

IN THE COURT OF APPEALS OF IOWA

No. 6-185 / 95-906

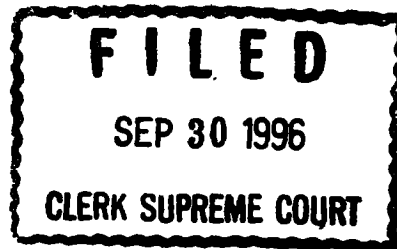
**IN RE THE MARRIAGE OF KIRT D. PARIZEK
AND DEBRA E. PARIZEK**

**Upon the Petition of
KIRT D. PARIZEK,**

Petitioner-Appellee,

**And Concerning
DEBRA E. PARIZEK,**

Respondent-Appellant.



Appeal from the Iowa District Court for Muscatine County, Patrick J. Madden,
Judge.

Debra appeals certain economic provisions contained in the parties' dissolution
of marriage decree. **AFFIRMED AS MODIFIED.**

Thomas G. Reidel, Muscatine, for appellant.

James R. Keele of Keele Law Offices, West Liberty, for appellee.

Considered by Habhab, P.J., and Huitink and Streit, JJ.

HABHAB, P.J.

Debra and Kirt Parizek were married April 23, 1979. They have two children, Ashley, born November 10, 1982, and Brent, born November 27, 1987.

Debra had obtained a college degree prior to their marriage and was certified as a physical education teacher. She began working as a teacher in the West Liberty School District shortly after the marriage and continued as such until 1987, when she became a full-time homemaker. During the marriage, Debra took care of the books for the family farm and other investments and prepared the information for the family tax returns. On occasion, Debra helped on the family farm.

Debra's teaching certificate has expired. If she elects to renew her certification, she needs to complete approximately ten credit hours. The cost of recertification is estimated at \$3000. She has the potential earning capacity of \$20,000 per year and is currently employed on a full-time basis as a secretary at a farm seed dealership earning \$6.50 per hour.

Kirt is a self-employed farmer and is involved in several business ventures with his family. He custom farms crop acreage in which he owns a one-half interest. He also receives income from the various investment properties that were awarded him by the district court. The district court determined Kirt's anticipated annual income from farming, custom farming, and storage rental ventures was approximately \$22,000.

The district court awarded the parties joint custody and Debra primary physical care of their two children. It set Kirt's child support obligation at \$550 per month based on his estimated annual income of \$22,000. The court also determined Kirt should assume one-half of the costs of Debra's teaching recertification, not to exceed \$1500, should she elect to obtain recertification within two years.

The parties brought few assets into the marriage but accumulated a great deal of property during the marriage. Kirt and his brother purchased a one-half interest in a rental house in West Liberty. The parties' equity interest in that property is \$3225. Kirt also purchased a one-third interest in a commercial building referred to as Third Street Commercial Rental which has a value of \$2500. In 1994, the parties purchased a one-third interest, with Kirt's mother and brother, in Muscatine Mini-Storage. They made a cash down payment of \$15,000 to acquire this property which was pooled with a like amount from Kirt's mother and brother. They also invested with Kirt's brother and mother in building a thirty-unit storage facility in West Liberty known as Economy Storage.

Debra and Kirt jointly acquired a farm in Cedar County consisting of 100 tillable acres with a fair market value of \$165,000 and an encumbrance of \$105,389. They purchased this property with a \$6000 down payment that Debra made with inheritance she received from her grandfather. In addition, they also own a home and small acreage near the Cedar County farm valued at \$92,000.

In 1992, Kirt received a one-half interest in three farms as a gift from his mother. This gift was made subject to existing mortgages on each farm. None of the gifted farms are of high quality, but each has appreciated in value during the course of the marriage.

Debra is a one-fifth owner in a retail business known as The Artist Colony. She is an equal owner with her mother and her three sisters. The business was originated by Debra and her family with a gift from her grandmother to each of them in the amount of \$1000. Debra also owns a one-sixth interest in the building which houses The Artist Colony. This property's value is \$29,169. Debra does not realize any monetary gain from this business. All gains and losses are either put back into the corporation or absorbed by the corporation.

The parties have a great deal of farm machinery with a net value of \$57,460 which was awarded to Kirt by the district court.

In distributing the parties' assets, the district court found Kirt's one-half interest in the gifted farms, the appreciated value, and the debt attached to those farms should be set off to him. It further found Debra's one-fifth interest in The Artist Colony, the appreciated value, and the debt should be set aside to her.

The court awarded net assets to Kirt valued at \$415,252 and net assets to Debra valued at \$43,635. The court also ordered Kirt to pay a \$115,000 property settlement to Debra in ten installments at six percent annual interest. The assets and \$115,000 settlement awarded to Debra constitute fifty-three percent of the net marital

worth of the parties. Further, the court provided that should Debra choose to return to teaching, Kirt should pay one-half of the costs incurred by Debra to become recertified, should she elect to do so within two years, but not to exceed \$1500.

Each party was ordered to pay his/her own attorney fees, except Kirt was required to pay \$332.50 to Debra's attorney for his failure to turn over information to Debra in a timely fashion. Debra was ordered to pay the costs of the action. Debra appeals the economic provisions of the district court's order and requests appellate attorney's fees.

Our review is de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court, especially where the credibility of witnesses is concerned, but we are not bound by them. Iowa R. App. P. 14(f)(7).

I. Gifted Property. Debra asserts she should have been awarded half of the appreciation which accrued on the farms gifted to Kirt by his mother.

[G]ifts received by either party during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage.

Iowa Code § 598.21 (1995). Both parties received inheritance and valuable gifts during the course of the marriage. The district court awarded Kirt the farms given to him by his mother, and awarded Debra the business she had acquired through the utilization of her gift from her grandmother.

Notwithstanding Debra's assertion that her efforts during the marriage contributed to the appreciation of the value of the gifted farms Kirt was awarded, we conclude, after a careful review of all the circumstances involved in this case, the district court's award to each party of their respective gifted properties, appreciated value, and the debt associated with those gifts, is a fair and equitable distribution of those assets.

II. Marital Property and Indebtedness. Debra argues the district court inequitably divided the marital assets as she was not awarded any of the parties' income-producing property. She asserts the homestead and the Cedar County farm should have been awarded to her. She argues that awarding this property to her would credit her for the \$6000 down payment made on the Cedar County farm with Debra's inheritance from her grandfather. She claims this award would be more equitable as it would provide both parties with a share of their income-producing property.

In making its determination as to the distribution of marital property and awarding Debra a \$115,000 property settlement, the trial court granted Debra fifty-three percent of the value of the parties' marital net worth.¹ We find this distribution of marital property is equitable and affirm the court's decision in this regard.

¹ In arriving at this figure, the court intentionally excluded consideration of the farms gifted to Kirt and the value of Debra's ownership interest in The Artist Colony and the building in Iowa City, as well as the appreciation on those assets since the dates of the gifts.

III. Interest. Section 535.3 of the Iowa Code provides:

Interest shall be allowed on all money due on judgments and decrees of courts at the rate of ten percent per year, unless a different rate is fixed by the contract on which the judgment or decree is rendered, in which case the judgment or decree shall draw interest at the rate expressed in the contract, not exceeding the maximum applicable rate permitted by the provisions of section 535.2, which rate must be expressed in the judgment or decree. The interest shall accrue from the date of the commencement of the action.

Courts may award interest on property distribution awards less than that called for in Iowa Code section 535.3 if equity so dictates. *In re Marriage of Pertzsch*, 451 N.W.2d 22 (Iowa App. 1989). We affirm the district court's determination and find the six percent interest rate to be equitable.

IV. Rehabilitative Alimony. Debra contends she should have been awarded rehabilitative alimony until she is able to renew her teaching certification and obtain employment. She estimated this will take approximately two years.

As previously noted, the trial court determined that Kirt should pay one-half the cost of Debra's recertification, not to exceed \$1500, should she elect to become recertified within two years.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa App. 1995). Self-sufficiency is the goal of rehabilitative alimony. *See In re Marriage of Francis*, 442 N.W.2d 59, 64 (Iowa 1989). Rehabilitative alimony was conceived as a way of supporting an economically dependent spouse through a limited period of

re-education and retraining following divorce, thereby creating incentive and an opportunity for that spouse to become self-supporting. *Id.* at 63.

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 Estlund*, 344 N.W.2d 276, 281 (Iowa App. 1983) (citation omitted). The district court found that if Debra obtained her teaching certificate, her earning potential would be \$20,000 per year and Kirt's earning potential roughly \$22,000. At the time of the entry of the district court's order, Debra was earning \$6.50 per hour and was employed on a full-time basis outside the home. When we consider Debra's earning capacity after obtaining her teaching certificate, she would not be economically dependent as she would possess roughly the same earning capacity as Kirt. Debra was also awarded a sizeable property settlement and marital assets. We consider property division and alimony together in evaluating their individual sufficiency. *In re Marriage of Dahl*, 418 N.W.2d 358, 359 (Iowa App. 1987); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa App. 1984). We agree with the trial court that neither rehabilitative alimony nor alimony is warranted.

V. Child Support. The district court determined Kirt should pay child support for the parties' two children in the amount of \$550 based on his anticipated net income of \$22,000 per year.

The court determined Kirt would earn \$12,000 per year from farming and an additional \$7000 to \$9000 for custom farming. The court also found the Economy Storage partnership yielded \$3453 in profit for Kirt in 1994. In arriving at an estimation of Kirt's income, the court additionally considered nearly \$20,000 in machinery depreciation taken by the parties in 1994, including \$4000 expense for the livestock trailer. We believe Kirt should pay child support based on a net income per year of \$24,453 or a net monthly income for Child Support Guideline purposes of \$2,037.75. We accept the trial court's apparent determination of net monthly income for Debra of \$817.35.

Debra argues the district court abused its discretion in considering depreciation. Whether depreciation should be deducted from income must be left to the court's discretion to be determined from all of the circumstances, including the amount of depreciation claimed and the property being depreciated. *In Re Marriage of Worthington*, 504 N.W.2d 147 (Iowa App. 1993). We find the district court did not abuse its discretion in considering the depreciation of these assets.²

However, after determining the net income of Kirt and Debra, we conclude the child support provisions of the district court's order should be and the same are hereby modified so as to provide that Kirt's child support obligation for the two

² Appellee directs to our attention that the depreciation on the Economy Storage business was computed on a straight-line basis over a thirty-nine year period. Appellant does not challenge this statement.

children pursuant to the Child Support Guidelines is fixed at \$670 per month. When support for one child is required, the child support shall be reduced to \$456 per month. We modify only the amounts of child support. We affirm all other provisions of the trial court's decree, including but not necessarily limited to the commencement date and place of payments, the occurrence of events that terminate child support, entitlement of exemptions on tax returns, the reserving of jurisdiction for post-high school education, along with the provisions for health and dental insurance.

VI. Attorney's Fees. Debra argues the district court abused its discretion in refusing her request for attorney fees and taxing the costs of the action to her. Iowa trial courts have considerable discretion in awarding attorney fees. *In re Marriage of Giles*, 338 N.W.2d 544, 546 (Iowa App. 1983). To overturn an award, the complaining party must show that the trial court abused its discretion. *Id.* Both parties have roughly the same earning capacity and have been awarded sizeable amounts of marital assets. As such, the district court's determination regarding attorneys fees was not an abuse of discretion. We do, however, award Debra appellate attorney's fees in the amount of \$500.

AFFIRMED AS MODIFIED.