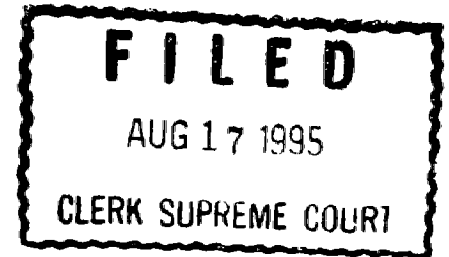


IN THE COURT OF APPEALS OF IOWA

No. 5-168 / 94-1002



IN RE THE MARRIAGE OF ROGER D. SCHRIBER AND CINDY A. SCHRIBER

Upon the Petition of
ROGER D. SCHRIBER,

Appellant,

And Concerning
CINDY A. SCHRIBER,

Appellee.

Appeal from the Iowa District Court for Webster County, Kurt L. Wilke,
Judge.

Roger Schriber appeals the alimony and property distribution provisions of the
parties' dissolution decree. **AFFIRMED.**

Joseph B. McCarville, Fort Dodge, for appellant.

Eric Eide of Johnson, Erb, Bice & Carlson, P.C., Fort Dodge, for appellee.

Considered by Donielson, C.J., and Hayden and Huitink, JJ.

DONIELSON, C.J.

Roger appeals the alimony and property awards made by the district court. We are not bound by the district court's findings of fact, but we do give them deference because it had the opportunity to view firsthand the demeanor of the witnesses and was in the best position to assess their credibility. *See In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992). Upon our de novo review, Iowa R. App. P. 4, we affirm the district court's award of alimony and distribution of property.

After living together for several years, Roger and Cindy were married on November 27, 1990. Following an incident of domestic abuse, the parties separated on August 13, 1993. Roger commenced dissolution proceedings in November 1993. The dissolution action was heard by the district court on May 5, 1994. At that time Roger was forty-three years old and Cindy was forty-four years old.

Roger had been a farmer during all of his adult life. He managed a large and successful farm operation. Cindy had not worked outside the home for over ten years prior to the dissolution action. She had no skills by which she could become immediately self-sufficient. Cindy's testimony was uncontroverted that Roger forbade her from obtaining outside employment or vocational training during their marriage.

During the course of the marriage the parties bought a home. At the time of the dissolution action the home had an equity value of approximately \$17,000. In his testimony Roger valued the contents of the home at \$5,000. The district court

awarded Cindy the family home as well as the furnishings, fixtures and appliances in her possession. The court ordered Roger to pay Cindy rehabilitative alimony in the amount of \$600 per month for twenty-four months.

I. ALIMONY.

Roger argues an award of alimony is not justified in this case. Alimony is an allowance to the former spouse in lieu of a legal obligation to support that person. *In re Marriage of Elbert*, 492 N.W.2d 733, 735 (Iowa App. 1992). Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *Id.* The discretionary award of alimony is made after considering the statutory factors listed in Iowa Code section 598.21(3). *Id.* at 736. We will consider the property division and alimony award together in evaluating their individual sufficiency. *In re Marriage of Coulter*, 502 N.W.2d 168, 172 (Iowa App. 1993).

The district court awarded Cindy twenty-four months of rehabilitative alimony. Self-sufficiency is the goal of rehabilitative alimony. *See In re Marriage of Francis*, 442 N.W.2d 59, 64 (Iowa 1989). Rehabilitative alimony was conceived as a way of supporting an economically dependent spouse through a limited period of reeducation and retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting. *Id.* at 63.

Roger contends he does not have the financial means to pay alimony. The record reveals Roger was not forthcoming with respect to the extent of his assets and his income. In violation of a court order, Roger sold livestock in 1994. The court found Roger was not candid about the value of his assets as he provided estimates of his net worth which varied considerably from figures he had previously provided to lending institutions. The court was skeptical of Roger's truthfulness regarding his assets and income claims. From our review of the record, we find Roger had a history of having a considerable net worth. When his deductions for depreciation were added back in, he generally had a level of farm income sufficient to pay the alimony awarded by the district court. We affirm the award of rehabilitative alimony.

II. PROPERTY AWARD.

Roger claims it was inequitable to award Cindy all of the equity in the parties' home. He claims the down payment for the home came from his earnings and the equity should be set aside to him. Both parties agreed the home would have to be sold. The **district** court found the family home as well as thirteen pieces of farm machinery **were** acquired during the marriage. Roger was awarded all of the property related to his farming operations. Cindy received only the family home and its contents.

"The distribution of the parties' property should be equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(1)." *In re Marriage of Wertz*, 492 N.W.2d 711, 713 (Iowa App. 1992). What constitutes an equitable division of marital property must be determined under the specific facts of each case. *In re Marriage of Byall*, 353 N.W.2d 103, 106 (Iowa App. 1984).

Given the circumstances of this case, we find it was equitable to award Roger all of the property associated with his occupation and to award Cindy the equity in the home and its contents.

III. APPELLATE ATTORNEY FEES.

Cindy requests an award of \$1,500 in 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 Castle*, 312 N.W.2d 147, 150 (Iowa App. 1981).

Cindy was obligated to defend this appeal. We find Cindy does not have the means to pay for this appeal and Roger does have the ability to contribute toward her

appellate attorney fees. Roger is ordered to pay \$1,500 to Cindy to be applied toward her appellate attorney fees.

AFFIRMED.