| Dr. Wilkinson | $ 555 |
| Camp Interloken | $ 2,525 |
| Reporting Services | $ 332 |
| Real Estate Taxes | $ 3,998 |
| Mortgage | $ 90,268 |
| TOTAL | (e) $102,923 |

Joan

| | | |
|---|---|---|
| Mortgage | | $ 76,423 |
| Newspapers | | $ 100 |
| MC/Visa Cards | | $ 2,800 |
| Loans from children | | $ 321 |
| Younkers | | $ 3,250 |
| Petersens | | $ 1,200 |
| Simon Landauer | | $ 1,300 |
| Samuels Jewelers | | $ 355 |
| Office equip. | | $ 250 |
| U.S. West | | $ 137 |
| ATT | | $ 400 |
| Dr. Mciejko | | $ 1,300 |
| Crow Valley | | $ 70 |
| Amoco | | $ 28 |
| B & B Cabinets | | $ 310 |
| Otto Thomas | | $ 2,050 |
| TOTAL | (4) | $ 90,294 |

It is now a matter of mathematics to see the gross disparity. All of Steven's assets including the corporation with is $2,064,545; liabilities of $102,923 for a net award of $1,961,622. On the other hand, Joan received her assets of $167,420 less her liabilities of $90,294 leaving a net balance of $77,126.

| | Steven | | Joan |
|---|---|---|---|
| (a) | $ 1,986,053 | (1) | $ 138,590 |
| (b) | $ 37,633 | | $ 7,869 |
| (c) | $ 35,204 | | $ 20,961 |
| (d) | $ 5,655 | TOTAL | $ 167,420 |
| TOTAL | $ 2,064,545 | (4) | -$ 90,294 |
| (e) | -$ 102,923 | | $ 77,126 |
| | $ 1,961,622 | | |

There is no reason to divide these assets other than equally between the parties. Both have worked equally hard to better their family. Steven has worked outside the home and done extremely well within the financial world, whereas, Joan has remained home during the years of marriage to raise the children and create a home for the entire family unit. It was Joan who accepted the added responsibility of care for Jennifer in her special needs. There is no reason to award one party more than the other. The trial court attempted to equalize the division between the parties since it felt there were tax consequences involved, however, this argument has computed all tax consequences.

There is a gross disparity that can be easily rectified by ordering Steven to pay one half of the difference of the two net amounts. Therefore, this Court is requested to enter judgment against Steven on behalf of Joan for the total sum of $942,000 with credit for any amounts already paid. Steven should be ordered to pay the $500,000 judgment previously ordered by the trial court; the other assets as set forth in the decree of $167,420 which includes: home; oil paintings; silver plates; 1982 Mercedes; N.W. Bank checking; filing cabinet and luggage; sterling silver; 20 shares of stock; NY Life insurance; Joan's deferred profit sharing; Joan's IRA Piper, Jaffrey; the marble table; the triangular table; the china; and the remaining balance of $275,000 to be paid over a five year period at ten percent interest.

The cross-appellee's brief and appellant's reply brief counters by stating:

The property distribution was further flawed in view of the nature of the assets distributed. The Appellee received the homestead, the bulk of the furniture, and $500,000.00 in cash taken from the liquid assets of the corporation. This left Mr. Strulowitz, the Appellant, from the book value of the corporation, property and equipment of $70,318.00, and the balance of the liquid assets easily convertible in cash in the sum of $176,140.00. Such disparity in liquidity must have tremendous value to the Wife-Appellee.

To get to the crux of Appellee's Division II, however, it is easy to see that in five pages of the Brief, it does nothing but repeat the claim of Division I. Appellee uses the Division I claimed value of $1,875,000.00 in computing the total assets received by Mr. Strulowitz in Division II. What is the purpose of all the mathematics, the tax analysis, the specific items of distribution, etc. All the Wife-Appellant really says is, value the corporation at $1,875,000.00 instead of $1,300,000.00, which was the Trial Court's value. Then she asks that the Appellate Court divide the difference of $575,000.00 and give her approximately one half (1/2). Actually, on page 21 of her Brief, she only asks for $275,000.00 more instead of the one half (1/2) of the difference, $287,500.00.

Division III is another example of overkill in the Wife's approach to this entire controversy.

Our courts have consistently held there need be neither an equal division of the property nor a percentage division, but only that which is just and equitable under the circumstances. In re Marriage of Hoak, 364 N.W.2d 185, 194 (Iowa 1985). The parties lived a luxurious life-style, and garnered numerous expensive items during their travels. Both parties received valuable items of property. Our review of the record convinces us that Joan received the great majority of the household furnishings, and those items Steven received do not convince us that Joan must have those items also to achieve a just and equitable distribution.

Joan received a payment of $500,000, the household furnishings, the family home, and a 1982 Mercedes automobile, among numerous other items. The only major asset Steven received was the corporation itself. He received, along with a number of items, his life insurance, personal bank accounts, and IRA of $12,213 and deferred profit sharing of $23,492. Though Steven may have less liquid capital as a result of the $500,000 payment to Joan, his business is doing well, and apparently will continue to do so in the future. Though a different situation may arise if Steven were to sell the corporation, there is no indication in the record that Steven has any such intentions. We find that under the circumstances the property division was equitable, and we decline to disturb it on appeal.

Child Support. The trial court decreed that Steven was to pay $860 per month per child. Steven maintains this amount is excessive, contending the trial court should have applied the uniform support guidelines adopted by the Iowa Supreme Court, which would have resulted in a lowering of his child support payments to $605 per month per child.

Joan, however, contends the trial court erred in awarding $1,720 per month in child support. Joan contends that her children should be supported in the same manner to which they have been accustomed. Joan argues that she is unable to take the children to eat at the country club as often as she would like, and that the children are not able to buy as much makeup and clothes as they had prior to the dissolution. Joan asserts the child support payments should be increased to $2,400 per month.

We have consistently recognized that both parties have a duty to support their children, not necessarily equally, but in accordance with their respective abilities to pay. In re Marriage of Scherrman, 447 N.W.2d 564, 566 (Iowa App. 1989). The principles governing the proper amount of a parent's child support obligation are familiar and well established. In fashioning such an obligation, it is incumbent upon a trial court to consider both the needs of the children in question and the financial resources of each parent. In re Marriage of Shambaugh, 414 N.W.2d 660, 661 (Iowa App. 1987). Factors to be considered in fashioning a just and adequate amount of child support are

contained in Iowa Code section 598.21(4), and need not be repeated here.

The record reveals the salary Steven pays himself from the corporate profits varies from year to year, ranging from $50,000 to approximately $100,000. Steven's income potential is much higher, however, when taking into consideration the net corporate profits.[3] Joan receives little income from her job at The Limited, and there was some testimony that the store may not keep her on in the future. Joan currently earns $5.75 per hour at the store. Joan, having stayed at home during the marriage to care for the children, has few marketable skills to compete in today's marketplace. Joan has, however, shown some talent in interior design.

We have recognized that in determining an equitable amount of child support, we look to the standard of living a child would have enjoyed had there not been a dissolution, not whether the child was accustomed to a higher standard of living. In re Marriage of Campbell, 451 N.W.2d 192, 193 (Iowa App. 1989). We also, recognize, however, that a dissolution will force economic difficulties on both parties, and that both parties will

---

3. Joan contends that according to the statement of facts the net profit before payment of salaries to the corporation was $770,000 for nine months in 1989; $618,000 in 1988. She further claims this annualized to over $1,000,000 a year. She claims that Steven could have a gross income in 1989 of $770,000 and his net income could be $508,200 for the nine-month period.

have to make sacrifices to ensure the children receive adequate support to meet their needs.

Steven's income is substantial, and he has a duty to support his children as close to the manner in which he had previously supported them. Steven requests that we adhere to the child support guidelines. Since the decree is silent as to whether the child support guidelines were considered, we are compelled to remand with directions to apply the rules as set forth in the October 16, 1990, order of the supreme court. Under that order, "the court shall not vary from the amount of child support which would result from application of the guidelines without a written finding that the guidelines would be unjust or inappropriate . . . ." We therefore remand this case to the trial court to enter an appropriate order following the procedure mandated by the supreme court order. Pending said hearing on remand, we order child support to be paid as fixed by the dissolution decree. We do not retain jurisdiction. See In re Marriage of Oakes, 462 N.W.2d 730, 733-34 (Iowa App. 1990); In re Marriage of Craig, 462 N.W.2d 692, 693 (Iowa App. 1990).

**Alimony.** Joan contends the trial court erred in not ordering Steven to pay her more alimony. The trial court ordered Steven to pay her $1,000 per month. Joan maintains that even with the child support payments, she does not have enough money to provide her family with a decent standard of living. Joan thus requests her alimony be

raised to $2,500 per month. Steven, in contrast, argues that the alimony award is excessive, considering the child support award and the $500,000 payment in cash. Steven contends Joan is not as helpless as she maintains, noting that in the past Joan had been a giftware buyer, model, and interior designer.

When determining the appropriateness of alimony, the court must consider (1) the earning capacity of each party, and (2) their present standards of living and ability to pay balanced against their relative needs. In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983). Alimony is an allowance to the ex-spouse in lieu of a legal obligation to support that person. See In re Marriage of Hitchcock, 309 N.W.2d 432 (Iowa 1981). Alimony is not an absolute right; an award depends upon the circumstances of each particular case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3). See In re Marriage of Hayne, 334 N.W.2d 347 (Iowa App. 1983).

The record reveals that Joan filed financial information indicating that her monthly expenses averaged between $5,000 and $9,000 per month. However, Joan continued to incur large amounts of debt after the divorce proceedings had begun, buying large amounts of expensive clothes, a $1,100 filing cabinet, and luggage costing $800 even though there were numerous other pieces of luggage in

the house. Joan simply explained that the children needed new luggage to take a trip to New Jersey to visit Steven's relatives for Passover. Though Joan stated that she needs $500 per month just for travel, she did state that her traveling had decreased, and that she had not visited her family more than once or twice a year up to the time of trial.

Steven contends that alimony awarded in the present case is excessive, and that furthermore it should not be permanent, but more in the form of rehabilitative alimony. Steven points out Joan's extravagant spending during the pendency of the divorce. Steven maintains his income is not nearly as large as Joan claims, and believes that the volatility of the scrap metal industry makes a prediction as to his future impossible.

Upon examination of record we cannot say the trial court erred in setting alimony payments at $1,000 per month. The present case is quite similar to several other previous cases considered by this court. In In re Marriage of Misol, 445 N.W.2d 411 (Iowa App. 1989), and In re Marriage of Hayne, 334 N.W.2d 347 (Iowa App. 1983), we considered the question of alimony and child support in the context of parties who had enjoyed high standards of living. In Misol, the respondent husband earned $330,000 per year. 445 N.W.2d at 412. The trial court ordered the husband to pay $600 per month per child. Alimony was set at $3,500 per month. Id. at 413. Though the petitioner

wife was awarded assets of over $700,000, she was awarded liquid assets of approximately $135,000. Id. The court in Misol affirmed the alimony award of $3,500.

In Hayne, the petitioner wife made arguments concerning her life-style almost identical to those made by Joan. 334 N.W.2d at 350. The trial court had awarded her alimony in the amount of $4,000. Id. at 351. The husband, a neurosurgeon, earned $240,000 per year. The trial court, in dividing the marital assets, awarded the wife a lump sum cash payment of $107,400. Id. at 350. In holding that the wife was going to have to learn how to cut corners in order to maintain the large and expensive family home, we opined:

> The equitable principles that we have recognized and enforced in the past require, in dissolution cases, that the spouse with the lesser earning capacity is entitled to be supported, for a reasonable time, in a manner as closely resembling the standards existing during the marriage as possible, to the extent that that is possible without destroying the right of the party providing the income to enjoy at least a comparable standard of living as well. But once the dependent spouse's standard of living is assured, there is no reason, in equity, for the supporting spouse to provide still more.

Id. at 350.

While we agree Joan should not have to struggle to make ends meet, considering the parties' assets and Steven's income, we do not believe Steven should be stripped of all liquid assets to support the life-style Joan wishes to maintain. Joan received a cash payment of $500,000, considerably more than either spouse in Misol and Hayne.

If such funds are invested wisely, Joan and her family should be able to enjoy a very comfortable standard of living far into the future.

We are also mindful that Steven has equally been less than forthcoming with his assets. Steven admitted that he deliberately refused to find out how much he was going to inherit from his mother's estate so that he would not be able to reveal such sums at trial. It was eventually discovered Steven will receive approximately $200,000. We affirm the trial court's award of $1,000 per month alimony, that it be permanent. However, we modify the decree by striking the provision that makes the alimony payments a charge against Steven's estate and in lieu thereof provide that the alimony payments shall terminate upon the death of either Steven or Joan.

Though we affirm the trial court's award of alimony, we strongly urge Joan to develop her own skills. Though we are mindful that throughout the parties' eighteen-year marriage Joan stayed home to care for the children, she is only in her early forties, and has had some higher education. She has exhibited some talent in interior design, and has shown some interest in retail. We do not believe that someone with Joan's resources and capabilities is limited to earning $5.25 per hour.

Attorney Fees. Joan lastly requests that she be awarded attorney fees for costs of this appeal. An award of attorney fees is not a matter of right, but rests within

the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to 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 trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981).

Joan has not provided us with any estimate as to what attorney fees have accrued as a result of this appeal. Joan has received considerable property, and we may consider such when determining whether to award attorney fees. In re Marriage of Griffin, 356 N.W.2d 606, 609 (Iowa App. 1984). Though Steven filed the present appeal, Joan has also contributed to the costs of appeal by cross-appealing. Based on these facts we decline to award Joan attorney fees on appeal. Costs on appeal to be assessed one-half to each party.

**AFFIRMED IN PART, MODIFIED IN PART, AND REMANDED WITH DIRECTIONS.**