IN THE COURT OF APPEALS OF IOWA

No. 9-019 / 98-0088
Filed February 24, 1999



**IN RE THE MARRIAGE OF CATHIE A. MIEHE AND FRED B. MIEHE, JR.**

Upon the Petition of
**CATHIE A. MIEHE,**
Petitioner-Appellant,

And Concerning
**FRED B. MIEHE, JR.,**
Respondent-Appellee.

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Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

Cathie Miehe appeals from various provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

David J. Dutton and Carolyn A. Rafferty of Dutton, Braun, Staack & Hellman, P.L.C., Waterloo, for appellant.

David H. Correll of Correll, Sheerer, Benson, Engels, Galles & Demro, P.L.C., Cedar Falls, for appellee.

Heard by Huitink, P.J., and Vogel and Zimmer, JJ. Mahan, J., takes no part.

**HUITINK, P.J.**

Cathie Miehe appeals from various economic provisions of the parties' decree of dissolution. We affirm as modified.

***I. Background Facts and Proceedings.***

Cathie and Fred Miehe were married July 7, 1979. The parties have two minor children: Mindy, born March 31, 1981; and Matthew, born February 19, 1983. At the time of trial, Cathie was forty-seven, and Fred was forty-four years old.

In its decree, the district court awarded Cathie primary physical care of Mindy and Matthew. The court ordered Fred to pay child support in the amount of $1596 per month, to be recalculated when only one child qualified for support.

In the property distribution portion of the decree, the district court awarded Cathie her 1996 Toyota automobile, her checking account, life insurance policy, and IRA, along with various personal property and $65,000 of the proceeds from the sale of the parties' home. After accounting for the liabilities assigned to Cathie, her net property distribution was $76,192.[1] The court awarded Fred his interest in Garris-Miehe Realty and its office building, his 1995 GMC sport-utility-vehicle, the equity in his new house, and his checking account and life insurance policies, along with various items of personal property and approximately $35,000 of the proceeds from

[1] *See* Attached schedule for an itemization of the district court's property distribution.

the sale of the parties' home. The court also assigned approximately $96,000 in debt to Fred, for a net distribution of $32,218. The court awarded no alimony.

On appeal, Cathie challenges the district court's property distribution, calculation of child support, and refusal to award alimony or attorney fees. Fred, in turn, requests appellate attorney fees.

***II. Scope of Review.***

Our review is de novo. *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996). We are obliged to examine the entire record and adjudicate rights anew on the issues properly presented. *In re Marriage of Geil*, 509 N.W.2d 738, 740 (Iowa 1993). No hard and fast rules govern the economic provisions in a dissolution action; each decision turns on its own uniquely relevant facts. *In re Marriage of Gaer*, 476 N.W.2d 324, 326 (Iowa 1991). We accord the trial court considerable latitude in resolving disputed claims and will disturb a ruling only when there has been a failure to do equity. *Benson*, 545 N.W.2d at 257.

***III. Property Distribution.***

The partners to 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). 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 to consider are: length of the marriage; property brought to the marriage by each party; the contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking; and the earning capacity of each party. Iowa Code § 598.21.

Initially we note Cathie contends the district court made mathematical errors on the face of the decree when it calculated the property distribution to Fred. While Cathie failed to file a proper motion under Iowa Rule of Civil Procedure 179(b), any prejudice suffered as a result of mathematical errors can be corrected on our de novo review of the property distribution.

Cathie raises three issues relating to the district court's treatment of the property distribution. First, she contends the court undervalued Fred's interest in Garris-Miehe Realty and also undervalued its office building. Second, she asserts the district court erroneously imposed a trust on property gifted to her from her father, requiring the funds be used for the benefit of Mindy and Matthew. Finally, Cathie maintains the district court assigned an improper value to the life insurance policy she was granted in the distribution.

### *A. Valuation of Garris-Miehe Realty.*

The valuation of a closely-held corporation is difficult, and the market value of stock in a closely-held corporation can rarely be ascertained. *In re Marriage of Steele*, 502 N.W.2d 18, 21 (Iowa App. 1993). Because of the difficulty of this task, the district court is allowed considerable discretion to devise its own valuation scheme. *Id.*; *In re Marriage of Dennis*, 467 N.W.2d 806, 808 (Iowa App. 1991).

At trial, both parties presented evidence regarding the value of Garris-Miehe Realty. Cathie's expert Stephen Kos, a certified public accountant, utilized what he termed the "capitalization of cash flow" method of valuation. He testified this method of valuing the business was appropriate because it gave proper weight to the efforts, reputation, and goodwill of the principals of the small business. He testified the value of Fred's interest of the business was $200,000.

Fred offered testimony and evidence of the market value of other real estate agencies located in Black Hawk county as the proper method for placing a value on his share of the business. Based upon the sale prices and asking prices of other agencies in the area, Fred asserted the value of his interest to be $31,000. The district court found Fred's valuation approach more credible, and assigned a value of $33,150 to his interest in Garris-Miehe.

Cathie argues the capitalization of income method of valuation used by her expert is a more reliable measure of Fred's interest in Garris-Miehe than the comparable value of other agencies relied on by the district court. We disagree.

Capitalization of income is a recognized and reliable business valuation method. *See Post-Newsweek Cable, Inc., v. Board of Review*, 497 N.W.2d 810, 814 (Iowa 1993). We are however reluctant to endorse its use without evidence of its customary use in valuing the type of business at issue. In the absence of such evidence, we decline to assign substantial weight to Cathie's expert witness' valuation opinion. The value assigned to Fred's business interest is within the range of permissible evidence and we decline to disturb it on appeal. *See In re Marriage of Bare*, 203 N.W.2d 551, 554 (Iowa 1973).

We also find the district court's valuation of Fred's interest in the Garris-Meihe building with the range of permissible evidence. Fred testified its gross value was $150,000. Cathie's written appraisal of $180,000 is properly excluded as hearsay and we decline to consider it. We accordingly affirm on this issue.

***B. District Court's Imposition of Trust on Gifted Property.***

The trust imposed on gifted property was intended to provide educational security for the children. Because the record fails to indicate the parties will not otherwise provide for these needs, we find this extraordinary remedy is unnecessary. The trust provisions of the decree are accordingly vacated.

***C. Cash Value of Life Insurance Policy.***

Our review of the record indicates the district court erroneously assigned a value of $10,000 to the New York Life term life insurance policy which it awarded to Cathie in the distribution. The record reflects both Cathie and Fred submitted the value of the policy to be $2900. We recognize and acknowledge the district court's error in assigning the $10,000 value to the policy. We do not, however, find an adjustment to the property distribution is necessary to achieve equity between the parties. Even when the proper value is assigned to the policy, the district court decree awards Cathie 68.1 % of the parties' net assets. We find this distribution, when considered with the substantial award of permanent alimony, discussed below, is sufficient to balance the equities between Fred and Cathie.

***IV. Alimony.***

When determining the appropriateness of alimony, the court must consider "(1) the earning capacity of each party, and (2) present standards of living and ability to pay balanced against relative needs of the other." *In re Marriage of O'Rourke*, 547 N.W.2d 864, 866 (Iowa App. 1996)(citation omitted). Alimony is an allowance to the former spouse in lieu of a legal obligation to support that person. *See In re Marriage of Hitchcock*, 309 N.W.2d 432, 437 (Iowa 1981).

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3) (1997). *See In re Marriage of Hayne*, 334 N.W.2d 347, 350 (Iowa App. 1983).

We consider property division and alimony together in evaluating their sufficiency. *In re Marriage of Hardy,* 539 N.W.2d 729, 732 (Iowa App. 1995); *In re Marriage of Hogeland,* 448 N.W.2d 678, 682 (Iowa App. 1989); *In re Marriage of Griffin,* 356 N.W.2d 606, 608 (Iowa App. 1984). They are neither made nor subject to evaluation in isolation from one another. *In re Marriage of McLaughin,* 526 N.W.2d 343, 345 (Iowa App. 1994); *In re Marriage of Griffin,* 356 N.W.2d at 608.

Alimony is awarded to accomplish one or more of three general purposes. Rehabilitative alimony serves to support an economically dependent spouse through a limited period of education and retraining. Its objective is self-sufficiency. *In re Marriage of Francis*, 442 N.W.2d 59, 63-64 (Iowa 1989). 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. *Id.* Traditional alimony is payable for life or for so long as a dependent spouse is incapable of self-support. *Id.* The amount of alimony awarded and its duration will differ according to the purpose it is designed to serve. *Id.*

Traditional alimony is payable for life or for so long as a dependent spouse is incapable of self-support. *Id.* In determining the appropriateness of a traditional alimony award, we are required to 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." Iowa Code § 598.21(3)(f) (1997). We are also to consider the length of the marriage, the age and health of the parties, the parties' earning capacities, and the parties' education. *In re Marriage of Mouw*, 561 N.W.2d 100, 102 (Iowa App. 1997).

We find an award of permanent alimony is warranted in this case. This is an eighteen year marriage. During their marriage, the parties enjoyed a comfortable standard of living. Although each was awarded an equitable share of marital property, Cathie's ability to support her pre-dissolution lifestyle is limited by virtue of her lower-earning capacity. Fred's income is sufficient to pay substantial alimony without compromising his accustomed lifestyle.

Under these circumstances, we find an award of $1000 in permanent alimony is equitable. We accordingly modify the decree to order Fred to pay Cathie alimony in the amount of $1000 per month until Fred reaches age 65, Cathie remarries, or either party dies. Alimony shall be due and payable on the first of every month and is payable through the Black Hawk County Clerk of Court's Office in accordance with Iowa Code section 598.22.

***V. Child Support.***

Cathie claims the district court's child support calculations were flawed by the use of incorrect net income amounts. She cites Fred's extra judicial statements to a banker that his annual income exceeded $200,000. Cathie also claims the district court failed to deduct her monthly medical insurance premiums from her gross income and overstated her passive rental income. Cathie accordingly claims Fred's net monthly income is $11,389 and hers is $1522.

The trial court must enter findings as to the income of the parties as defined by the child support guidelines. *In re Marriage of Powell*, 474 N.W.2d 531, 533 (Iowa 1991); *In re Marriage of Holcomb*, 471 N.W.2d 76, 80 (Iowa App. 1991). The court must determine a parties' current monthly income from the most reliable evidence presented. *In re Marriage of Krone*, 530 N.W.2d 468, 471 (Iowa App. 1995). All income that is not anomalous, uncertain, and speculative should be included. *In re*

*Marriage of Nelson*, 570 N.W.2d 103, 105 (Iowa 1997). The district court determined Fred's net monthly income was $6391. The court found Fred's tax return more reliable than his extra judicial statements. We agree with the district court and likewise find Fred's net monthly income is $6391.

Contrary to Cathie's assertions, the record indicates the district court deducted the cost of her medical insurance from her net monthly income. The difference in the net income amount reached by the court is attributable to the district court's inclusion of Cathie's rental income. We conclude the district court properly determined Cathie's net monthly income and upon application of the child support guidelines correctly set Fred's child support obligation at $1596 per month. We affirm on this issue.

We realize our award of alimony in this case affects the net income of both parties. *In re Marriage of Lalone*, 469 N.W.2d 695, 698 (Iowa 1991). However, the amount of child support awarded is the minimum allowed in this discretionary range of the child support guidelines. Under these circumstances, any resulting adjustments of the amount awarded is unnecessary to achieve justice between the parties.

***VI. Attorney Fees.***

Lastly, Cathie contends the court erred by denying her request for trial attorney fees. Ordinarily an award of attorney's fees rests in the sound discretion of the trial court and will not be disturbed on appeal in the absence of an abuse of discretion. *Francis*, 442 N.W.2d at 67. An award of attorney's fees depends upon the ability of the respective parties to pay, depending upon the financial circumstances and earnings of each. *In re Marriage of Wessels*, 542 N.W.2d 486, 491 (Iowa 1995). We find the record indicates the district court should have granted Cathie an award of trial attorney fees. We find the district court's refusal to do so was unreasonable and an abuse of discretion. We therefore modify the decree to award Cathie $2500 in trial attorney fees.

Fred requests an award of appellate attorney fees. Cathie has made no such request. In making such a determination, 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 district court's decision on appeal. *In re Marriage of Garst*, 573 N.W.2d 604, 608 (Iowa App. 1997). Applying these factors to the facts of the instant case, we find an award of appellate attorney fees is unwarranted. Each party is responsible for their own appellate attorney fees.

**AFFIRMED AS MODIFIED.**

| CATHIE'S DISTRIBUTION | Value | Encumbrance | Net Value |
|---|---|---|---|
| 1996 Toyota Avalon | $21,325 | $24,109 | ($2,784) |
| Personal Property | $5,000 | | $5,000 |
| Checking Account | $100 | | $100 |
| *NY Life Whole Life Insurance* | $10,000 | | $10,000 |
| Principal IRA | $6,900 | | $6,900 |
| Proceeds from Sale of Home | $65,000 | | $65,000 |
| **SUBTOTAL** | | | **$84,216** |
| **Liabilities** | | | |
| MasterCard | | | ($995) |
| Von Maur Credit | | | ($331) |
| Magna Bank | | | ($1,000) |
| Moving Expenses | | | ($698) |
| ½ Debt to Cathie's Father Ed Pederson | | | ($5,000) |
| **NET AWARD** | | | **$76,192** |

| FRED'S DISTRIBUTION | Value | Encumbrance | Net Value |
|---|---|---|---|
| ½ Interest in Garris-Miehe Realty | $33,150 | | $33,150 |
| ½ Interest in Garris-Miehe Office Building | $35,000 | | $35,000 |
| Equity in Fred's Home | $6,500 | | $6,500 |
| 1995 GMC Yukon | $24,312 | ($12,950) | $11,362 |
| Personal Property | $3,000 | | $3,000 |
| Checking Account | $1,000 | | $1,000 |
| IDS Whole Life Policy | $3,500 | | $3,500 |
| Proceeds from Sale of Home | $35,000 | | $35,000 |
| **SUBTOTAL** | | | **$128,512** |
| **Liabilities** | | | |
| 1996 Federal Tax Liability | | | ($30,350) |
| 1997 Federal and State Tax Liability | | | ($43,000) |
| 1993 State Tax Liability | | | ($1,441) |
| 1996 Tax Assessment | | | ($403) |
| Mercantile Bank Loan | | | ($7,500) |
| ½ Debt to Cathie's Father Ed Pederson | | | ($5,000) |
| Visa-Traveler's Bank | | | ($4,100) |
| Magna Bank | | | ($4,500) |
| **NET AWARD** | | | **$32,218** |