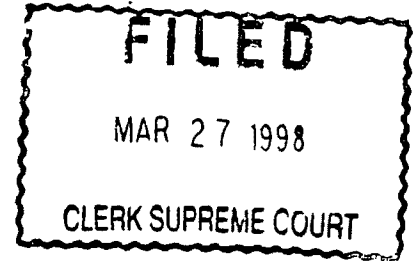


IN THE COURT OF APPEALS OF IOWA

No. 8-039 / 97-870



**IN RE THE MARRIAGE OF SETH WADE MORTON AND NAOMI MARY
MORTON**

000257

Upon the Petition of
SETH WADE MORTON,
Petitioner-Appellee/Cross-Appellant,

And Concerning
NAOMI MARY MORTON,
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Franklin County, Gilbert K. Bovard,
Judge.

Naomi Morton appeals various economic provisions of the parties' dissolution
decree. **AFFIRMED AS MODIFIED.**

Philip L. Garland, Garner, for appellant.

G.A. Cady III of Hobson, Cady & Cady, Hampton, for appellee.

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

VOGEL, J.

Naomi Morton appeals various economic provisions of the parties' dissolution decree. Seth Morton cross-appeals. As we find: 1) the valuation of the stock in Seth's business was discounted excessively by the trial court; and 2) the value of the stock should not have been set off entirely to Seth, we modify.

Background facts. Seth and Naomi Morton were married on May 30, 1981. At the time of the marriage, Naomi was thirty-eight years of age and Seth was twenty-two. Although the parties were legally married sixteen years, they only lived together, off and on, for five to eight of those years. Naomi worked as a typist for the Franklin County Treasurer for eighteen-and-a-half years and earned \$18,847 in 1996. Seth began in the marriage as a laborer for his family's business, Mort's Pump & Plumbing ("Mort's"). During the marriage, he purchased stock in the company, eventually becoming a fifty percent owner. Seth reported income of \$30,680 in 1996.

Scope of review. 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 the witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7); *In re Marriage of Vrbanc*, 359 N.W.2d 420, 423 (Iowa 1984).

I. Valuation of stock. At trial, the most hotly contested issue was the value of Seth's share of stock in Mort's. The district court concluded the value of the business was \$689,151 and that Seth's interest was worth \$344,575. The court discounted that figure by twenty-five percent due to the fact Seth did not have a controlling interest, bringing the value down to \$258,431. The court discounted the store's value by an additional thirty percent as the buy-sell agreement limited marketability, reducing the value to \$180,902, or a fifty-five percent reduction in value.

Although Seth contends the true value of the stock is determined in the buy-sell agreement for the amount of \$13,133, we find this method would set the value artificially low. After Seth's brother, Lance, died in 1995, Seth and his remaining brother, Kent, each acquired a fifty percent share of the stock by purchasing Lance's stock for \$228,000. This figure lends support to the determination the trial court made of the value of the business. We therefore accept the trial court's starting figure, valuing the stock at \$689,151, divided by fifty percent, for a base figure of \$344,575 as Seth's share.

We next turn to how the base figure was discounted by the trial court. It is proper to discount the value of stock in closely-held corporations because of the limited marketability and lack of controlling interest by one party. *See In re Marriage of Meulhaupt*, 439 N.W.2d 656, 660 (Iowa 1989). However, this calculation is

imperfect and discretionary by the court in determining real value to the party holding the stock. Here, there is no need for a liquidation of the stock. Its value to Seth as an income-producing asset is great. We therefore modify by reducing the discount from fifty-five percent to thirty percent for a valuation of Seth's stock of \$241,962. We find this discount sufficient to account for the lack of controlling interest and the limited marketability of a closely-held corporation while also considering the length of the parties' marriage. *See, e.g., In re Marriage of Meulhaupt*, 439 N.W.2d at 661 (holding appropriate for 32% discount where marriage lasted 20½ years); *In re Marriage of Wiedemann*, 402 N.W.2d 744, 749 (Iowa 1987) (holding 35% discount of close corporation stock appropriate where 42-year marriage with 9-year separation). This amount is also more consistent with prior case law. Seth is still left with a successful going business concern.

II. Property division/alimony award.

A. Property. The trial court awarded the entire value of Mort's stock to Seth, and fashioned a net property distribution to Seth of \$213,151 and to Naomi of \$47,700. Using our recalculated value of Mort's stock, this distribution is \$274,211 to Seth. Naomi contends this disparity is accentuated by the fact that she came to the marriage with \$115,000 in property while Seth entered the marriage with only \$1500.

One factor the court considers in making an equitable division of property is what each party brought to the marriage. *See* Iowa Code § 598.21(1)(b). Premarital assets, unlike gifted and inherited property, are subject to division. *See* Iowa Code § 598.21(2); *In re Marriage of Brainard*, 523 N.W.2d 611, 616 (Iowa App. 1994).

The court set off the total value of Seth's business to him as it concluded that the appreciation in the value of the business was not due to the joint efforts of the parties. Naomi disagrees, asserting that she used her premarital assets, as well as her income during the marriage to support the family, freeing Seth financially to purchase stock. We agree with Naomi that she made substantial contributions to the marital property and those contributions should be reflected in the distribution 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).

Seth has a secondary argument to support setting off at least a portion of the stock to him. He claims life insurance proceeds from a policy on his deceased brother's life, used to purchase his brother's stock, should be characterized as inherited property. Thus, to the extent the proceeds increased the value of his stock holdings, that amount should be set off to him as inherited property. *See* Iowa Code § 598.21(2). We disagree. The insurance proceeds did not constitute inherited

property but rather marital property as the life insurance premiums were paid during the course of the marriage.

In order to achieve a more equitable distribution of marital property, we order Seth to pay to Naomi the sum of \$50,000. This will be accomplished by a Qualified Domestic Relations Order (QDRO) for Seth to transfer his interest in his 401(k) plan to Naomi. This account has a current value in excess of \$30,000. The balance shall be payable to Naomi within ninety days of praecipe issuing.

B. Alimony. The court ordered Seth to pay Naomi \$350 per month in alimony for five years. Naomi contends this is not sufficient as she is currently fifty-four years of age, while Seth is only thirty-nine. She argues she has only eleven years until retirement, while Seth has twenty-six years to build his retirement.

Alimony is not an absolute right; an award depends on the circumstances of each particular case. *In re Marriage of Welch*, 476 N.W.2d 104, 110 (Iowa App. 1991). We 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). The discretionary award of alimony is made after considering the factors listed in Iowa Code section 598.21(3) (1995).

In determining the appropriateness of alimony, the court must consider (1) the earning capacity of each party, and (2) the present standards of living and ability to pay balanced against the relative need of the other. *In re Marriage of Estlund*, 344

N.W.2d 276, 281 (Iowa App. 1983). Alimony may be used to remedy inequities in a marriage and to compensate a spouse who leaves a marriage at a financial disadvantage. *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993).

Naomi is in good health and has a good work history. She is capable of being self-sufficient. Given our modification of assets above, we find Naomi's request for additional alimony unjustified and affirm the alimony awarded by the trial court.

IV. Attorney fees. An award of attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Gilliam*, 525 N.W.2d 436, 439 (Iowa App. 1994). 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 Roberts*, 545 N.W.2d 340, 345 (Iowa App. 1996). We affirm the trial court's \$1500 award of attorney fees to Naomi. We determine Naomi is entitled to \$1000 on this appeal. Costs are assessed to Seth.

AFFIRMED AS MODIFIED.