

IN THE COURT OF APPEALS OF IOWA

No. 4-084 / 93-1219

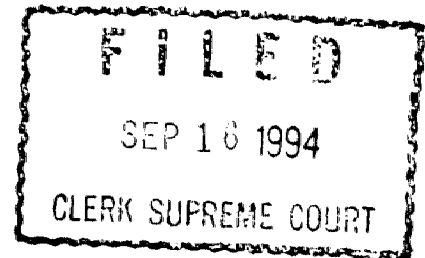
IN RE THE MARRIAGE OF CATHY JO GRUBBS AND
SCOTT BRYAN GRUBBS

Upon the Petition of
CATHY JO GRUBBS,

Petitioner-Appellant/Cross-Appellee,

And Concerning
SCOTT BRYAN GRUBBS,

Respondent-Appellee/Cross-Appellant.



Appeal from the Iowa District Court for Boone County,
Carl Peterson, Judge.

Cathy appeals and Scott cross-appeals from the property
division, child support and alimony provisions of their
dissolution decree. **AFFIRMED.**

Kirke C. Quinn of Courter, Quinn, Doran & Anderson,
Boone, for appellant.

Vicki R. Copeland of Wilcox, Polking, Gerken,
Schwarzkopf, Hoyt & Copeland, P.C., Jefferson, for
appellee.

Considered by Hayden, P.J., and Habhab and Cady, JJ.

CADY, J.

This is an appeal by both parties from the property division, child support and alimony provisions of the district court's decree for dissolution of their marriage. In our de novo review, we affirm the district court.

Cathy and Scott Grubbs were married on September 17, 1983. They have two children: Kyle, born on March 27, 1985; and Brock, born on August 12, 1990. The parties lived in rural Boone County during the marriage.

Scott was self-employed as a farmer throughout the marriage, as he was prior to the marriage. He owned eighty acres of farmland and some farming equipment when he married Cathy. The farm included the house where the parties subsequently lived. Scott's net worth at the time of the marriage was about \$325,000. Cathy brought very few assets to the marriage.

During the marriage the parties purchased an additional 240 acres of land. They also leased 1,150 acres. The parties had farm income of \$31,095 in 1989, \$24,468 in 1990, \$18,886 in 1991, and \$14,615 in 1992.

Cathy did not work outside the farm during most of the marriage, but helped with the farm work. At the time of trial she worked part-time as a nurse's aide. She planned to enroll at Des Moines Area Community College to become a dental hygienist. The district court determined her present earning capacity was \$525 per month.

The district court awarded the parties joint legal custody of the children, with Cathy having primary physical care. The court determined Scott's net monthly income was \$1,425. Applying the child support guidelines, Scott was ordered to pay child support of \$520 per month. He was also ordered to pay rehabilitative alimony of \$250 per month for thirty-six months.

The district court determined that at the time of the dissolution hearing the parties' net worth was about \$521,522. The court set aside to Scott the amount he had brought to the marriage, \$325,000. Cathy was awarded assets worth about \$24,049. In addition, Cathy was awarded a cash property settlement of \$100,000, payable in installments of \$20,000 per year. Scott was awarded the remainder of the parties' assets, which included the farmland and equipment. Scott was ordered to pay \$5,000 towards Cathy's attorney fees.

Cathy and Scott each filed a post-trial motion. After the district court ruled on the motions, Cathy appealed the economic provisions of the dissolution decree. Scott filed a cross-appeal.

I. Our review of this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992).

II. Both parties contend the distribution of property was inequitable. We will consider their arguments together.

A. Cathy contends the district court overvalued Scott's net worth at the time of the marriage and Scott contends the district undervalued his net worth. Scott had signed a financial statement which showed his net worth was \$270,053 on March 21, 1983. This statement, however, was based on what he had paid for the eighty acres he owned, and not the fair market value of the land. On November 15, 1983, Scott signed a financial statement showing his net worth was \$390,973. This statement reflected the harvest for 1983. Scott stated he began harvesting that year shortly after the wedding.

We determine the value placed on Scott's net worth on the date of the marriage by the district court was well within the permissible range of the evidence, and we will not disturb it on appeal. See In re Marriage of Russell, 473 N.W.2d 244, 246 (Iowa App. 1991).

B. Cathy claims the district court undervalued the cattle held by Scott at the time of the dissolution. In the dissolution decree, the court stated the cattle had been sold for \$161,957. In her post-trial motion, Cathy pointed out the cattle had actually been sold five or six weeks after the trial for \$181,741. The trial court responded that whether or not the cattle had been sold by the date of the hearing, the value of the cattle on that date was \$161,957.

We affirm the district court's findings. A court must consider the value of assets at the time of the dissolution hearing. Locke v. Locke, 246 N.W.2d 246, 252 (Iowa 1976). The value of the cattle on the date of the sale was greater than the value of the cattle on the date of the hearing because Scott was in the process of fattening the cattle at the time of the hearing.

C. Scott believes the district court improperly valued the parties' property at the time of trial. He states the court failed to consider debts of \$26,018, which the parties incurred while separated. Almost \$17,000 of this amount represents the parties' attorney fees for the dissolution. Scott claims the parties' net worth should be reduced to \$488,365. We note, however, Cathy was ordered to pay any debts she had incurred on her own behalf after the separation and Scott was ordered to pay all other debts incurred during this time. We find this division is fair, and results in each party paying a similar amount of debt during the separation. We conclude these additional debts should not affect the property distribution.

D. Cathy and Scott both contend the distribution of assets was inequitable. Cathy believes she should be awarded a portion of the property Scott brought to the marriage. She asks for 40% of the parties' net worth before any assets are set aside to Scott, which would be about \$208,609. Scott seeks to have Cathy's cash property settlement reduced to \$25,000, which would give her total net assets worth about \$50,000.

The partners in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. In re Marriage of Russell, 473 N.W.2d 244, 246 (Iowa App. 1991). The Iowa courts do not require an equal division or percentage distribution. Id. The determining factor is what is fair and equitable in each particular circumstance. Id.

The property owned by a spouse at the time of the marriage is not set aside to the spouse at the time of the divorce. To the contrary, pre-marital assets are included in the overall property division. Iowa Code section 598.21(1) (1993). The nature and extent of property owned by a spouse prior to the marriage is a factor to consider, together with all the other factors enumerated in section 598.21(1), in determining an equitable division of all property. It is a factor, however, which generally weighs in favor of the spouse who owned the pre-marital property.

We conclude, as the district court did, that the net worth of the parties at the time of their divorce was \$521,522. Scott brought net amounts from his farming operation to the marriage totalling \$325,000. The parties accumulated \$196,500 in net amounts during their ten year marriage. Considering the length of the marriage, the property Scott brought into the marriage, the contributions of each party, the age and health of the parties and their earning capacities, we believe the district court's property division was equitable. Scott has an established

house and occupation, while Cathy must embark upon a new career and establish a house for herself and the children. Cathy was also a part of the farming operation for ten years. It was equitable to award her cash and property of \$124,000, and we affirm the district court.

III. In her post-trial motion, Cathy requested the district court to give her a lien on certain property owned by Scott in order to secure her cash property settlement. The district court ruled such a lien was unnecessary. Cathy appeals this ruling.

We agree with the district court's conclusion such a lien was unnecessary. There was no evidence Scott intended to file for bankruptcy. We affirm the district court on this issue.

IV. Cathy contends Scott's child support obligation should be increased. The district court determined Scott's net monthly income was \$1,425. This amount is based on the parties' farm income.

During the marriage, the parties withdrew amounts greater than their net farm income from farm proceeds. This meant they accumulated no reserves with their depreciation allowance and did not retire debt. Instead, their debt load increased. Cathy believes Scott's child support obligation should be based on the amount they were withdrawing for their personal use each month, which was about \$2,547..

On the other hand, Scott believes his child support obligation should be reduced. In his cross-appeal, Scott argues his net monthly income is \$1,310 per month. His figure is based on his average income over the past three years. The district court used a five-year average in calculating Scott's net monthly income.

A court must determine the parents' current monthly income from the most reliable evidence presented. In re Marriage of Powell, 474 N.W.2d 531, 534 (Iowa 1991). This often requires the court to carefully consider all of the circumstances relating to the parents' income. Id. Where a parent's income is subject to substantial fluctuations, it may be necessary to average the income over a reasonable period when determining the current monthly income. Id.

Like the district court, we determine Scott's current monthly income at the time of the dissolution hearing was \$1,425. Obviously the parties could not continue to indefinitely spend more than their net income. We conclude Scott's child support obligation should be based on his net income from the farm. Furthermore, based on the fluctuations in his income, we find a five-year average is equitable. We affirm the amount of Scott's child support obligation.

V. Cathy asks for an increase in the amount of alimony awarded to her. She requests rehabilitative alimony of \$700 per month for a period of three years. She states she needs this amount in order to go to school full-time. She

states that on alimony of \$250 per month she will not be able to afford to proceed with her education.

Scott agrees Cathy should receive rehabilitative alimony of \$250 per month for three years. However, he believes her receipt of alimony should be contingent upon whether she actually enrolls in school as a full-time student.

When determining the appropriateness of alimony, the court should consider the earning capacity of each party. In re Marriage of Oler, 451 N.W.2d 9, 13 (Iowa App. 1989). Also, the ability of the one spouse to pay should be balanced against the needs of the other spouse. Id. Rehabilitative alimony was conceived as a way of supporting an economically dependent spouse through a limited period of additional education or retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting. In re Marriage of Francis, 442 N.W.2d 59, 63 (Iowa 1989).

Here, Cathy has been out of the job market for quite some time. Even if she did not go back to school, it would take her a period of time to become self-supporting. We find she is entitled to rehabilitative alimony even if she does not enroll as a full-time student. As to the amount of alimony, the award must be based on Scott's ability to pay as well as Cathy's needs. We find the amount of alimony awarded is equitable.

VI. Cathy seeks attorney fees for this 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 Hunt, 476 N.W.2d 99, 103 (Iowa App. 1991). We determine each party should pay his or her own attorney fees for this appeal.

We affirm the district court on each issue presented in the appeal and cross-appeal. Costs of this action are assessed one-half to each party.

AFFIRMED.