

IN THE COURT OF APPEALS OF IOWA

No. 4-442 / 93-1845

FILED

MAR 30 1995

CLERK SUPREME COURT

IN RE THE MARRIAGE OF RICHARD C. ROBERTSON AND
RAMONA M. ROBERTSON

Upon the Petition of
RICHARD C. ROBERTSON,

Appellant,

And Concerning
RAMONA M. ROBERTSON,

Appellee.

Appeal from the Iowa District Court for Woodbury
County, Phillip S. Dandos, Judge.

Richard appeals the economic provisions of the parties'
dissolution decree. **AFFIRMED.**

Judith A. Garnos and W.E. Collins of Murphy &
Associates, Le Mars, for appellant.

Teresa A. O'Brien of Forker & Kanter, Sioux City, for
appellee.

Considered by Donielson, C.J., and Sackett and Habhab,
JJ. Huitink, J., takes no part.

DONIELSON, C.J.

Richard and Ramona Robertson were married in 1972. They had eight children during their twenty-year marriage. The two oldest children are emancipated. The six children who were minors are: Holly, born April 13, 1976; Charles, born April 9, 1978; Matthew, born September 8, 1982; Jeffrey, born January 17, 1988; Anthony, born June 23, 1989; and David, born July 21, 1992.

Richard was forty-two years old at the time of the dissolution hearing. He was employed as an electronics technician of F-16 aircraft, which was a civil service job. He also had a part-time job with the Air National Guard. His annual income was about \$30,500, and he had net monthly income of \$2,020. Richard quit these jobs on August 27, 1993, and moved to Arizona. He obtained a job working on aircraft. His annual income was reduced to \$15,600, and he has net monthly income of \$1,200.

Ramona was forty-three years old at the time of the dissolution hearing. She was not employed outside the home during most of the marriage. At the time of the marriage she had a license in cosmetology. By the parties' agreement, she gave up her job in order to care for the children, and she no longer has her cosmetology license.

The district court entered a dissolution decree for the parties on November 5, 1993. The court awarded the parties joint legal custody of the children, with Ramona having primary physical care. The court determined Richard had

voluntarily quit his work for no good reason. Therefore, the court used his prior earning capacity to determine his child support obligation under the child support guidelines. The court found that for the six minor children, Richard should pay \$924 per month.

The court ordered Richard to pay alimony of \$200 per month until Ramona remarries or dies, Richard dies, or Ramona attains the age of sixty, whichever occurs first. The court awarded Ramona the marital residence, household goods, and a van. Richard was awarded his car, guns, tools, and household goods. Ramona was awarded one-half of Richard's military and civil service pensions, which were payable when Richard reached the age of sixty. Richard was ordered to pay \$500 for Ramona's attorney fees. Richard appealed.

I. Our review of this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992).

II. Richard contends the distribution of property is inequitable to him. He points out Ramona was awarded a greater amount of the parties' assets and was required to pay few debts, while he was awarded few of the parties' assets and was required to pay a greater amount of the parties' debts. He asks that he be awarded the full amount

of his pension, which he believes will equalize the property distribution.

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). The Iowa courts do not require an equal division or percentage distribution. Id. The determining factor is what is fair and equitable in each particular circumstance. Id. We note pension benefits are treated as marital property and are subject to equitable distribution. In re Marriage of Huffman, 453 N.W.2d 246, 248 (Iowa App. 1990).

In the present case, we determine it was more equitable to award Ramona a greater share of the parties' net assets. Richard recognizes Ramona needs to retain the marital residence in order to provide a place for her and the six minor children to live. Furthermore, Ramona has no pension plan of her own, and with her child care duties, it is unlikely she will be able to earn enough to accumulate a pension which would sustain her through her retirement years. We find the property distribution is equitable under the facts of this case.

III. Richard believes his alimony obligation is excessive. He asks us to reduce his alimony obligation to \$100 per month for a period of three years.

Alimony is a stipend to a spouse in lieu of the other spouse's legal obligation for support. In re Marriage of

Francis, 442 N.W.2d 59, 62 (Iowa 1989). 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). When determining the appropriateness of alimony, the court should consider the earning capacity of each party. In re Marriage of Oler, 451 N.W.2d 9, 13 (Iowa App. 1989). We consider property division and alimony together in evaluating their individual sufficiency. Whelchel, 476 N.W.2d at 110.

It is clear Ramona's earning capacity will never approach that of Richard. By the parties' agreement, Ramona stayed home to take care of the parties' children, and consequently, she has been out of the job market for many years. Ramona has few job skills, and realistically could not expect to earn more than minimum wage. Furthermore, assuming Ramona does go back to work, her child care expenses will consume most of her income. We affirm the award of alimony.

IV. Richard claims his child support obligation is excessive. He believes his obligation should be based on his current income, instead of his income when employed in Iowa. He states he should not be penalized for moving to Arizona.

Child support is generally not reduced because of self-inflicted or voluntary reductions in income. In re Marriage of Fidone, 462 N.W.2d 710, 712 (Iowa App. 1990). A court should examine the parties' earning capacities

instead of simply ascertaining present income. In re Marriage of Wegner, 434 N.W.2d 397, 399 (Iowa 1988).

We find Richard voluntarily reduced his income. He stated he gave up his employment in Iowa and moved to Arizona because he did not want to live near Ramona. At the time he quit his employment in Iowa he did not have a job lined up in Arizona. We find Richard's earning capacity is shown by his previous net monthly income of \$2,020. We agree with the district court's conclusion his child support obligation should be based on his earning capacity.

V. Richard claims the district court should not have awarded Ramona the three youngest children as federal and state income tax exemptions if she obtains employment. He asks to be awarded all of the exemptions for the minor children.

The district court actually awarded Ramona the deductions for the children who were then ages seventeen, eleven, and three. Richard was awarded the deductions for the children ages fifteen, five, and one. Furthermore, Ramona may claim her deductions only if she becomes employed. We find this distribution to be equitable and we affirm.

VI. Richard contends the district court abused its discretion by ordering him to pay \$500 of Ramona's attorney fees. He states Ramona's attorney's representation was pro

bono, and he should not be required to pay any attorney fees for Ramona.

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. We find no abuse of discretion in the present case.

VII. Finally, Ramona asks for attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. Id. We determine Richard should pay \$500 for Ramona's attorney fees for this appeal.

We affirm the district court on all issues raised in the appeal. Costs of this appeal are assessed to Richard Robertson.

AFFIRMED.