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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-700 / 90-77

IN RE THE MARRIAGE OF PAMELA R. DYKSTRA AND RONALD L. DYKSTRA

Upon the Petition of
PAMELA R. DYKSTRA,

Appellee,

And Concerning
RONALD L. DYKSTRA,

Appellant.

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Appeal from the Iowa District Court for Lyon County, James L. McDonald, Judge.

The husband appeals a dissolution decree, challenging its economic provisions. **AFFIRMED.**

Randy L. Waagmeester of DeWaay & Waagmeester, Rock Rapids, for appellant.

Patrick N. Murphy of Murphy & Dull, LeMars, for appellee.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ.

SCHLEGEL, J.

Ronald and Pamela Dykstra were married in 1967. They have three children: a boy born in 1969 who presently attends college, a boy born in 1973, and a girl born in 1975. The dissolution decree placed the two minor children in joint legal custody and in Pamela's physical care. These custody provisions are not challenged in the present appeal.

Ronald is an engineer and an employee and stockholder of a professional corporation which engages in engineering. He earns a salary of $42,300 per year, plus bonuses and fringe benefits.

Pamela is a news announcer and sales representative for a radio station. Her income includes commissions and therefore varies, but it averages about $15,000 per year.

The dissolution decree directed Ronald to pay Pamela rehabilitative alimony of $200 per month for three years and child support of $300 per month for each of the two minor children. Ronald was also directed to pay support of $250 per month for the adult son who attends college; this support will last only until the son's twenty-second birthday in May 1991. In addition, Ronald was directed to contribute $1200 toward Pamela's attorney fees.

Ronald was awarded all his stock in the professional corporation for which he is employed; this stock was valued at over $70,000. He was also awarded an employee profit sharing plan with a vested value of over $100,000, an IRA

worth over $16,000, and various vehicles and personal effects. In addition, he was awarded his interest in a real estate partnership which owns rental houses; the value of this interest is unclear from the record. He was awarded other bank accounts and investments of small or speculative value.

Pamela was awarded the parties' house, which was valued at $76,000 but was subject to a debt of about $20,000. She was also awarded all the parties' interest in a cable television investment; the court valued that investment at about $70,000. In addition, she was awarded an IRA worth about $4000, an investment account worth $7400, and various other bank accounts and investments of small or speculative value. She was awarded a car and personal effects.

Many of the parties' investments were purchased with the help of loans from Ronald's parents. The district court concluded the amount owed to Ronald's parents is about $72,000. The decree directed Ronald to assume all of this debt to his parents. The decree specified that Ronald must assume the debt attributable to the cable television investments even though those investments themselves were awarded entirely to Pamela.

Ronald has appealed from the dissolution decree. He challenges the division of property and debts and the award of rehabilitative alimony to Pamela.

Pamela requests attorney fees on appeal.

Our review in this equity action is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew 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. P. 14(f)(7).

I.

We must consider property division and alimony together in evaluating their individual sufficiency. In re Marriage of Dahl, 418 N.W.2d 358, 359 (Iowa App. 1987); In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984). We first discuss the property division.

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 Havran, 406 N.W.2d 450, 452 (Iowa App. 1987). The distribution of the property of the parties should be that which is equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(1). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983).

Ronald's main contention is that it was unfair to place upon him the obligation to pay the debt for the cable television systems while awarding interest in the systems to Pamela. We find the district court awarded the unencumbered interest to Pamela in order to have an equitable distribution. Ronald has the profit sharing plan

of his employer with a vested value of more than $100,928 plus his share of the employer's contribution. The trial court awarded Ronald the IRA accounts, the profit sharing plans, and the stock in his professional corporation. These are all marital assets and subject to equitable distribution. The trial court properly considered the tax consequences of transferring these assets and found it was best not to transfer them. For that reason, Pamela was awarded the unencumbered cable television system and rehabilitative alimony. The cable television debt was correctly allocated to Ronald.

II.

Ronald contends he should not have to pay rehabilitative alimony for Pamela. 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 former spouse in lieu of a legal obligation to support that person. See In re Marriage of Hitchcock, 309 N.W.2d 432 (Iowa 1981).

The trial court ordered Ronald to pay Pamela alimony of $200 per month for three years. Ronald claims this award is error and abuse of discretion because it, in conjunction with debts awarded to him, is in excess of his monthly income. In order to show an abuse of discretion, one

generally must show that the court exercised its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." State v. Blackwell, 238 N.W.2d 131, 138 (Iowa 1976) (quoting State v. Burnor, 132 Vt. 603, 326 A.2d 138, 140 (1974)). We find the property division and the alimony award are not error nor abuse of discretion.

Ronald has worked for the same firm for over twenty years and is a stockholder. He testified he has no intention of changing employ. Taking into account his bonuses and benefits, he makes well over three times the amount Pamela makes in one year. This marriage was also a fairly long one, lasting over twenty-two years. After the birth of their children, Pamela did not work outside the home for more than fourteen years. Pamela has been dependent on Ronald financially in the past, and this rehabilitative alimony will allow her the time to become self-supporting. See In re Marriage of Francis, 442 N.W.2d 59, 63-64 (Iowa 1989). We find the award of rehabilitative alimony was appropriate in this case and affirm the award of the district court.

III.

Pamela asks for attorney fees on 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). Considering these principles, we conclude the parties should pay their own appellate attorney fees. Costs of this appeal are assessed to appellant.

AFFIRMED.