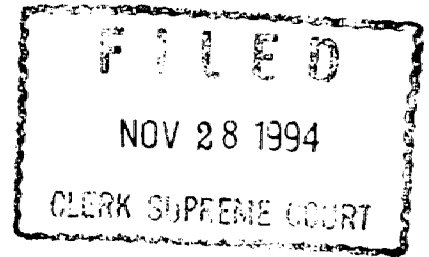


IN THE COURT OF APPEALS OF IOWA

No. 4-429 / 93-1633



IN RE THE MARRIAGE OF ROBERT D. JONES AND
PAMELA K. JONES

Upon the Petition of
ROBERT D. JONES,

Appellee,

And Concerning
PAMELA K. JONES,

Appellant.

Appeal from the Iowa District Court for Polk County,
Larry J. Eisenhower, Judge.

Pamela Jones appeals the economic and attorney fee provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Victoria L. Herring, West Des Moines, for appellant.

Steven H. Shindler and Michael E. Marshall of Smith, Schneider, Stiles, Wimer, Hudson, Serangeli, Robinson, Mallaney, Shindler & Scalise, P.C., Des Moines, for appellee.

Heard by Sackett, P.J., and Habhab and Huitink, JJ.

HUITINK, J.

Pamela appeals the economic and attorney fee provisions of the parties' dissolution decree. We affirm as modified.

Pamela and Robert Jones married in 1976. Pamela is forty-five years of age. Robert is fifty-two years of age. Robert adopted two of Pamela's children, but they are now adults and not affected by this dissolution.

At the time the parties married, Robert was a sales person for F & J Mobile Homes. Pamela worked in the Polk County Clerk of Court's office. In 1982 they purchased F & J Mobile Homes and formed a corporation, R & J Mobile Homes. Robert issued seventy-five shares of stock to himself and twenty-five to Pamela. Robert handled the sales, service, and management of the corporation. Pamela quit her job at the clerk's office, cashed in her IPERS account, and worked as company secretary and bookkeeper. She also worked with customers, decorated model units, and cleaned trade-in units. Pamela was primarily responsible for the parties' children and their home.

Robert filed for dissolution in October 1992. In 1992 the corporation paid Robert \$60,184. Pamela is currently employed by the Central Iowa Employment Training Consortium and earns \$22,700 per year.

In 1993 R & J earned gross receipts of \$2,032,967.17 and received rebates from manufacturers totaling \$50,000. R & J owned several parcels of commercial and residential real estate. Robert's expert, Joseph Coco, a certified

public accountant, testified R & J's estimated fair market value was \$135,500. Pamela's expert, Kim Smith, also a CPA, testified R & J's valuation was between \$196,323 and \$224,464.

The district court accepted the \$135,500 valuation of R & J and awarded all of its assets to Robert. The court also awarded Robert marital assets valued at \$36,344 and liabilities valued at \$11,000.

Pamela received \$40,000, payable in four annual installments, for her interests in R & J. No interest on the installments was awarded. The court also awarded her \$110,296 in marital assets and liabilities valued at \$25,341. The court also ordered Pamela to pay \$4000 towards Robert's attorney fees.

Pamela contends the district court erred in its valuation of R & J. She also argues the court's division of the parties' property was inequitable. Finally she claims the district court abused its discretion in awarding Robert attorney fees.

Our review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

Pamela argues the trial court erred in accepting Coco's valuation of R & J. She contends Coco's close business relationship with Robert makes his valuation suspect. We disagree.

Both parties presented expert testimony by certified public accountants on the valuation issue. Although each used recognized valuation methods to arrive at their conclusions, we find Coco's valuation to be more realistic because of his familiarity with R & J's history and the retail mobile home business generally. We, like the trial court, have considered Coco's relationship with Robert. There is, however, nothing in the record to support the negative inferences Pamela suggests, nor are we willing to draw similar conclusions regarding Pamela's expert simply because she paid him for his appraisal. The district court's evaluations, to a significant extent, reflect its assessment of the credibility of the witnesses. The record shows the district court's valuation of R & J is supported by credible evidence, and we will not disturb it on appeal. See In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984).

Pamela also contends the trial court's division of property was inequitable, in part because of the court's acceptance of Coco's valuation of R & J.

The partners in the marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. In re Marriage of Tzortzoudakis, 507 N.W.2d 183, 185 (Iowa App. 1993). Iowa courts do not require an equal division or percentage distribution. Id. The determining factor is what is fair and equitable in each circumstance. Id. The distribution of the property should

be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1993). In re Marriage of Bries, 499 N.W.2d 319, 322 (Iowa App. 1993).

Our review of the record reveals Robert received net assets valued at \$160,844. We do not include the Putnam accounts and the Hawkeye Savings account since the funds in each of the accounts belonged to Robert's mother. Pamela received net assets valued at \$124,955. After considering all of the factors listed in section 598.21(1), we determine it is equitable to divide the marital assets equally. We therefore modify the decree and order Robert to pay Pamela \$18,064 to equalize the property division. We also modify the decree to award Pamela interest on the \$40,000 award. Interest shall accrue at the statutory rate of ten percent from the date each installment is due. Iowa Code § 535.3 (1993).

Finally, Pamela contends the district court abused its discretion when it ordered her to pay \$4000 toward Robert's attorney fees. We agree.

Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Hunt, 476 N.W.2d 99, 101 (Iowa App. 1991). To overturn an award the complaining party must show that the trial court abused its discretion. Id. Awards of attorney fees must be for fair and reasonable amounts and based on the parties' respective abilities to pay. In re Marriage of Benson, 495 N.W.2d 777, 783 (Iowa App. 1992).

Pamela received two continuances in this action. The record shows Pamela requested the continuances after she changed attorneys in June 1993. Robert claims her last-minute switch caused him to incur an additional \$4000 in attorney fees. Although the order granting the second continuance anticipated the issue of attorney fees, we find nothing in the record to support Robert's inference of bad faith or manipulation by Pamela which justifies an award of attorney fees as a sanction.

Since there is no evidence of bad faith, we must apply the test as stated above to determine whether attorney fees are appropriate. Pamela did not have independent liquid assets available to pay the award. The only way she could pay was to offset the \$4000 against the \$10,000 Robert owed to her, thus diminishing her property settlement.

We conclude this award was neither reasonable or based on Pamela's ability to pay. Therefore, the trial court abused its discretion in ordering Pamela to pay \$4000 toward Robert's attorney fees. Accordingly, the court is reversed on this issue.

Pamela also requests appellate attorney fees. 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 Weinberger, 507 N.W.2d 733, 736 (Iowa App. 1993). After our modification of the property division, Pamela has the economic resources available to pay her own attorney fees on appeal. The parties shall be responsible for their own attorney fees.

We affirm the district court as modified. Costs are assessed one-half to each party.

AFFIRMED AS MODIFIED.