IN THE COURT OF APPEALS OF IOWA

No. 5-201 / 93-1897

IN RE THE MARRIAGE OF IONE MARIE BACHMAN AND NEIL ALAN BACHMAN

Upon the Petition of

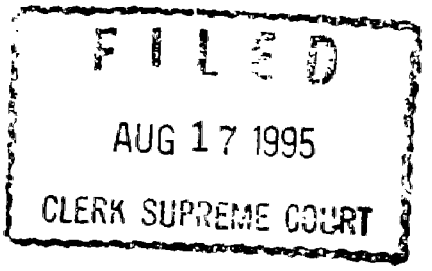
IONE MARIE BACHMAN,

Petitioner-Appellee,

And Concerning

NEIL ALAN BACHMAN,

Respondent-Appellant.



Appeal from the Iowa District Court for Muscatine County, C. H. Pelton, Judge.

Neil Bachman appeals from the economic provisions of the decree of dissolution of marriage. **AFFIRMED AS MODIFIED.**

Gregory A. Johnston, Muscatine, for appellant.

Eric M. Knoernschild of Hintermeister & Knoernschild, Muscatine, for appellee.

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

HABHAB, J.

Ione and Neil Bachman were married in 1970. They have two children, Corey, born July 6, 1971, and Melissa, born May 23, 1974. In May 1993 Ione filed a petition for dissolution of marriage.

A short time after they were married, Neil became employed at Plywood Minnesota (Plywood) in Fargo, North Dakota. In 1980 Neil was offered and accepted the job of manager of a new Plywood store in Muscatine. In 1983 Plywood converted the Muscatine store from a company-owned store to a franchise and eventually the Bachmans purchased a twenty-five percent interest in the business. In order to make this purchase the Bachmans took out a loan with First National Bank of Muscatine. The loan was personally guaranteed by both Neil and Ione. Plywood dissolved its franchise system in 1986, the Bachmans increased their ownership to forty percent, and the business was renamed La-Bach's Floors and More. By 1991 the La-Bach's had a corporate debt of approximately $500,000 and entered into an agreement to sell and lease back its building. The buyer also advanced $50,000 operating capital to the corporation and took a security agreement on all corporate assets. The Bachmans owe $51,091 on their debt to First National Bank. The business is currently in financial difficulty. Prior to trial, Neil negotiated a release of his obligation on the loan in exchange for $2000. Ione remains liable.

At the time of trial, Ione was forty-one years old. She has a bachelor of science degree in nursing. In 1992 Ione earned $62,000 working approximately

seventy hours a week. Neil was forty-two years old at the time of trial. He does not have a college degree. Neil earned $37,000 in 1992.

Melissa Bachman was nineteen years old at the time of trial and enrolled in a pre-nursing program at a community college.

The district court ordered the parties to each pay one-half of Melissa's college expenses. The court found that if the parties' marital home, appraised at $90,000, was sold there would be expenses from the sale. Therefore, the court valued the home at $81,500. After subtracting the remaining debt on the home, the court granted each party one-half of its worth, $9750. Ione was awarded the entirety of her pension plan.

Neil appeals.

In this equity action, our review 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 give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

I. *College Expenses*. Neil contends the district court's order that he pay fifty percent of his daughter's college tuition and room and board is premature and excessive. Neil's argument is primarily centered around his limited financial resources.

By statute, divorced parents may be required to support their children while attending college. *In re Marriage of Byall*, 353 N.W.2d 103, 107 (Iowa App. 1984).

This obligation depends largely on the circumstances of each case. *In re Marriage of Vrban*, 293 N.W.2d 198, 203 (Iowa 1980). The duty to provide college support extends to both parents. *In re Marriage of Limberg*, 462 N.W.2d 698, 701 (Iowa App. 1990). In assessing Neil's obligation, we consider (1) the ability of the child for college, (2) the age of the child, (3) the financial conditions of the parents, and (4) whether the child is self-sustaining. *Vrban*, 293 N.W.2d at 202.

Neil's daughter was attending college at the time of trial and was living at home with Ione. As a result of the failing business, both parties have large debts. Neil chose to deal with his debt by negotiating a release of his obligation, while Ione has indicated she will probably seek bankruptcy. Ione is currently employed and Neil has not yet sought employment as his business recently failed.

We modify the decree so as to provide that Neil is to pay one-third of Melissa's room and board, book expenses, and tuition, but the tuition amount is not to exceed one-third of the cost of tuition in an Iowa state university. The remaining two-thirds of the expense amount is to be divided equally between Melissa and Ione.

II. ***Home Equity***. Neil contends the district court improperly deducted sales costs in determining the home equity prior to distribution. Neil argues there was no testimony that the house was about to be sold and he stated there is no Iowa law supporting such a deduction in the valuation of home equity. We disagree.

In valuing the home, the district court assumed a seven percent sales commission and approximately an additional $2000 in sales costs. The total deduction was $8500 on a $90,000 home. We have previously stated:

> [t]he cost of selling the home is also an obligation incurred by both of the parties. Subtracting the seven percent fee at the time of trial results in a net equity figure that more accurately reflects the dollar value of the asset being divided. We do not find that the trial court acted improperly determining the equity value of the homestead.

In re Marriage of Richards, 439 N.W.2d 876, 882 (Iowa App. 1989). We find the district court properly considered the costs of selling the homestead in determining the equity value of the homestead. The district court did not err.

III. ***Pension Fund.*** Neil contends the district court erred in awarding Ione her entire pension fund. Pension benefits are treated as marital property subject to equitable division. *In re Marriage of Mott*, 444 N.W.2d 507, 510-11 (Iowa App. 1989). They are considered in formulating an equitable distribution of property. *In re Marriage of Miller*, 475 N.W.2d 675, 677 (Iowa App. 1991); *In re Marriage of Curfman*, 446 N.W.2d 88, 89 (Iowa App. 1989). On review, we view all economic aspects of a dissolution decree as an integrated whole. *In re Marriage of Imhoff*, 461 N.W.2d 343, 344 (Iowa App. 1990) (citing *In re Marriage of Campbell*, 451 N.W.2d 192, 196 (Iowa App. 1989)). An equal division of property is not required, but rather a division of assets must be founded on what is equitable and just under all circumstances. *In re Marriage of McNerney*, 417 N.W.2d 205, 209 (Iowa 1987); *In re Marriage of Hoak*, 364 N.W.2d 185, 194 (Iowa 1985).

Ione and Neil were married over twenty years prior to the dissolution of their marriage. During the marriage, Ione was provided with the opportunity to increase her worth in the job market by earning two nursing degrees. Ione finished her two-year RN from St. Luke's School of Nursing during the early years of the marriage. In 1987, Ione completed her bachelor of science degree in nursing at Iowa Wesleyan.

Both parties submitted estimates in their briefs regarding the impact of the property distribution of the district court's decree. Neil estimated a net equity for Ione of $50,733 and -$18,614 for himself under the decree. Ione estimated a net equity for herself of -$60,108 and -$94,564 for Neil. Without determining which set of numbers is more accurate, we find these estimates to illustrate the inequitable nature of the property distribution.

Consequently, we determine equity requires Ione's pension accumulated during the marriage to be split between the parties. Accordingly, we modify the decree to provide when Ione receives her pension Neil is to receive fifty percent of a fraction of her pension or pension payments as follows: the numerator of the fraction being two years, the number of years Ione contributed to the pension during the marriage; and the denominator of the fraction being the total number of years during which benefits were accumulated prior to being paid. *Curfman*, 446 N.W.2d at 90.

IV. ***Attorney Fees.*** On appeal, Ione requests 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 Gilliam*, 525 N.W.2d 436, 439 (Iowa App. 1994). 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 Miller*, 524 N.W.2d 442, 445 (Iowa App. 1994). Ione's request for appellate attorney fees is denied.

AFFIRMED AS MODIFIED.