

IN THE COURT OF APPEALS OF IOWA

No. 3-470 / 92-1660

FILED

OCT 28 1993

IN RE MARRIAGE OF GARY ALAN ROBINSON AND SUSAN KAY ROBINSON COURT

Upon the Petition of
GARY ALAN ROBINSON,

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Petitioner-Appellant,

And Concerning.
SUSAN KAY ROBINSON,

Respondent-Appellee.

Appeal from the Iowa District Court for Polk County,
George W. Bergeson, Judge.

Petitioner husband appeals from various economic provisions of the dissolution decree. **AFFIRMED AS MODIFIED.**

Robert H. Laden and Teresa A. Beyer of Hyland, Laden & Pearson, P.C., Des Moines, for appellant.

Thomas D. Hanson and Robert B. Hanson of Hanson, Bjork & Russell, Des Moines, for appellee.

Heard by Oxberger, C.J., and Sackett and Habhab, JJ.
Donielson, J., takes no part.

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SACKETT, J.

Petitioner-appellant Gary Alan Robinson appeals from a decree dissolving his eighteen year childless marriage. He challenges the economic provisions made by the trial court. We modify the property division and strike the provision that Gary pay Susan alimony. We affirm as modified.

Gary and respondent-appellee Susan Kay Robinson were married in February 1984. Gary is now forty-six and Susan is forty-four. Gary is an attorney and Susan is a college professor. During their marriage, they accumulated considerable assets.

The trial court divided certain property and ordered Gary to pay Susan alimony of \$1000 a month for three years and \$500 a month for two years. Gary appeals. He challenges the value placed by the trial court on his law practice contending it resulted in an inequitable allocation of assets. He contends the trial court did not consider the tax aspects of the property allocation. He contends he should not be required to pay alimony.

After the marriage, Gary attended law school. During the time he was in law school, Susan taught school. Since Gary's graduation from law school, he has practiced law in Des Moines. After Gary came to Des Moines to practice law, Susan did not work outside the home but spent her time caring for the parties' home.

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Susan, who had a masters degree at the time of marriage, then returned to Iowa State University where she obtained a PHD. She subsequently took a job teaching at Drake University.

Gary first contends the trial court overvalued his interest in a law firm. Gary owned stock in the law firm he was a partner in when the dissolution was heard. Gary's right to dispose of the stock was governed by a Stock Redemption Agreement. The agreement provided that if Gary leaves the firm for a reason other than death, disability or retirement at age 65 his stock in the firm is valued at between \$6,500 and \$12,000. He also owes the firm between \$5,000 and \$6,000 on the stock. If Gary should die, become disabled or retire at age 65 currently the stock would be worth \$62,000. The trial court valued Gary's stock in the law firm at \$62,000. Gary contends at the time of the dissolution this figure did not represent the value of the stock. We value property for division purposes at its value at the time of the dissolution. See Locke v. Locke, 246 N.W.2d 246, 252 (Iowa 1976).

A professional corporation is difficult to value because its income comes almost exclusively from the efforts of the professionals and its value is dependent on continual professional performance and the cooperation among the shareholders. In re Marriage of Hogeland, 448 N.W.2d 678, 681-82 (Iowa App. 1989). Stock in a professional corporation can only be sold to another

professional of the same discipline. Id. at 82. It is doubtful another professional would purchase the stock unless he or she felt they could establish a working relationship with the other professionals. Id. We, therefore, determine the value of Gary's stock in the professional corporation is at or near the current redemption price. Id. We do, however, give consideration to the fact there is provision for disability or retirement. We value Gary's stock at \$20,000.

Gary next contends the trial court should have considered the tax consequences to him in liquidating property to pay Susan a \$119,000 cash settlement. We agree. The court is directed to consider income tax consequences when allocating property in a dissolution. See Iowa Code § 598.21(1)(j), (3)(g) (1992); see also In re Marriage of Hoak, 364 N.W.2d 185, 193 (Iowa 1985); In re Marriage of Dahl, 418 N.W.2d 358, 360 (Iowa App. 1987). And where the payment of cash to a spouse will in all probability require the liquidation of capital assets, the income tax consequences of such a sale should be considered by the trial court in assessing the equities of the property and alimony award. Hogeland, 448 N.W.2d at 680-81.

Gary had inherited about \$50,000 which was set off to him. Susan had an interest in a \$600,000 trust established by her father. The value and extent of Susan's interest in the trust was not fully developed in the record. Susan had

responsibility to make this information available to the dissolution court. See In re Marriage of Williams, 421 N.W.2d 160, 164 (Iowa App. 1988); In re Marriage of Voss, 396 N.W.2d 801, 804 (Iowa App. 1986).

The trial court left Gary with his inherited property and made no mention or disposition of Susan's interest in the trust. The trial court valued the equity in the personal residence and awarded the personal residence to Susan. The trial court awarded the interest in the law firm to Gary. The trial court ordered Gary to transfer to Susan IRA and 401(K) accounts in the amounts of \$51,834 and \$67,385. Valuing the law firm interest at \$62,000 the trial court's allocation of assets resulted in a nearly equal division of the assets the couple accumulated during the marriage. We agree with the trial court that a nearly equal division of the assets the couple accumulated during the marriage is equitable under the circumstances.

A property division is one that is equitable under the circumstances. In re Marriage of Stewart, 356 N.W.2d 611, 612 (Iowa App. 1984).

We have determined the trial court overvalued Gary's law firm. Therefore, on this basis, we determine the allocation made by the trial court is not equal or equitable. We modify the trial court order to provide that Gary shall transfer pursuant to a Qualified Domestic Relations order \$77,000 from his retirement accounts. In all other respects, we affirm the property division made by

the trial court. Having made this adjustment, we find it unnecessary to consider further the tax consequences of the allocation.

Gary next challenges the alimony award. Susan contends the award is justified because she supported the couple both emotionally and financially during Gary's three years of law school. Gary received some money for law school from the G.I. bill. Additionally, unlike a number of other cases, Susan also received an advanced degree during the marriage. Education is a factor to be considered on the party's earning capacity--and this is true not only on the issue of an 'equitable division of assets' but also as to whether 'alimony should be awarded and if so, to the amount to be awarded'. See In re Marriage of Janssen, 348 N.W.2d 251, 253-54 (Iowa 1984); In re Marriage of Horstmann, 263 N.W.2d 885, 891 (Iowa 1978).

Both degrees have enhanced the couple's earning capacity. See Stewart, 356 N.W.2d at 613. The fact the parties had attained similar levels of education was a factor considered in rejecting a wife's request for alimony. See In re Marriage of Griffin, 356 N.W.2d 606, 609 (Iowa App. 1984).

Gary and Susan are outstanding people who have been of assistance to each other in developing their respective careers. They have enjoyed an excellent lifestyle during marriage. Gary's earnings during the marriage were substantially more than Susan's earnings. Susan

contributed in other respects. There is no evidence either Susan or Gary have made any extraordinary sacrifices or exhibited an unusual devotion to the furtherance of the marriage. Susan is gainfully employed at a job with a future and benefits. See Dahl, 418 N.W.2d at 359. Susan did not give up or postpone a career of her own for the couple's joint benefit. Susan did absent herself from the job market for some years to care for family responsibilities. As a result, Susan has not made the FICA contributions Gary has made. She is, however, building for her retirement and received retirement accounts accumulated from Gary's earnings as a result of the trial court division.

Susan has received substantial assets. See In re Marriage of Hayne, 334 N.W.2d 347, 350-51 (Iowa App. 1983). She has a measurable earning ability. Alimony is not an absolute right. See In re Marriage of Maskel, 225 N.W.2d 115, 120 (Iowa 1975).

Currently, Susan's income is not equal to Gary's income. Both Gary and Susan have adequate income to provide a high standard of living for a single person. Susan is earning about \$40,000 a year and Gary is earning about \$75,000 a year. Both Gary and Susan point out their future earnings are not guaranteed. Susan is not yet a tenured professor. She has an excellent track record at Drake and she has the ability to generate income as a consultant. Gary's specialty is white collar tax and the need for these

legal services has decreased in recent years and his income has decreased. We cannot determine the future income level of either Gary or Susan. The important factor is they both leave the marriage with education and job experience. They both are talented individuals. The fact Gary's professional endeavors may at the current time generate more income than Susan's professional endeavors does not alone support an award of alimony for Susan. Susan has sufficient income to meet her needs and save for her retirement. She has excellent employment opportunities and the ability to generate income outside her salaried position. We look at the issue from a gender-neutral position. See Orr v. Orr, 440 U.S. 268, 278-279, 99 S. Ct. 1102, 1111, 59 L. Ed. 2d 306, 318-19 (1979); In re Marriage of Bethke, 484 N.W.2d 604, 608 (Iowa App. 1992).

Susan has some interest in a \$600,000 trust set up through her father's estate. Any interest Susan has in this trust is Susan's alone. The trial court did not address the trust interest in its findings. We modify to clarify any interest in the trust is Susan's alone. Gary had \$50,000 in inherited property set aside to him. Inherited or gifted property may be considered on the issue of alimony. In re Marriage of Moffatt, 279 N.W.2d 15, 20 (Iowa 1979).

We disagree with the trial court that the factor of this case supports an award of alimony. We modify the trial court decision to strike the provision for Gary to pay Susan alimony.

No award is made for attorney fees on appeal. Each party shall pay his or her own attorney fees.

AFFIRMED AS MODIFIED.