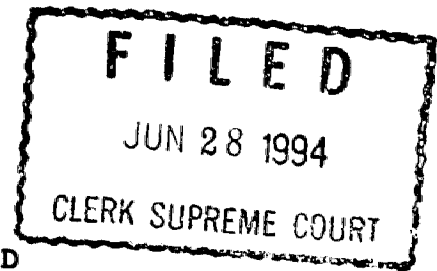


IN THE COURT OF APPEALS OF IOWA

No. 3-412 / 92-1314



IN RE THE MARRIAGE OF CHARLES GENE HOEKSTRA AND
LINDA JANE HOEKSTRA

Upon the Petition of
CHARLES GENE HOEKSTRA,

Petitioner-Appellant,

And Concerning
LINDA JANE HOEKSTRA,

Respondent-Appellee.

Appeal from the Iowa District Court for Lyon County,
Tom Hamilton, Judge.

The petitioner appeals from various economic provisions
of the district court's decree dissolving the parties'
marriage. **AFFIRMED AS MODIFIED.**

Randy L. Waagmeester of DeWaay & Waagmeester,
Rock Rapids, for appellant.

Gene A. Wickey, Sioux City, for appellee.

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

PER CURIAM

Petitioner-appellant Charles Gene Hoekstra appeals the economic provisions of the decree dissolving his marriage to respondent-appellee Linda Jane Hoekstra. We affirm as modified.

The parties were married in 1967 and had two children who are now adults. At the time of marriage, neither Charles nor Linda had completed high school. Linda, age forty-two at the time of trial, had finished high school and received a G.E.D. and completed cosmetology school during the marriage. She had some jobs, including that of a hair dresser. She also kept books for Charles's business and was paid a salary. Currently Linda is employed with Western Surety Company of Sioux Falls. Charles, age forty-four at the time of the trial, worked as an unskilled laborer until about 1975 when he was able to buy into a rendering service which he currently operates and which supplies his main source of income.

The trial court determined the primary issue was valuation of the rendering business. The trial court valued it at \$25,000. The court determined the net worth of the parties to be \$33,338 and then allocated assets and liabilities to Charles in the net amount of \$21,560 and to Linda in the amount of \$11,778. Charles was ordered to pay Linda an additional \$4891; the payment to be made within thirty days of the filing of the decree and to draw interest at ten percent per annum until paid. The result

was, using that valuation, each party was then awarded approximately \$17,000 in net assets.

In addition, Charles was ordered to pay Linda what the trial court termed support of \$350 a month to continue until her death or remarriage.

Charles was further ordered to pay Linda's attorney \$600.

Charles first contends the value placed on the business was not correct. The business was originally purchased for \$25,000. Charles testified the business was worth \$15,000 at the time of trial. A competitor who had a similar business testified he would be lucky to get \$18,000 if his business were sold. The principal asset of both businesses was a truck. Both Charles and the competitor who testified pick up dead animals from area farmers and take them to the Alton Rendering Works, Sioux-Boy Products. They are paid by the Rendering Works for the animals. They have no license or permit but operate at the pleasure of the Alton Rendering Works. The business of selling dead livestock has changed since Charles purchased it. Then Charles picked up animals from farmers for free; now it is necessary to charge for the pick up service because lower rates are paid by the Rendering Works. Charles and his competitor testified the result is they both have fewer calls.

The CPA who prepared the business tax returns testified the business had income of \$24,861 in 1991, and the

business assets were nearly fully depreciated, therefore, he determined the business had limited value. Charles claimed less than \$500 depreciation in 1991. Charles's truck, the primary business asset, had 750,000 miles on it and his competitor's truck had 500,000 miles on it.

Charles contends this was the only credible evidence on valuation and it does not support the valuation established by the trial court. Linda, in her brief, has failed to recognize or address the issue of valuation of the business raised by Charles. She makes no reference to any evidence appearing in the record that supports the trial court valuation.

The trial court valued the business at \$25,000 and said, "That is less than one year's current cash flow from the business yet some \$10,000 higher than Charles' unsupported testimony concerning its value."

Charles argues the trial court failed to identify any recognized or accepted method for valuation of the business and the value was contrary to the value advanced by the only three people who gave testimony as to value.

To generate \$25,000 in income requires not only the truck but also requires Charles drive the truck and pick up the animals. If Charles were paid a fair hourly wage from the business, there would be little profit from the truck. There may be some goodwill. In In re Marriage of Hogeland, 448 N.W.2d 678, 681 (Iowa App. 1989), we recognized goodwill of a business is a factor that bears

on the future earning potential of the principal in the business. Id. We consider future earning capacity in considering the equities of the economic provisions of a dissolution. Id. We do not consider any goodwill in reaching our valuation of the business. We find on our de novo review the business should be valued at \$15,000.

Charles's second contention is the trial court should not have allocated the entire income tax liability in excess of \$13,000 for the year 1991 to him. Once again, Linda, in her brief, has failed to address an issue raised by Charles. The question is whether the division as a whole is equitable.

The partners in the marriage are "entitled to a just and equitable share of the property accumulated through their joint efforts." In re Marriage of Havran, 406 N.W.2d 450, 452 (Iowa App. 1987). The distribution of the property of the parties should be that which is equitable under the circumstances after consideration of the criteria codified in the Iowa Code section 598.21(1). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983).

We affirm the property division except we modify to strike the provision Charles pay Linda the additional amount of \$4891. With the adjustment we have made to the valuation of the business, this results in each party receiving an award of about \$12,000.

Charles's third issue is he should not have been ordered to pay Linda alimony of \$350 a month. Charles's

business earnings were about \$25,000 in 1991. In 1991, Linda had earnings of a little less than \$11,000. Her pay stubs for the first three months of 1992 indicate she will have an annual salary in 1992 of about \$15,500. Linda has certain employee benefits, including medical insurance, paid vacation, and holidays. Charles has no benefits. Linda obtained further education during the marriage. Charles obtained none.

In awarding alimony, we look to the particular circumstances of this case. The mandate is to achieve an equitable and just result under the circumstances. See In re Marriage of Webb, 426 N.W.2d 402, 405 (Iowa 1988). We look to the earning capacity of both Charles and Linda and the standard of living the parties have maintained as well as Charles's ability to pay. See In re Marriage of Imhoff, 461 N.W.2d 343, 345 (Iowa App. 1990). We look to the factors of section 598.21(3). This was a long-term marriage. Both parties are in their forties and in good health. The property division does not provide sufficient current funds for either party to maintain the standard of living he and she enjoyed during the marriage without outside employment. Charles's employment is more remunerative than Linda's. Alimony is taxable to Linda and deductible by Charles. We did not consider any goodwill of Charles's business in valuing the assets, but do consider it in assessing alimony. See Hogeland, 448 NW.2d at 681. The record supports a finding Charles's income will exceed

Linda's income at least for some period of time. There is authority to award Linda alimony under these circumstances. See In re Marriage of Friedman, 466 N.W.2d 689, 693 (Iowa 1991); In re Marriage of Hitchcock, 309 N.W.2d 432, 437-38 (Iowa App. 1981); In re Marriage of Misol, 445 N.W.2d 411, 413-14 (Iowa App. 1989); In re Marriage of Hayne, 334 N.W.2d 347, 350-51 (Iowa App. 1983). We affirm the alimony award except for its duration and the fact it was not ordered to terminate on Charles's death. We affirm the award of \$350 a month alimony to Linda payable until her remarriage, the death of either party, or five years from the date of the decree, whatever occurs sooner.

Charles's last argument is he should not have been ordered to pay \$600 toward Linda's attorney fees. Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). Awards of attorney fees must be for fair and reasonable amounts, In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977), and based on the parties' respective abilities to pay. In re Marriage of Lattig, 318 N.W.2d 811, 817 (Iowa App. 1982). 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). 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 Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). We affirm on this issue.

Each party shall pay his or her own attorney fees on appeal. Costs on appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.