

IN THE COURT OF APPEALS OF IOWA

No. 4-206 / 93-1090

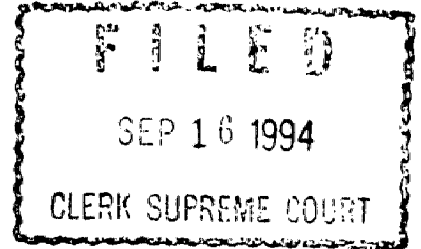
IN RE THE MARRIAGE OF TERRY DEAN FREESE AND
JOYCE ANN FREESE

Upon the Petition of
TERRY DEAN FREESE,

Appellant,

And Concerning
JOYCE ANN FREESE,

Appellee.



Appeal from the Iowa District Court for Linn County,
Kristin L. Hibbs, Judge.

Petitioner appeals from various economic provisions of
the parties' dissolution decree. **AFFIRMED.**

Mark J. McCool of McCool & McCool, P.C., Cedar Rapids,
for appellant.

Kathleen H. Chapman of Booth & Chapman, Cedar Rapids,
for appellee.

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

CADY, J.

This is an appeal by Petitioner, Terry Freese, from the economic provisions of the parties' dissolution decree. He contests the alimony provisions, the division of his savings account, and the valuation date of his company savings and retirement accounts. Respondent, Joyce Freese, requests appellate attorney fees. We affirm the district court and decline to award Joyce attorney fees.

Terry and Joyce Freese were married on August 11, 1969. They have three children, Jeffrey, born in 1970, Shane, born in 1973, and Ryan, born in 1975. The children were residing with Terry in the family home at the time of trial.

Terry was medically discharged from the Army in 1969, and receives a tax-free disability payment of \$859 per month. Terry and Joyce were not married at the time Terry was discharged.

Terry and Joyce are high school graduates. They have taken some post high school courses, but neither graduated from college. At the time of trial, Terry was forty-six years old and Joyce was forty-three.

Terry was unemployed when he married Joyce but began work in data processing at FMC Linkbelt in Cedar Rapids shortly after the marriage. While working at FMC, Terry attended a one-year computer studies program at Kirkwood Community College. In 1974, the family moved to Lexington, Kentucky after Terry was transferred by his employer to participate in a plant start-up.

In January 1977, the family returned to Cedar Rapids. Terry obtained a management position in data processing at Rockwell-Collins Avionics International (Rockwell). Terry earned a gross annual income of \$63,688.66 in 1992.

Joyce began baby-sitting shortly after the family moved back to Cedar Rapids, and eventually took a part-time sales clerk job with So Fro Fabrics. Joyce later assumed a part-time job with Iowa Glass where she currently works between thirty and thirty-five hours per week. She receives no benefits. In 1992, her gross income was \$10,002.

Terry and Joyce maintained a frugal lifestyle during their marriage. They amassed marital property valued in excess of \$390,000. At the time of trial, Terry had accumulated over \$91,000 in his Rockwell savings plan, and had a retirement plan that would pay him \$1,000 per month. They also own a home valued at \$80,000.

Pursuant to the decree, Terry was awarded the 1985 Buick LeSabre (\$2,800), a 1979 boat and trailer (\$3,255), a Northwestern Mutual life policy (\$10,987.92), two IRAs (\$12,428), his checking account (\$1,255), one-half of his Collins Credit Union savings account (\$12,200), and two certificates of deposit (CDs) (\$28,011). Terry was also awarded the marital home. Joyce was awarded numerous items of furniture, a 1977 Itasca mini-home (\$5,785), the 1980 Pontiac (\$675), two IRAs (\$11,654), a cashiers check (\$15,825), numerous CDs (\$105,312), one-half of the Collins

savings account (\$12,200), her personal savings account (\$3,266), and her checking account (\$1,050). Terry and Joyce were each awarded one-half of Terry's Rockwell retirement plan. Terry was ordered to pay Joyce alimony in the amount of \$1,000 per month until her death or remarriage. Terry was also ordered to pay Joyce \$7000 for educational costs she might incur in obtaining training for a new job. Additionally, Terry was ordered to maintain Joyce on his health and dental insurance for eighteen months. Terry has appealed.

Terry claims the district court erred in ordering him to provide Joyce medical insurance for eighteen months and to pay her \$1,000 per month in alimony and \$7,000 in rehabilitation alimony. He claims Joyce expressed no interest in enhancing her earning capacity by taking classes during the marriage and received over \$150,000 under the decree. Terry next asserts the district court erred in awarding Joyce one-half of his \$24,000 Collins Credit Union savings account because he accumulated it after the parties separated. Finally, Terry claims the district court erred in dividing his Rockwell savings and retirement plans at the date of trial rather than at the date of separation.

I. Scope of Review

Our review of this equitable action 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 are not bound by the district court's findings of fact, but 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. Alimony

Alimony is an allowance to a former spouse in lieu of the other spouse's legal obligation for support. See in re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981) (citation omitted). It may be used to remedy inequities in a marriage and to compensate a spouse who leaves the marriage at a financial disadvantage. In re Marriage of Geil, 509 N.W.2d 738, 742 (Iowa 1993). When determining the appropriateness of alimony, the court must consider "(1) the earning capacity of each party, and (2) present standards of living and ability to pay balanced against relative needs of the other." In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983).

Rehabilitation alimony may also be awarded. It provides support to an economically dependent spouse through a limited period of additional education or training following the divorce. In re Marriage of Grauer, 478 N.W.2d 83, 85 (Iowa App. 1991).

On appeal, Terry asserts the district court erred in awarding Joyce alimony of a \$1,000 per month, medical insurance for eighteen months, and educational expenses of

\$7,000. He argues Joyce is relatively young, in good health, has no child care responsibilities, and has an educational background approximately equivalent to his. Terry also points out the property was equally distributed.

We have affirmed awards of alimony where the payee spouse also received substantial assets, especially where the marriage is of long duration and the disparity in earning capacity is great. Geil, 509 N.W.2d at 742 (citing Hitchcock, 309 N.W.2d at 438. Terry and Joyce were married almost twenty-four years. By mutual agreement, Joyce spent most of those years out of the work force. Consequently, the disparity between their current and potential incomes is significant. Even with additional education Joyce is unlikely to achieve the standard of living she enjoyed during the marriage. Furthermore, Joyce's current position is part-time and provides no benefits. She will be required to find additional employment to become self-supporting. Thus, we believe the alimony, education expense, and medical insurance awarded by the district court are an appropriate means of remedying the financial inequity caused by the dissolution.

II. Savings Account

Terry contends the district court erred in equally dividing the \$24,000 Collins Credit Union savings account. Terry testified he accrued this money during the parties' eight month separation. Based on the evidence presented by

the parties, the district court determined Terry's testimony was implausible.

The court's decision is supported by credible evidence in the record and we will not disturb it on appeal. See In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984).

III. Valuation Date

Finally, Terry argues the district court erred in dividing his Rockwell savings and retirement plans at the date of trial rather than the date the parties separated. Terry primarily relies on In re Marriage of Oakes, 462 N.W.2d 730 (Iowa App. 1990). In Oakes, the court held one spouse had not contributed to the increase in the other's retirement account since the parties' separation and therefore the increase in the retirement account should not be divided between the parties in the property distribution. Id. at 733. We decline to reach the same conclusion here.

Property settlements are within this court's equitable jurisdiction and it is not appropriate to develop a concrete rule concerning valuation dates in dissolution proceedings. In re Marriage of Hitchcock, 309 N.W.2d 432, 435 (Iowa 1981). Prior cases have little precedential value and we base our decision primarily on the circumstances of the parties before us. In re Marriage of Gaer, 476 N.W.2d 324, 326 (Iowa 1991).

After reviewing the record, we affirm the district court's decision to divide Terry's Rockwell pension and savings plans as of the time of trial. We conclude this provided an equitable distribution of the property. During the separation, Terry lived mortgage-free in the family home and continued to accumulate income and savings. In contrast, Joyce lived in an apartment on a net monthly income of \$678 and incurred new expenses. Moreover, there is no evidence of Terry's additional contributions to the retirement and savings plans during the parties separation. Nor is there evidence showing which portion of the plans' growth was attributable to interest on pre-separation contributions and post-separation contributions.

IV. Attorney Fees

Joyce requests 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). After considering Joyce's needs and Terry's ability to pay, we decline to award Joyce attorney fees.

AFFIRMED.