

IN THE COURT OF APPEALS OF IOWA

No. 6-374 / 95-0756

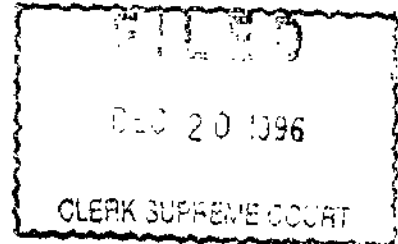
**IN RE THE MARRIAGE OF ROBERT
W. BIDWELL AND DIANE L. BIDWELL**

**Upon the Petition of
ROBERT W. BIDWELL,**

Petitioner-Appellant,

**And Concerning
DIANE L. BIDWELL,**

Respondent-Appellee.



Appeal from the Iowa District Court for Tama County, Willam C. Thomas,
Judge.

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

Michael J. Moon of Mowry, Irvine, Gianetto & Moon, Marshalltown, for
appellant.

Sharon Soorholtz Greer of Cartwright, Druker & Ryden, Marshalltown, for
appellee.

Considered by Sackett, C.J., and Cady, J., and Perkins, S.J.*

* Senior judge from the Fifth Judicial District serving on this court by order
of the Iowa Supreme Court.

PERKINS, S.J.

Robert and Diane Bidwell were married on June 22, 1973. They have two children born to the marriage: Amy, born May 7, 1975, and Eric, born May 15, 1978. Robert is a graduate of the Iowa State University School of Veterinary Medicine and was a partner in a veterinary practice in the Tama-Toledo area from 1978 to 1993. For the last three years he engaged in his practice, 1991 through 1993, Robert earned \$89,886, \$70,711, and \$88,239, respectively. He was forty-four years of age at the time of trial and Diane was forty. Diane is a registered nurse and is employed as an ophthalmic nurse at the Wolfe Clinic in Marshalltown. For the years 1991 through 1993, Diane earned \$24,639, 25,494, and \$27,794, respectively. Although the Bidwells had filed for bankruptcy in 1984, at the time of trial they had accumulated seven parcels of real estate, including the Arp farm consisting of 160 acres, the Hand farm consisting of 160 acres, the Hutton farm consisting of 90 acres, the Shuler farm consisting of 160 acres, the "homeplace" consisting of 9.12 acres, an office storage building near Tama, and a grain drying and handling facility.

At the end of 1993, Robert decided to make a drastic career change and quit his veterinary practice. Instead, Robert decided to enter the animal pharmaceutical field. He also wanted to spend more time with hands-on farming. He also became interested in the newly-independent Ukraine and the untapped business opportunities in that country. Robert made several trips to the Ukraine in 1993 and began to spend a considerable amount of time away. Robert did not earn much money from his new

venture, but he did meet a new “friend”, his interpreter Olga. Robert returned to the United States and began marriage counseling with Diane. Despite his attendance at the counseling sessions, Robert threatened to leave everything and move to the Ukraine with Olga.

On June 22, 1994, the day of the Bidwells' twenty-first wedding anniversary, Diane awoke to find Robert had packed all his belongings and fled. Half the family drove to Des Moines to intercept him at the airport and the other half did the same in Cedar Rapids. They discovered Robert at the Cedar Rapids airport attempting to purchase a ticket to the Ukraine. The family's pleas to stay were to no avail. Robert spent six days on vacation in Italy and four days in Moscow. Because Robert had abandoned the farm, Diane and their son Eric were forced to take over the farming operation. The crops developed a severe case of foxweed and resulted in a net loss in yield which amounted to a loss of between \$15,000 and \$23,000. Diane obtained a temporary injunction allowing her to operate the farm in place of Robert. Diane was forced to liquidate the hog operation and the farm machinery in order to pay the bills and provide for living expenses. Robert filed for divorce in June 1994.

When Diane learned Robert was returning to the United States, she filed an application for temporary support but the district court determined, since the dissolution proceedings were set for November 1994, no temporary orders would be entered. Following trial, the district court entered its decree. The court awarded the parties joint custody with physical care of Eric to Diane. The court ordered Robert

to pay \$1000 per month in child support based on the court's determination of Robert's income he earned while still in his veterinary practice. Diane was also ordered to maintain medical insurance for the children and the parties were ordered to share equally in all expenses not covered by insurance. Robert was ordered to pay for one-half of Amy's education at Marshalltown Community College and one-half at Iowa State University in 1996. Diane was awarded the tax exemptions for the children.

The court awarded Robert the Hutton farm, valued at \$93,000 but with an indebtedness of \$53,000; the Shuler farm, valued at \$180,000 but with an indebtedness of \$162,000; the home place, valued at \$114,000 but with an indebtedness of the same; and the office building near Tama, valued at \$25,000 with no indebtedness. Diane was awarded the Arp farm, valued at \$173,000 but with an indebtedness of \$108,000; the Hand farm, valued at \$136,000 but with an indebtedness of \$85,000; the grain bins, valued at \$30,000; \$10,000 in cash; her 1991 Mercury Sable valued at \$9000; and furniture and appliances valued at \$15,000. Diane was awarded a total of \$373,000 in assets and an indebtedness of \$201,000, for a net equity of \$172,000. Robert was awarded a total of \$412,000 in marital assets, but was assigned \$424,724.70 of marital debt, for a negative worth of \$12,724.70. Diane was granted the right to live rent-free in the homeplace until sixty days after Eric graduates from high school. Robert was additionally ordered to pay Diane \$1000 per month in alimony until the death of either party or Diane's remarriage. The court

also ordered Robert to pay other debts incurred in the farm operations and also private loans from his family. Each party was responsible for their respective attorney fees.

Robert filed a rule 179(b) motion claiming the property division was inequitable, the child support was too high, and alimony was not needed given Diane's receipt of a positive net worth and income-producing properties. The district court denied the motion. Robert has appealed.

Robert contends the property division, if allowed to stand, would force him into bankruptcy and foreclose his ability to engage in farming. He maintains they accumulated \$785,000 in marital assets and indebtedness of \$625,724.70, for a net worth of \$159,275.30. Robert further contends that because Diane is a registered nurse, is in good health, and received a net equity of over \$172,000, she does not need to receive alimony. Robert also contends the district court erred in calculating his child support obligations under the guidelines. He maintains the district court should have considered his income derived from his new ventures, not his income from the previous four years of his veterinary practice. He argues the court should take into account expenses and taxes historically incurred by him in generating income from his veterinary practice if this standard is to be applied.

I. Scope of Review

Dissolution actions are equitable in nature and the review is de novo. Iowa R. App. P. 4; *In re Marriage of Urban*, 359 N.W.2d 420, 423 (Iowa 1984). Weight is

given to the findings of facts by the district court but we are not bound by these findings. Iowa R. App. P. 14(f)(7).

II. Issue of Division of Property

Robert contends the trial court erred in its division of the parties' property. The court made detailed findings in regard to the property and the debts of the parties. It is true that Diane received more of the net value of property than Robert but the court justified this division correctly and it should not be disturbed.

III. Child Support

Robert contends the trial court erred in basing the child support on his earning potential rather than on his current income. The trial court correctly averaged his earnings over a four year period as a veterinarian. A lowering of earning power will not affect child support where it is self inflicted and voluntary. *State ex rel. LeClere v. Jennings*, 523 N.W.2d 306, 308 (Iowa App. 1994). The guidelines were applied and child support should not be disturbed.

IV. Alimony

Robert contends alimony is not justified under the facts of this case and we agree. Diane received a larger distribution of the assets of the parties and justly so under the facts of the case. Diane is to get adequate child support. Diane is in good health and has earnings as a registered nurse sufficient to meet her personal financial requirements. Alimony is not justified under the facts of this case. *See In re*

Marriage of Williams, 449 N.W.2d 878, 883 (Iowa App. 1989). The court decree is modified accordingly.

We find the decision of the trial court should be affirmed except the award of alimony is eliminated. There is no award of attorney fees to either party.

AFFIRMED AS MODIFIED.