

IN THE COURT OF APPEALS OF IOWA

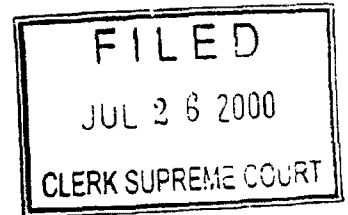
No. 0-182 / 99-1169

Filed July 26, 2000

IN RE THE MARRIAGE OF WILFORD H. STONE and DIANE M. STONE

**Upon the Petition of
WILFORD H. STONE,**
Petitioner-Appellee,

**And Concerning
DIANE M. STONE,**
Respondent-Appellant.



Appeal from the Iowa District Court for Linn County, Patrick R. Grady,
Judge.

Respondent appeals from the district court's decree dissolving the parties'
marriage. **AFFIRMED AS MODIFIED.**

John W. Hayek of Hayek, Hayek & Brown, L.L.P., Iowa City, for appellant.

John H. Ehrhart of Fisher, Ehrhart, McCright & Turner, Cedar Rapids, for
appellee.

Heard by Streit, P.J., and Zimmer and Hecht, JJ.

HECHT, J.

Diane M. Stone appeals from the property division, alimony, and attorney fees provisions of a dissolution decree. She contends the district court erred in awarding her only \$5400 for her portion of the appreciation in the house's value during the marriage and no spousal support after a marriage of approximately thirty-nine months. She also requests appellate attorney fees and costs. We affirm as modified.

I. Factual Background and Proceedings. Wilford H. Stone ("Bill") was born April 18, 1956. He graduated from the University of Iowa College of Law in 1984, and Georgetown University Law Center in 1987. He joined a Cedar Rapids, Iowa, law firm in 1987, and was made partner in 1992. His health is excellent.

Diane was born on May 11, 1956. She graduated from Hawkeye Community College where she earned an associate's degree in 1992. She worked thereafter for several years as a travel agent. After her travel agency employment terminated in February of 1999, Diane took employment at a Barnes and Noble bookstore where she is paid \$6 per hour for approximately eighteen hours per week. Her health is also excellent. The parties have no children.

The parties were married on December 29, 1995. Bill filed this dissolution action on July 13, 1998, and the parties ceased cohabiting on December 29, 1998. Trial was held on April 1, 1999.

Bill owned substantial assets before the parties married. The record indicates, and the district court found, he owned real and personal property with

a net value of approximately \$332,448 at the time of the marriage. The district court found the net value of Diane's assets to be \$29,932 at the time of the marriage.

There was a substantial disparity in the earnings of the parties during the marriage. Bill's earnings increased from \$141,000 in 1995 to \$205,000 in 1998. Diane earned approximately \$17,000 per year from 1995 to 1997, and approximately \$30,000 in 1998. The district court ordered Bill to pay \$1000 per month for temporary spousal support after Diane's employment was terminated in February of 1999.

The decree entered by the district court awarded Bill the residence he brought into the marriage. The net value of this real estate increased by \$20,800 during the marriage. Bill was also awarded all of the other investments he brought into the marriage, the value of which increased during the marriage by nearly \$60,000; and securities he purchased during the marriage with a value of \$167,378.

The decree awarded Diane a 401K plan she brought into the marriage. The value of this asset increased by \$15,198 during the marriage. Diane also was awarded jewelry accumulated by her during the marriage with a value of \$10,220; and a residence purchased at the time of the separation with a net value of \$15,909.

The decree ordered Bill to pay Diane \$5400 for her portion of the appreciation of the house's value during the marriage and \$3000 to offset her attorney's fee. Diane contends the district court failed to make an equitable

distribution of the parties' property. She asserts she should be awarded \$113,996.50 as her share of: (a) the increase in value of the assets owned by the parties at the time of the marriage; and (b) the value of the assets accumulated by the parties during the marriage. She also claims she should have been awarded spousal support of \$1000 per month retroactive to May 1, 1999, and continuing until such time as she obtains full-time employment. Diane also requests an award of appellate attorney fees and costs. Bill urges us to affirm the district court's decree. He asserts the district court properly concluded Diane should not, in view of the short duration of the marriage, share in the increased value of the assets he brought into the marriage; and she should not benefit from the investments he made during the marriage from his substantially greater earnings. Bill contends Diane's net worth increased by more than 300% during the marriage of three years; and she made no significant contribution to the significant increase in the value of his assets during the marriage. He further contends Diane is entitled to no alimony in view of the short duration of the marriage because she is in good health and is capable of supporting herself as she did before the marriage.

II. Standard of Review. Economic provisions of a dissolution decree are reviewed de novo. Iowa R. App. P. 4. 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). Although our review of alimony awards is de novo, we accord the trial court considerable latitude in making such

determinations. We will disturb alimony rulings only when there has been a failure to do equity. *In re Marriage of Wahlert*, 400 N.W.2d 557, 560 (Iowa 1987).

III. The Merits.

A. *Property Division.* Each party is entitled to a just and equitable share of marital assets. *In re Marriage of Gonzalez*, 561 N.W.2d 94, 98 (Iowa App. 1997); *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). Iowa courts do not require an equal division or percentage distribution. *Id.* The determining factor is what is fair and equitable in each circumstance. *Id.* When distributing the property, we take into consideration the criteria codified in Iowa Code section 598.21(1) (1997). *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983). Among the many factors we consider are: the length of the marriage, each party's contribution to the marriage, the parties' earning capacities, the amount and duration of alimony, and the tax consequences to each party. Iowa Code § 598.21(1). There is no rule requiring a party to share his wealth simply because he had more to share than his spouse. *In re Marriage of VanRegenmorter*, 587 N.W.2d 493, 497 (Iowa App. 1998).

The court should consider the appreciation in value of assets during the marriage when dividing the property. Where the appreciation is not merely fortuitous, but due to the mutual efforts and tangible contributions from both parties, division is appropriate. *In re Marriage of Hass*, 538 N.W.2d 889, 893 (Iowa App. 1995). Contribution by the parties to the marriage is a broad concept and extends well beyond contributions to accumulation of property. *In re Marriage of Miller*, 552 N.W.2d 460, 464-65 (Iowa App. 1996). Financial matters

make up only a portion of a marriage, and must not be emphasized over other contributions in determining an equitable contribution. *In re Marriage of Wendell*, 581 N.W.2d 197, 199 (Iowa 1998). Although a party's contribution to a marriage is an appropriate factor affecting property division, we do not find it useful to analyze the exact duties performed by each of the marriage partners. *In re Marriage of Grady-Woods*, 577 N.W.2d 851, 853 (Iowa App. 1998).

After reviewing the record carefully, we find the district court's division of the property is inequitable. Although the marriage was comparatively brief, the parties experienced a significant increase in the value of their assets during the marriage. We acknowledge Diane brought far fewer assets into the marriage, and her earnings during the marriage were substantially less than Bill's. Nonetheless, she worked outside the home full time during most of the marriage and made other nonmaterial contributions to the relationship. We find she is not entitled to any of the assets brought into the marriage by Bill. In view of the short duration of the marriage, we also find she should not benefit from the increase in value of assets Bill brought into the marriage. Diane should, however, receive a larger portion of the assets accumulated from the earnings of the parties during the marriage than was awarded by the district court. Thus, in addition to the assets awarded to Diane in the decree, Bill shall pay her the sum of \$50,000 as part of the property division.

B. Alimony. District courts are afforded wide latitude in making alimony determinations and their rulings will be disturbed only where there has been a failure to do equity. *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996).

Entitlement to alimony is not an absolute right. An award depends upon the circumstances of each particular case. In *re Marriage of Inhoff*, 461 N.W.2d 343, 345 (Iowa 1990); *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976); *In re Marriage of Kurtt*, 561 N.W.2d 385, 387 (Iowa App. 1997). The discretionary award of alimony is made after considering the factors listed in Iowa Code section 598.21(3). Diane leaves a marriage of three years still young and in good health. Considering all other factors, we affirm the trial court's denial of her request for alimony.

C. Attorney Fees. Finally, Diane requests an award of appellate attorney fees. An award of attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Dieger*, 584 N.W.2d 567, 570 (Iowa App. 1998). 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. *Id.* In view of the assets received by Diane under the decree as modified, we find she should pay her own attorney fees and expenses on appeal.

Having considered all arguments before us on appeal, we affirm the decision of the trial court, as modified. Costs of the appeal are taxed to Bill.

AFFIRMED AS MODIFIED.