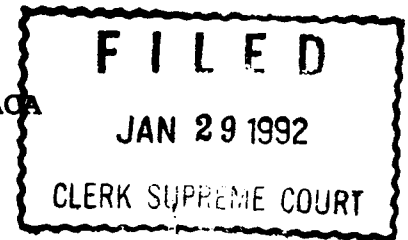


IN THE COURT OF APPEALS OF IOWA

No. 1-437 / 90-1856

IN RE THE MARRIAGE OF KATHRYN J. DELLACA
and DAVID F. DELLACA



Upon the Petition of
KATHRYN J. DELLACA,

Appellee,

And Concerning

DAVID F. DELLACA,

Appellant.

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Appeal from the Iowa District Court for Polk County,
Gene L. Needles, Judge.

The husband challenges the economic provisions of the
parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Lawrence F. Scalise and Christopher R. Pose of Scalise,
Scism, Sandre, Uhl, McConville, Miller & Holliday,
Des Moines, for appellant.

James M. Gocke of Dreher, Wilson, Simpson, Jensen,
Sellers, Harvey, Butters, Adams and Kaiser, P.C.,
Des Moines, for appellee.

Considered by Oxberger, C.J., and Schlegel and Habhab,
JJ.

OXBERGER, C.J.

David and Kathryn Dellaca were married on May 18, 1974. They have two children, Danielle, born October 28, 1976, and Nicholas, born June 23, 1980. The custody of these children is not an issue on appeal.

At the time of trial, David was 38 years old. David has been employed in the construction trade for several years. At the time of the dissolution he was self-employed in a remodeling business. The district court found David's net earning capacity was about \$33,000 per year. David has a high school education and two years of college.

At the time of trial, Kathryn was 37 years old. She previously worked full time outside the home as a secretary. More recently she has been working part-time. The district court found she had a net earning capacity of \$10,000 per year. Kathryn has a high school education. She would like additional training in word processing and computers before returning to work full time.

The parties purchased a house on Wright Street in Des Moines, Iowa. The mortgage on that house has been paid. The parties presently receive \$500 per month in rent from that property. The parties were building a house in Cummings. The Cummings house was damaged by fire. The parties have received some insurance proceeds and have a claim pending for additional funds. David has been working on repairing the house.

The district court entered its decree of dissolution on November 14, 1990. The court awarded custody of the two minor children to Kathryn. David was ordered to pay child support of \$863 per month. He must also carry health care insurance for the children. David was ordered to pay Kathryn rehabilitative alimony of \$200 per month for four years. Kathryn was awarded assets valued at \$87,847, including the Wright Street rental property. David was awarded assets valued at \$81,907. The court ordered the parties to sell the Cummings property. The proceeds should be divided evenly between the parties after \$20,000 is set off to David for the work he has done on the property. David was ordered to contribute \$10,000 towards Kathryn's attorney fees.

David appeals certain economic provisions of the decree of dissolution.

I. Scope of Review.

Our scope of review in dissolution cases is de novo. In re Marriage of Craig, 462 N.W.2d 692, 693 (Iowa App. 1990). While not bound by the trial court's determination of factual findings, we will give them considerable weight, especially when considering the credibility of witnesses. Id.

II. Child Support.

David contends the district court ordered him to pay an excessive amount of child support. He claims his earning

capacity is not nearly \$33,000 per year due to a depressed economy in the construction business. David also claims Kathryn's earning capacity is greater than \$10,000 per year. He feels she could earn at least \$20,000 per year if she worked full time.

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. Alimony may be considered by the court in applying the child support guidelines. In re Marriage of Lalone, 469 N.W.2d 695, 697 (Iowa 1991).

We find the district court correctly determined the earning capacities of both parties. David admitted he earned almost \$32,000 in 1988. Kathryn's current gross income is \$7,644 per year. The finding that her net income would be about \$10,000 per year if she worked full time is reasonable.

However, the district court did not consider all of the circumstances relating to the parties' income. Kathryn also receives \$500 per month in rental income from the Wright Street property. Furthermore, her rehabilitative alimony may be considered income to her and a deduction from David's net income. Considering these changes to the parties' net incomes, under the child support guidelines

David should pay \$765 per month in child support until October 1994, when his alimony obligation ends. Danielle also becomes eighteen years of age in October 1994. Therefore, after October 1994 David's child support obligation under the guidelines for one child will be \$618 per month. We modify the dissolution decree to make these changes.

Our findings here only reflect David's child support obligations under the child support guidelines. The guidelines do not apply to college-age children. The district court has retained jurisdiction to determine the parties' responsibilities for the college education of the children.

III. Rehabilitative Alimony.

David disputes Kathryn's need for rehabilitative alimony. David again argues Kathryn currently has an earning capacity of at least \$20,000 per year. He also believes she was awarded sufficient assets to pay for her own education.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. In re Marriage of Whelchel, 476 N.W.2d 104, 110 (Iowa App. 1991). Rehabilitative alimony was conceived as a way of supporting an economically dependent spouse through a limited period of reeducation 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).

We affirm the award of rehabilitative alimony to Kathryn. In order to more fully realize her economic potential she needs retraining in current office techniques, such as word processing and computers. We have also considered the relative current earning capacities of both parties.

IV. Property Distribution.

David contends the district court did not equitably divide the parties' property. He believes he should have been awarded property with more liquidity. He also asks to be awarded the Cummings house so that he could finish working on it.

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). We consider property division and alimony together in evaluating their individual sufficiency. Id. The Iowa courts do not require an equal division or percentage distribution. Id.

We affirm the property distribution as set forth by the district court. David does not really argue that he should have been awarded more property, he just asks for different property. The property division, which awarded more of the liquid assets to Kathryn, recognizes that her earning

capacity is less than David's. We also agree with the district court's finding that neither party could afford to live in the Cummings house, and it should be sold.

V. Attorney Fees.

David claims the district court erred in ordering him to pay \$10,000 towards Kathryn's trial attorney fees. Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Hunt, 476 N.W.2d 99, 103 (Iowa App. 1991). To overturn an award, the complaining party must show that the trial court abused its discretion. Id. After considering the parties' respective abilities to pay, we affirm the district court's award of attorney fees to Kathryn.

VI. Appellate Attorney Fees.

Kathryn has also asked for attorney fees for this appeal. 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. Id. We conclude that the parties should be responsible for their own attorney fees for this appeal. Costs are assessed to David.

VII. Summary.

In summary, we have modified David's child support obligation as set forth previously in this opinion. We affirm the district court on all other issues.

AFFIRMED AS MODIFIED.