IN THE COURT OF APPEALS OF IOWA

No. 7-741 / 96-2083

IN RE THE MARRIAGE OF RONALD H. POHLMAN AND JUDITH K. POHLMAN

Upon the Petition of
RONALD H. POHLMAN,

Petitioner-Appellant\Cross-Appellee,

And Concerning
JUDITH K. POHLMAN,

Respondent-Appellee\Cross-Appellant.

FILED
JUL 31 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Linn County, Lynne E. Brady, Judge.

Ronald Pohlman appeals, and Judith Pohlman cross-appeals, from the provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Eugene J. Kopecky of Ackley, Kopecky & Kingery, Cedar Rapids, for appellant.

David S. Good of Nazette, Marner, Good, Wendt & Knoll, Cedar Rapids, for appellee.

Considered by Cady, C.J., and Streit, and Vogel, JJ.

CADY, C.J.

Ronald Pohlman appeals and Judith Pohlman cross-appeals various economic provisions of the parties' dissolution decree. We affirm as modified.

Ronald and Judith Pohlman dissolved their marriage of approximately twenty-one years in October 1996. The parties had two children. Jeffrey was eighteen-years-old at the time of the dissolution and Justin was sixteen years of age.

Ronald worked for an airline throughout the marriage. He currently earns approximately $40,000 per year, including overtime. He obtained bachelor of arts degrees in business administration and political science during the marriage. He also has a nonactive real estate license.

Judith graduated from high school. She worked outside of the home until her first pregnancy. She subsequently stayed home with the children for several years before obtaining part-time employment. She currently works as a day care provider, earning $18,720 per year. She does not receive insurance or retirement benefits from her employment.

The district court awarded Judith a net award of $27,663, including the parties' home. Ronald received a net award of $10,962. The district court also awarded Judith alimony for a period of five years, with payments of $100 per month for the first thirty-six months, and $300 per month for the last twenty-four months.

On appeal Ronald claims the district court erred by: (1) failing to reach an equitable distribution of property; and (2) awarding alimony to Judith. On cross-

appeal Judith maintains a credit card debt should have been assigned to Ronald and a tax refund should have been split equally. She also requests appellate attorney fees.

I. Standard of Review

We review this equitable matter de novo. Iowa R. App. P. 4. This requires us to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Ruter*, 564 N.W.2d 849, 851 (Iowa App. 1997). At the same time, we recognize the value in listening to and observing the parties and witnesses. Iowa R. App. P. 14(f)(7). Consequently, we give weight to the findings of the trial court, although they are not binding. *Id.*

II. Property Distribution

The partners to a marriage are entitled to a just and equitable share of property accumulated through their joint efforts. *See In re Marriage of Gonzalez*, 561 N.W.2d 94, 98 (Iowa App. 1997); *see also In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). The Iowa courts do not require an equal division or a percentage division in determining a just and equitable share of property. *Gonzalez*, 561 N.W.2d at 98. Instead, each particular circumstance determines what is fair and equitable. *Id.* Further, the property distribution should be made pursuant to the criteria codified in Iowa Code section 598.21(1) (1995). *Id.*

Ronald first claims the district court erred in valuating the parties' home at $110,000. Neither party called an expert witness to testify to the value of the house. Thus, he asserts the trial court should have relied on his testimony as a licensed real

estate agent. Ronald testified the house was comparable to a $130,000 house across the street from the parties' home.

The assessed value of the home was $103,946. Additionally, while Ronald has an inactive real estate license, he had never viewed the interior of the comparable home. We find the district court's valuation of the parties' home to be well within the permissible range of evidence, and we will not disturb it on appeal. *See In re Marriage of Huisman*, 532 N.W.2d 157, 160 (Iowa App. 1995).

Ronald next claims the district court erred in dividing the parties' property. He asserts he should be awarded an additional $8000 to reach a more equitable property distribution. Judith contends the division made by the trial court was equitable because Ronald incurred much of the parties' debt in a family farming operation and because she was unaware of much of the debt he incurred. On cross-appeal Judith also claims the Visa bill should be allocated to Ronald because he made most of the charges on it. She further claims the tax refund should be divided equally.

To reach an equitable distribution of property in this case, we must divide *both* the marital assets and debts. Judith contends most of the marital debt should first be allocated to Ronald and then the assets should be divided between the parties. The parties' debt, however, was incurred during the marriage and for marital purposes. The farm debt does not lose its status as a marital debt merely because Judith was unaware of the finances of the farming operation. Accordingly, we modify the decree to require Judith to pay Ronald $8000, payable with interest at seven percent per

annum. This amount shall be paid in five annual payments of $1600, plus accumulated interest, beginning six months after the issuance of procedendo. This raises Ronald's net award to $18,962, and reduces Judith's net award to $19,663.

We decline to allocate the Visa bill to Ronald as it is marital debt and an equitable distribution requires Judith to assume this debt. Further, we consider the tax refund as part of the marital assets received by Ronald.

III. Alimony

Alimony is an allowance to the former spouse in lieu of a legal obligation to support that person. *See Gonzalez*, 561 N.W.2d at 99. When determining the appropriateness of alimony, we consider: (1) the earning capacity of each party; and (2) present standards of living and ability to pay balanced against the relative needs of the other. *In re Marriage of Kurtt*, 561 N.W.2d 385, 387 (Iowa App. 1997); *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa App. 1994).

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *Gonzalez*, 561 N.W.2d at 99. Many factors are considered in determining the appropriate amount of alimony to be awarded to a spouse. *In re Marriage of Siglin*, 555 N.W.2d 846, 850 (Iowa App. 1996); Iowa Code § 598.21(3). Alimony may be used to remedy the 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). We also consider the division of property in determining alimony. *Siglin*, 555 N.W.2d at 850.

Alimony has traditionally taken the place of support that would have been provided had the marriage continued. *In re Marriage of Francis,* 442 N.W.2d 59, 63 (Iowa 1989). It is awarded to accomplish one or more of three purposes. We have observed:

> *Rehabilitative alimony* serves to support an economically dependent spouse through a limited period of education and retraining. Its objective is self-sufficiency. An award of *reimbursement alimony* is predicated upon economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the other. *Traditional alimony* is payable for life or for so long as a dependent spouse is incapable of self-support. The amount of alimony awarded and its duration will differ according to the purpose it is designed to serve.

In re Marriage of O'Rourke, 547 N.W.2d 864, 866-67 (Iowa App. 1996) (citations omitted). In determining whether to award alimony, we consider "[t]he feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage and the length of time necessary to achieve this goal." Iowa Code § 598.21(3)(f).

The district court awarded Judith reimbursement/rehabilitative alimony. Ronald was able to obtain a college degree as well as continue to grow professionally due to Judith's financial and homemaking contributions. Therefore, considering the length of the marriage, the parties' earning capacities, and Judith's need, we affirm the district court's award of alimony.

IV. Attorney Fees

An award of appellate attorney fees is not a matter of right, but rests in our discretion. *Kurtt*, 561 N.W.2d at 389. In determining whether to award appellate attorney fees, we 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 decision of the trial court on appeal. *Id.*

Considering Judith's need and both parties' ability to pay, we find Ronald should contribute $1000 for her appellate attorney fees.

AFFIRMED AS MODIFIED.