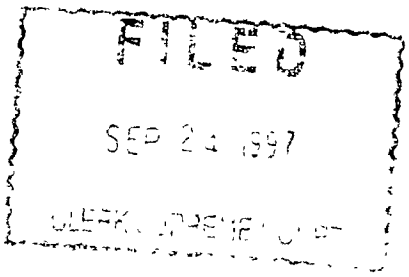
**IN THE COURT OF APPEALS OF IOWA**

000173

No. 7-201 / 95-2109
Filed September 24, 1997




**IN RE THE MARRIAGE OF SHANNON J. KRUEGER AND MICHAEL LEE KRUEGER**

Upon the Petition of
**SHANNON J. KRUEGER,**
Petitioner-Appellee,

And Concerning
**MICHAEL LEE KRUEGER,**
Respondent-Appellant.

---

Appeal from the Iowa District Court for Polk County, Larry J. Eisenhauer, Judge.

The respondent appeals and petitioner cross-appeals from various economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Bruce H. Stoltze of Brick, Gentry, Bowers, Swartz, Stoltze, Schuling & Levis, P.C., Des Moines, and Luis Herrera of Herrera Law Office, Des Moines, for appellant.

Joe Bertogli and Harlan M. Hockett, Des Moines, for appellee.

Heard by Cady, P.J., and Vogel, J., and Schlegel, S.J.,* but decided en banc.

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

**PER CURIAM**

Respondent Michael Lee Krueger appeals the property and child support provisions of the decree dissolving his marriage to the petitioner, Shannon J. Krueger. Shannon cross-appeals requesting alimony and an increased property award. We affirm as modified.

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

Michael, age forty-six, and Shannon, age forty-five, were married October 22, 1977. They have two minor children: Jordan, born February 22, 1982; and Jeremy, born August 20, 1993.

Shannon received a degree in psychology in 1974 from Simpson college. She has worked for United Way for twenty years. Shannon earned $27,960 in 1994 prior to deducting child care expenses. The record suggests her earnings tend to fluctuate in the mid to high twenties.

Michael attended Simpson College but did not graduate. At the time of the marriage, Michael was working at his parents' heating and cooling business. In 1987, Michael and his partner, Ron Newman, started a corporation known as A-TEC Energy. The company specializes in demand side management services for utilities. After the corporation secured a contract with Midwest Power, Michael stopped working full-time in the heating and cooling business and devoted all his efforts to A-TEC Energy. Since that time, Michael's income has increased substantially from

$40,481 in 1991 to $73,422 in 1992, and to $101,788 in 1993. The record indicates that while Michael was occupied with the development of his company, Shannon took full responsibility for the care of Jordan and Jeremy. She was also employed full-time during this period.

Shannon initiated these proceedings in June 1994. The case was tried in May 1995 and the court issued a decree in September 1995.

The parties agreed to joint physical custody of the children with Shannon designated as the primary physical caretaker. Shannon's net monthly income was set at $1508 per month while Michael's was determined to be $8589 per month. The trial court ordered Michael to pay $2113 in monthly child support for two children and $1603 per month when only one child qualifies for support. The decree deemed Michael was entitled to claim Jordan as a dependent for income tax purposes and Shannon was entitled to claim Jeremy. The parties were ordered to pay for the children's college educations to the extent of the ratio of their respective incomes.

Shannon employed an expert witness, Yale Kramer, to evaluate the fair market value of A-TEC Energy and Michael's most recent venture, A-TEC Recycling. Michael did not employ the use of an expert witness, however, he vigorously disputed Kramer's findings. The court valued Michael's fifty percent share of A-TEC Energy at $245,000 ($335,000 minus a $90,000 distribution to Michael). The court did not place a value on A-TEC Recycling due to the fact that the corporation had only been

in operation since November 1993. Michael was ordered to pay Shannon $7976.25 to cover Kramer's fees.

The trial court awarded Shannon a property settlement in the amount of $114,915. Michael was awarded all of his stock in A-TEC Energy. Shannon was granted a lien against the stock in the amount of $100,000. The court ordered Michael to pay the settlement in installments of $2000 per month. In addition, any net profits of A-TEC Energy due Michael over and above his salary and business distribution received in 1994, were to be distributed to Shannon in reduction of her property settlement. The judgment was set to draw interest at six percent per annum on the unpaid balance. Michael was also ordered to pay $10,000 toward Shannon's attorney fees.

Michael appeals asserting several arguments with regard to the valuation of his company, the property distribution, the child support award, the provisions for college education, and the award of dependent tax exemptions. Shannon cross-appeals requesting that she be awarded alimony as well as one-half of the A-TEC Recycling stock.

## *II. Standard of Review.*

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

of the district court's trial perspective. *In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa App. 1995); *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992).

***III. Property Valuation.***

Michael asserts the following objections to the trial court's valuation of his share in A-TEC Energy: (1) the trial court failed to reduce the value by any factor due to lack of free marketability; (2) the court did not discount the stock based on its status as a minority interest; (3) the court failed to subtract an additional $89,249 from the book value of the corporation reflecting an additional draw taken by Michael in 1994; (4) the court overvalued the corporation by adding the book value and the earnings value pursuant to the expert witness' testimony; (5) the court erred in valuing the corporation on a cash basis rather than on an accrual basis; and (6) the court erred by failing to consider tax obligations. Michael proposes an alternative valuation using a book value of $450,000, subtracting the $90,000 net distribution made in 1995 and the $89,249 distribution made in 1994, and then dividing that amount by one-half. Using these figures, Michael arrives at a value of $135,000.

The purpose of determining the value of the parties' assets is to assist the court in making an equitable property division and other allowances. *In re Marriage of Steele*, 502 N.W.2d 18, 21 (Iowa App. 1993). It is the province of the trial court to determine the value of marital property and the trial court cannot delegate this responsibility to the parties. *In re Marriage of Dennis*, 467 N.W.2d 806, 808 (Iowa

App. 1990). We are reluctant to disturb the district court's valuations if they are within the range of permissible evidence. *See In re Marriage of Bare*, 203 N.W.2d 551, 554 (Iowa 1973); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa App. 1984).

The general rule is that stock should be valued at market value if it can reasonably be ascertained. *In re Marriage of Dennis,* 467 N.W.2d 806, 808 (Iowa App. 1991). However, the valuation of a closely-held corporation is difficult, and the market value of stock in a closely-held corporation can rarely be ascertained. *Id.* Because of the difficulty of the task of valuation, the law provides much leeway to the trial court. *Id.*

The trial court, after assigning a fair market value of $245,000 to Michael's interest in A-TEC Energy, made the following observations:

> Shannon employed the services of Mr. Yale Kramer to evaluate the fair market value of the two corporations. Prior to trial, and even prior to the testimony of Mr. Kramer, Michael had refused to value either of the two corporations involved in this action. . . . However, after the testimony of Mr. Kramer, Michael submitted a financial statement dated June 2, 1995, in which he listed the market value of A-TEC Energy Corporation at $200,000.
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> Mr. Kramer's testimony was persuasive in eliciting at least some semblance of valuation of these corporations by Michael. It is also evident to the Court that without the assistance of Mr. Kramer's evaluation of the two corporations, the Court would have been left without competent testimony as to the valuation of the most valuable asset of the parties.

The district court was faced with a difficult task in valuing the A-TEC Energy stock, especially in light of Michael's recalcitrance at trial in refusing to place any value on his stock until after hearing the testimony of Shannon's expert. We note that Michael called no independent witnesses on his behalf to testify on the issue of valuation but instead relied on his own estimates of the property values. Shannon's expert is the owner of a business brokerage company and has experience in selling small businesses. He arrived at his conclusions after reviewing the financial records of the company, including tax returns, and after interviewing Michael.

Under the circumstances, we conclude the trial court reasonably relied upon the testimony of Mr. Kramer in setting the value of the A-TEC Energy stock at $245,000. *See In re Marriage of Dennis,* 467 N.W.2d 806, 809 (Iowa App. 1991) (trial court is free to consider any and all evidence of the value of a closely-held corporation, including credibility of expert witness and credibility of the parties). This amount is well within the permissible range of evidence and we will not disturb it on appeal. *See In re Marriage of Steele,* 502 N.W.2d 18, 21 (Iowa App. 1993); *see also In re Marriage of Alexander,* 478 N.W.2d 420, 422 (Iowa App. 1991). Accordingly, we affirm on this issue.

***IV. Property Distribution.***

Michael asserts the trial court made an erroneous allocation of the assets and liabilities of the parties. He argues the decree distributed substantially more property

to Shannon, plus gave her total ownership of her retirement account. Michael also contends the court failed to consider the capital gains tax that will be attributed to his interest in A-TEC Energy. Michael submits an alternative allocation of the assets that enables him to better afford the payments ordered pursuant to the property settlement.

The district court's property division provided the following:

| Assets Awarded to Shannon | |
|---|---|
| 1993 Pontiac | $10,000 |
| Life Insurance | 10,317 |
| Checking accounts | 3210 |
| 401K | 4452 |
| United Way Pension | 100% |
| Personal Property | 4700 |
| Duplex | 70,000 |
| Loan from Shannon's Parents | (14,457) |
| Property Settlement | 114,915 |
| TOTAL | $203,137 |

| Assets Awarded to Michael | |
|---|---|
| 1982 Subaru | $200 |
| First Interstate | 1200 |
| 401K | 8944 |
| Personal Property | 3500 |
| Mortgage | (18,580) |
| Property Settlement | (114,915) |
| A-TEC Energy | 245,000 |
| A-TEC Recycling | 0 |
| Payment to Yale Kramer | (7,976.25) |
| Payment to Shannon's Attorney | (10,000) |
| TOTAL | $107,372.75[1] |

[1] Shannon contends that Michael was awarded a $45,000 receivable from A-TEC Recycling. She does not cite to support in the record for the inclusion of the receivable, nor does the decree designate such an award. Accordingly, we decline to include it in our consideration of the property distribution.

Michael proposes the following adjustments: (1) that Shannon's United Way pension be equally divided between the parties; (2) that the value of the duplex be equally divided, $37,500 allocated to each party; (3) that the loan from Shannon's parents be equally assessed, $7288.50 to each party; (4) that the mortgage be equally assessed, $9290 to each party; and (5) that the value of Michael's interest in A-TEC Energy be reduced to $40,000 in order to reflect the capital gains tax liability. After making these adjustments, Michael computes a net distribution of $58,932.50 to Shannon and $56,899.50 to himself.

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.* The distribution of the property should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1991); *see In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983).

We have already determined the trial court's valuation of Michael's A-TEC Energy stock is reasonable based on the testimony of the expert witness. We decline to adjust the property distribution in accordance with the reduced value urged by Michael.

We are not persuaded by Michael's other arguments in support of a revised allocation of property. Each party was awarded his or her own pension benefits. We find this distribution provides each party with an equitable share of the retirement security earned during the marriage. We also find the division of the real estate and the parties' current liabilities is fair.

Shannon argues the trial court erred by not awarding her one-half of the A-TEC Recycling stock. In response to the parties' post-trial motions, the trial court assigned a value of $0 to the stock and awarded it to Michael. Shannon maintains the corporation has significant earnings potential and is beginning to show a profit. She asserts she is entitled to an equitable division of the stock based on her efforts that enabled Michael to develop the company.

The record indicates that the sacrifices made by Shannon occurred primarily during the development of A-TEC Energy. At the time the divorce decree was entered, A-TEC Recycling was a relatively new enterprise and did not reflect an ascertainable fair market value. We conclude Shannon's cash award of $114,915 accommodates her contributions to the success of Michael's business ventures. Therefore, we do not find that equity demands an additional award to Shannon of A-TEC Recycling stock.

The court ordered Michael to pay Shannon's property award in monthly installments of $2000. In addition, the court ordered Michael, in reduction of the

property settlement, to pay Shannon any net profits of A-TEC Energy due Michael over and above his salary and business distribution received in 1994. Although the issue has not been raised by either party, we believe the payment of additional profits presents adverse financial consequences for Michael that should be avoided. Specifically, we are concerned the award will leave Michael with insufficient funds to satisfy his income tax obligation on the increased profits. Accordingly, we modify the property settlement by striking Shannon's award of the excess profits over and above Michael's 1994 earnings. Michael may pay off the entire balance at any time it may become possible or beneficial for him to do so. All other aspects of the trial court's payment schedule are affirmed.

### *V. Child Support.*

Michael argues the trial court erred in setting his net monthly income too high for purposes of determining his child support obligation. The court found that Michael's income had increased from approximately $40,481 in 1991 to $169,061 in 1994. Using an average of Michael's income from 1992 to 1994, the court set his net monthly income at $8589 per month. The court ordered him to pay $2113 per month in child support for two children and $1603 when only one child remains eligible.

Michael asserts the court improperly attributed Subchapter S income derived from A-TEC Energy as income to him. Excluding the Subchapter S income, Michael submits that an average of his net income for the years 1992, 1993, and 1994 equals

$51,464. He computes his net monthly income at $4074.72. According to the guidelines, Michael argues that twenty eight percent of this amount, or $1140.92, should be his monthly child support obligation for two children.

The Uniform Child Support Guidelines are to be used in determining child support unless the court makes written findings that an adjustment is necessary. *In re Marriage of Toedter,* 473 N.W.2d 233, 235 (Iowa App. 1991). Before applying the guidelines there needs to be a determination of the net monthly income of the custodial and noncustodial parent. *In re Marriage of McKamey,* 522 N.W.2d 95, 98 (Iowa App. 1994). We must determine the parents' current income from the most reliable evidence presented. *In re Marriage of Powell,* 474 N.W.2d 531, 533 (Iowa 1991). Generally, in fixing child support, we consider as gross income what is referred to as "total taxable" income on the Federal 1040 and as "net income" on the Iowa 1040. *See In re Marriage of Cossel,* 487 N.W.2d 679, 683 (Iowa App. 1992).

We agree that the inclusion of the Subchapter S income derived from A-TEC Energy was improper. The Subchapter S income is not necessarily income available to Michael but rather is used to operate the business. We acknowledge that these earnings are difficult to separate from Michael's personal income, however, we must attempt to do so in order to arrive at a support obligation that accurately reflects Michael's ability to pay.

There is no evidence suggesting there has been any attempt to manipulate Michael's earnings in order to avoid his support obligations. We note Michael's 1994 income tax return reported his salary income at $71,168. The corporation's entire earnings are included on his tax returns for the purpose of paying the corporation's income tax obligation as a Subchapter S entity. Shannon's expert witness testified that $75,000 would be reasonable compensation for Michael's services. Mr. Kramer's testimony is the only reliable, independent evidence we can discern from the record on this issue. Accordingly, we conclude Michael's income for child support purposes should be set at $75,000 per year, or $6250 per month.

The amount payable by a noncustodial parent with a net monthly income of $6001 or more can be no less than the dollar amount as provided for in the guidelines for a noncustodial parent with a monthly net income of $6000. *See* Child Support Guidelines, adopted effective July 1, 1995.[2] At a minimum, the guidelines obligate Michael to pay $1596 per month ($6000 x 26.4%). However, in this range of income, "the appropriate figure is deemed to be within the sound discretion of the court or agency fixing support by administrative order." *Id.* We determine Michael's child support obligation should be set at $1800 per month for two children. ($6250 x

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[2] We note that since the amount of child support has been appealed, we must recalculate the child support obligation according to the new child support guidelines which became effective July 1, 1995. *See In re Marriage of Roberts,* 545 N.W.2d 340, 343, n.2 (Iowa App. 1996).

28.8%). When only one child remains eligible, Michael shall be ordered to pay $1200 per month. ($6250 x 19.2%).

***VI. Dependent Tax Exemptions.***

Michael objects to the court's award of dependent tax exemptions. He asserts he is entitled to both dependency exemptions.

If primary care remains in one parent, and the noncustodial parent is current on all child support obligations, then the noncustodial parent may be awarded the dependency exemptions. *In re Marriage of Pothast,* 539 N.W.2d 199, 203 (Iowa App. 1995) (citations omitted). Shannon earns approximately $24,000 per year. Michael will be paying approximately $21,600 per year for the support of two children and $14,400 for the support of one child. Accordingly, Shannon will not be paying more than one-half the cost of supporting the children. The tax exemptions for both Jordan and Jeremy shall be allocated to Michael. *See In re Marriage of Staton,* 511 N.W.2d 418, 421-422 (Iowa App. 1993).

***VII. College Education.***

Michael objects to the provision in the decree that obligates both parties to pay for the children's college educations to the extent of the ratio of their gross incomes. He requests that the trial court retain jurisdiction to make this determination when the children reach the age of college attendance.

We note the legislature recently enacted Iowa Code section 598.21(5A). The decision of the district court on this issue must be modified, and the parents' responsibility for the children's future college expenses should be determined pursuant to the provisions of this section. Under section 598.21(5A)(a)(1), the cost of postsecondary education is limited to the cost of attending an in-state public institution. The child's expected contribution, from scholarships, loans, and earnings, is to be deducted from this amount. Iowa Code §598.21(5A)(a)(2) and (3). The remaining amount should be apportioned to the parents. Iowa Code §598.21(5A)(a)(3). The amount paid by each parent should not exceed thirty-three and one-third percent of the total cost of postsecondary education. *Id.* We modify to provide that Michael's share of expense for the children's postsecondary education shall not exceed the liability of section 598.21(5A)(a)(3).

***VIII. Alimony.***

Shannon cross-appeals asserting the trial court erred in not awarding her alimony. She argues it is not feasible for her to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. Shannon cites her responsibilities as the children's primary care giver, Michael's greater earning capacity, and, finally, the length of the marriage, as reasons supporting an award of alimony. She contends her contributions to Michael's success alone justify an award

of reimbursement alimony. Shannon requests that she receive support in the amount of $1500 per month.

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). 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 the relative needs of the other." *In re Marriage of Miller,* 524 N.W.2d 442, 445 (Iowa App. 1994); *In re Marriage of Estlund*, 344 N.W.2d 276, 281 (Iowa App. 1983) (citation omitted).

We consider alimony and property division together in assessing their individual sufficiency. They are neither made nor subject to evaluation in isolation from one another. *In re Marriage of McLaughlin,* 526 N.W.2d 342, 345 (Iowa App. 1994); *In re Marriage of Griffin,* 356 N.W.2d 606, 608 (Iowa App. 1984). An alimony award is justified when the distribution of the assets of the marriage does not equalize the inequities and economic disadvantages suffered in marriage by the party seeking the alimony who also has a need for support. *In re Marriage of Weiss,* 496 N.W.2d 785, 787 (Iowa App. 1992). The court should also consider the feasibility of the party seeking alimony becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. *In re Marriage of Debbler,* 459 N.W.2d 267, 270 (1990); Iowa Code § 598.21(3)(f).

Shannon has a bachelor's degree and has worked full-time throughout the entire seventeen-year marriage. Accordingly, she does not need additional education to achieve self-sufficiency. Shannon's income is adequate for her subsistence. Moreover, Shannon has received a substantial property award. We conclude this award accommodates her contributions made during the marriage in support of Michael's endeavors. Alimony is therefore unnecessary.

***IX. Attorney Fees.***

Shannon requests an award of appellate attorney fees. An award of attorney fees on appeal is not a matter of right, but rests within the court's discretion and the parties' financial position. *In re Marriage of Gilliam,* 525 N.W.2d 436, 439 (Iowa App. 1994). Shannon has successfully defended part of the trial court's decision on appeal. However, she has not prevailed on her cross-appeal. We accordingly limit her award of appellate attorney fees to $5000.

**AFFIRMED AS MODIFIED.**

**IN THE COURT OF APPEALS OF IOWA**

No. 7-201 / 95-2109 000229

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FILED
OCT 29 1997
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And Concerning
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| 401K | 4452 |
| United Way Pension | 100% |
| Personal Property | 4700 |
| Duplex | 70,000 |
| Loan from Shannon's Parents | (14,457) |
| Property Settlement | 114,915 |
| TOTAL | $203,137 |

| Assets Awarded to Michael | |
|---|---|
| 1982 Subaru | $200 |
| First Interstate | 1200 |
| 401K | 8944 |
| Personal Property | 3500 |
| Mortgage | (18,580) |
| Property Settlement | (114,915) |
| A-TEC Energy | 245,000 |
| A-TEC Recycling | 0 |
| Payment to Yale Kramer | (7,976.25) |
| Payment to Shannon's Attorney | (10,000) |
| TOTAL | $107,372.75[1] |

Michael proposes the following adjustments: (1) that Shannon's United Way pension be equally divided between the parties; (2) that the value of the duplex be equally divided, $37,500 allocated to each party; (3) that the loan from Shannon's parents be equally assessed, $7288.50 to each party; (4) that the mortgage be equally

[1] Shannon contends that Michael was awarded a $45,000 receivable from A-TEC Recycling. She does not cite to support in the record for the inclusion of the receivable, nor does the decree designate such an award. Accordingly, we decline to include it in our consideration of the property distribution.

assessed, $9290 to each party; and (5) that the value of Michael's interest in A-TEC Energy be reduced to $40,000 in order to reflect the capital gains tax liability. After making these adjustments, Michael computes a net distribution of $58,932.50 to Shannon and $56,899.50 to himself.

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.* The distribution of the property should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1991); *see In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983).

We have already determined the trial court's valuation of Michael's A-TEC Energy stock is reasonable based on the testimony of the expert witness. We decline to adjust the property distribution in accordance with the reduced value urged by Michael.

We are not persuaded by Michael's other arguments in support of a revised allocation of property. Each party was awarded his or her own pension benefits. We find this distribution provides each party with an equitable share of the retirement security earned during the marriage. We also find the division of the real estate and the parties' current liabilities is fair.

Shannon argues the trial court erred by not awarding her one-half of the A-TEC Recycling stock. In response to the parties' post-trial motions, the trial court assigned a value of $0 to the stock and awarded it to Michael. Shannon maintains the corporation has significant earnings potential and is beginning to show a profit. She asserts she is entitled to an equitable division of the stock based on her efforts that enabled Michael to develop the company.

The record indicates that the sacrifices made by Shannon occurred primarily during the development of A-TEC Energy. At the time the divorce decree was entered, A-TEC Recycling was a relatively new enterprise and did not reflect an ascertainable fair market value. We conclude Shannon's cash award of $114,915 accommodates her contributions to the success of Michael's business ventures. Therefore, we do not find that equity demands an additional award to Shannon of A-TEC Recycling stock.

The court ordered Michael to pay Shannon's property award in monthly installments of $2000. In addition, the court ordered Michael, in reduction of the property settlement, to pay Shannon any net profits of A-TEC Energy due Michael over and above his salary and business distribution received in 1994. Although the issue has not been raised by either party, we believe the payment of additional profits presents adverse financial consequences for Michael that should be avoided. Specifically, we are concerned the award will leave Michael with insufficient funds to satisfy his income tax obligation on the increased profits. Accordingly, we modify

the property settlement by striking Shannon's award of the excess profits over and above Michael's 1994 earnings. Michael may pay off the entire balance at any time it may become possible or beneficial for him to do so. All other aspects of the trial court's payment schedule are affirmed.

*V. Child Support.*

Michael argues the trial court erred in setting his net monthly income too high for purposes of determining his child support obligation. The court found that Michael's income had increased from approximately $40,481 in 1991 to $169,061 in 1994. Using an average of Michael's income from 1992 to 1994, the court set his net monthly income at $8589 per month. The court ordered him to pay $2113 per month in child support for two children and $1603 when only one child remains eligible.

Michael asserts the court improperly attributed Subchapter S income derived from A-TEC Energy as income to him. Excluding the Subchapter S income, Michael submits that an average of his net income for the years 1992, 1993, and 1994 equals $51,464. He computes his net monthly income at $4074.72. According to the guidelines, Michael argues that twenty eight percent of this amount, or $1140.92, should be his monthly child support obligation for two children.

The Uniform Child Support Guidelines are to be used in determining child support unless the court makes written findings that an adjustment is necessary. *In re Marriage of Toedter*, 473 N.W.2d 233, 235 (Iowa App. 1991). Before applying the guidelines there needs to be a determination of the net monthly income of the

custodial and noncustodial parent. *In re Marriage of McKamey,* 522 N.W.2d 95, 98 (Iowa App. 1994). We must determine the parents' current income from the most reliable evidence presented. *In re Marriage of Powell,* 474 N.W.2d 531, 533 (Iowa 1991). Generally, in fixing child support, we consider as gross income what is referred to as "total taxable" income on the Federal 1040 and as "net income" on the Iowa 1040. *See In re Marriage of Cossel,* 487 N.W.2d 679, 683 (Iowa App. 1992).

We agree that the inclusion of the Subchapter S income derived from A-TEC Energy was improper. The Subchapter S income is not necessarily income available to Michael but rather is used to operate the business. We acknowledge that these earnings are difficult to separate from Michael's personal income, however, we must attempt to do so in order to arrive at a support obligation that accurately reflects Michael's ability to pay.

There is no evidence suggesting there has been any attempt to manipulate Michael's earnings in order to avoid his support obligations. We note Michael's 1994 income tax return reported his salary income at $71,168. The corporation's entire earnings are included on his tax returns for the purpose of paying the corporation's income tax obligation as a Subchapter S entity. Shannon's expert witness testified that $75,000 would be reasonable compensation for Michael's services. Mr. Kramer's testimony is the only reliable, independent evidence we can discern from the record on this issue. Accordingly, we conclude Michael's gross monthly income for child support purposes should be set at $75,000 per year. After subtracting

allowable deductions, we conclude Michael's net monthly income for child support purposes is $4192 per month.

Based on our application of the current child support guidelines,[2] we conclude Michael's child support obligation should be set at $1157 per month for two children (4192 x 27.6%). When only one child remains eligible for child support, Michael shall pay $788 per month for that child (4192 x 18.8%).

*VI. Dependent Tax Exemptions.*

Michael objects to the court's award of dependent tax exemptions. He asserts he is entitled to both dependency exemptions.

If primary care remains in one parent, and the noncustodial parent is current on all child support obligations, then the noncustodial parent may be awarded the dependency exemptions. *In re Marriage of Pothast*, 539 N.W.2d 199, 203 (Iowa App. 1995) (citations omitted). Shannon earns approximately $24,000 per year. Michael will be paying approximately $21,600 per year for the support of two children and $14,400 for the support of one child. Accordingly, Shannon will not be paying more than one-half the cost of supporting the children. The tax exemptions for both Jordan and Jeremy shall be allocated to Michael. *See In re Marriage of Staton*, 511 N.W.2d 418, 421-422 (Iowa App. 1993).

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[2] We note that since the amount of child support has been appealed, we must recalculate the child support obligation according to the new child support guidelines which became effective July 1, 1995. *See In re Marriage of Roberts*, 545 N.W.2d 340, 343, n.2 (Iowa App. 1996).

*VII. College Education.*

Michael objects to the provision in the decree that obligates both parties to pay for the children's college educations to the extent of the ratio of their gross incomes. He requests that the trial court retain jurisdiction to make this determination when the children reach the age of college attendance.

We note the legislature recently enacted Iowa Code section 598.21(5A). The decision of the district court on this issue must be modified, and the parents' responsibility for the children's future college expenses should be determined pursuant to the provisions of this section. Under section 598.21(5A)(a)(1), the cost of postsecondary education is limited to the cost of attending an in-state public institution. The child's expected contribution, from scholarships, loans, and earnings, is to be deducted from this amount. Iowa Code §598.21(5A)(a)(2) and (3). The remaining amount should be apportioned to the parents. Iowa Code §598.21(5A)(a)(3). The amount paid by each parent should not exceed thirty-three and one-third percent of the total cost of postsecondary education. *Id.* We modify to provide that Michael's share of expense for the children's postsecondary education shall not exceed the liability of section 598.21(5A)(a)(3).

*VIII. Alimony.*

Shannon cross-appeals asserting the trial court erred in not awarding her alimony. She argues it is not feasible for her to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. Shannon cites

her responsibilities as the children's primary care giver, Michael's greater earning capacity, and, finally, the length of the marriage, as reasons supporting an award of alimony. She contends her contributions to Michael's success alone justify an award of reimbursement alimony. Shannon requests that she receive support in the amount of $1500 per month.

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). 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 the relative needs of the other." *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa App. 1994); *In re Marriage of Estlund*, 344 N.W.2d 276, 281 (Iowa App. 1983) (citation omitted).

We consider alimony and property division together in assessing their individual sufficiency. They are neither made nor subject to evaluation in isolation from one another. *In re Marriage of McLaughlin*, 526 N.W.2d 342, 345 (Iowa App. 1994); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa App. 1984). An alimony award is justified when the distribution of the assets of the marriage does not equalize the inequities and economic disadvantages suffered in marriage by the party seeking the alimony who also has a need for support. *In re Marriage of Weiss*, 496 N.W.2d 785, 787 (Iowa App. 1992). The court should also consider the feasibility of the party seeking alimony becoming self-supporting at a standard of living

reasonably comparable to that enjoyed during the marriage. *In re Marriage of Debbler,* 459 N.W.2d 267, 270 (1990); Iowa Code § 598.21(3)(f).

Shannon has a bachelor's degree and has worked full-time throughout the entire seventeen-year marriage. Accordingly, she does not need additional education to achieve self-sufficiency. Shannon's income is adequate for her subsistence. Moreover, Shannon has received a substantial property award. We conclude this award accommodates her contributions made during the marriage in support of Michael's endeavors. Alimony is therefore unnecessary.

***IX. Attorney Fees.***

Shannon requests an award of appellate attorney fees. An award of attorney fees on appeal is not a matter of right, but rests within the court's discretion and the parties' financial position. *In re Marriage of Gilliam,* 525 N.W.2d 436, 439 (Iowa App. 1994). Shannon has successfully defended part of the trial court's decision on appeal. However, she has not prevailed on her cross-appeal. We accordingly limit her award of appellate attorney fees to $5000.

**AFFIRMED AS MODIFIED.**