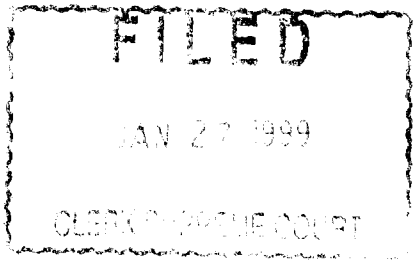
IN THE COURT OF APPEALS OF IOWA

No. 1998-13 (8-743) / 98-1158
Filed January 27, 1999



IN RE THE MARRIAGE OF CAROL SCHROEDER AND ALLEN SCHROEDER

Upon the Petition of
CAROL SCHROEDER,
Appellant/Cross-Appellee,

And Concerning
ALLEN SCHROEDER,
Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Bremer County, Paul W. Riffel, Judge.

Carol Schroeder appeals and Allen Schroeder cross-appeals from various economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Curtis J. Klatt of Dunakey & Klatt, Waterloo, for appellant.

Thomas W. Langlas of Gallagher, Langlas, & Gallagher, P.C., Waterloo, for appellee.

Heard by Sackett, C.J., and Streit and Vogel, JJ.

VOGEL, J.

Carol Schroeder appeals and Allen Schroeder cross-appeals from various economic provisions of the parties' dissolution decree. We modify to effect a more equitable property distribution and increase the alimony award, but otherwise affirm.

Background facts. Carol and Allen Schroeder were married in 1996. Three children were born to the marriage, the youngest of whom reached majority shortly after entry of the decree.

Carol filed a petition for dissolution in June of 1997. After trial, the court entered its decree, distributing the parties' property and ordering Allen to pay Carol rehabilitative alimony in the amount $500 per month for two years. Carol appeals and Allen cross-appeals various economic provisions of the decree.

Scope of review. Our review of this equitable proceeding 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 Courtade*, 560 N.W.2d 36, 37 (Iowa App. 1996). We give weight to the fact findings of the district court, especially in determining the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

I. Property division. Both Carol and Allen argue that the property division was inequitable and challenge the district court's valuation of several items of property.

The parties to a marriage are entitled to a just and equitable share of the property accumulated during the marriage. *In re Marriage of Starcevic*, 522 N.W.2d

855, 857 (Iowa App. 1994). The determining factor is what is fair and equitable to both parties under each circumstance. *Id.;* Iowa Code § 598.21 (1997).

In making an equitable distribution of assets, the court must first determine what assets are available to be allocated between the spouses. *In re Marriage of Driscoll*, 563 N.W.2d 640, 641-42 (Iowa App. 1997). To do this, the court must identify and value the assets of the parties, both jointly and separately. *In re Marriage of Brainard*, 523 N.W.2d 611, 616 (Iowa App. 1994). The equitable distribution of property should be made in consideration of the criteria codified under Iowa Code section 598.21. *Starcevic*, 522 N.W.2d at 857; *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983).

The parties had accumulated considerable property during the marriage and presented, at times, widely varying values for particular items of property. We find the values assigned by the trial court to be within the permissible range of evidence and will not disturb them on appeal. *See Brainard*, 523 N.W.2d at 616. While the decree did not specify a net distribution, Carol claims she received approximately $20,000 less under the trial court's valuation. On our de novo review, we agree that Allen received a greater share and find he should pay Carol an additional $10,000 to effect a more equitable distribution of property. This amount should be added to the $50,000 cash award ordered under the decree to constitute a lien against the marital residence.

II. Alimony. Carol asserts that the alimony award is inadequate and leaves her unable to provide for her own health insurance or reeducation. Allen asserts that the award is excessive.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Erickson*, 553 N.W.2d 905, 907 (Iowa App. 1996). Alimony may be used to remedy inequities in a marriage and compensate a spouse who leaves the marriage at a financial disadvantage. *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993). We consider alimony and property distribution together in assessing their individual sufficiency. They are neither made nor subject to evaluation in isolation from one another. *In re Marriage of McLaughlin*, 526 N.W.2d 342, 345 (Iowa App. 1994). Before awarding alimony, the district court must consider the factors listed in Iowa Code section 598.21(3).

Rehabilitative alimony serves to support an economically dependent spouse through a limited period of education and retraining. *In re Marriage of O'Rourke,* 547 N.W.2d 864, 866 (Iowa App. 1996). Its objective is self-sufficiency. *Id.* Cases in which rehabilitative alimony is awarded are those where the spouse to receive alimony needs to redevelop previous skills, receive new training, or develop potential supportive skills. *In re Marriage of Peterson,* 491 N.W.2d 535, 538 (Iowa App. 1992).

At the time of trial, Carol was fifty-one years old and Allen was fifty-two. Both were in good health. Allen is a high school graduate and has worked as a tool

and die maker for the past fifteen years. He has an annual gross income of $58,944 and occasional opportunities for overtime. Carol has a high school diploma and graduated from beauty school in 1965. She owned her own beauty shop until the parties moved to Waverly in 1969, then operated a beauty shop part-time in the parties' home until 1988. The parties lived on an acreage in Waverly, and Carol was primarily responsible for the care of the children, the acreage, and the horses. In 1995, Carol received training and briefly worked part-time as a dog groomer for minimum wage. Currently, Carol substitutes for another beautician at a nursing home and works twenty hours at a beauty shop in Waverly. She testified that she earns approximately $78 per week, which would amount to $4,056 per year.

Carol recently received an inheritance from her father's estate and will have some annual rental income from his farm in the future. However, she was also ordered to pay one-third of her youngest daughter's college education expenses and the court denied her request for medical insurance coverage from Allen. Considering all these factors, we find that Allen should pay Carol $500 for five years so she has sufficient time to seek additional training or education to increase her earning capacity. This also helps her offset the cost of her own health insurance.

III. Attorney fees. Carol asserts that court should have awarded her trial attorney fees given the disparity in the parties' financial circumstances. An award of attorney fees on appeal is not a matter of right, but rests within the discretion of the court. *In re Marriage of Benson*, 545 N.W.2d 252, 258 (Iowa 1996). The test is

whether the fee is reasonable and based on the parties' respective abilities to pay. *See In re Marriage of Applegate*, 567 N.W.2d 671, 675 (Iowa App. 1997). Given the parties' respective abilities to pay, we find no abuse of discretion.

Carol also requests an award of appellate attorney fees. 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 district court's decision on appeal. *In re Marriage of Wood*, 567 N.W.2d 680, 684 (Iowa App. 1997). After considering these factors, we award Carol $2000 for appellate attorney fees. Costs of this appeal are taxed to Allen.

AFFIRMED AS MODIFIED.