

IN THE COURT OF APPEALS OF IOWA

No. 4-420 / 93-1431

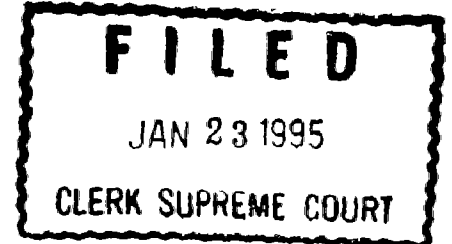
IN RE THE MARRIAGE OF MARGARET FRANCES BREESE AND
ROBERT LAWRENCE BREESE

Upon the Petition of
MARGARET FRANCES BREESE,

Appellee,

And Concerning
ROBERT LAWRENCE BREESE,

Appellant.



Appeal from the Iowa District Court for Johnson County,
Paul J. Kilburg, Judge.

Respondent challenges the alimony and property
provisions of the decree dissolving the parties' marriage
and the posttrial order awarding him his wedding ring.

AFFIRMED AS MODIFIED.

John W. Hayek and Lisa A. Engh of Hayek, Hayek & Brown,
Iowa City, for appellant.

Margaret T. Lainson of Meardon, Sueppel, Downer &
Hayes, Iowa City, for appellee.

Heard by Donielson, C.J., Cady, J., and Keefe, S.J.*

*Senior judge from the First Judicial District serving
on this court by order of the Iowa Supreme Court.

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DONIELSON, C.J.

Three issues are raised in this dissolution appeal. Our review is 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). Upon our review of the parties' arguments and the record, we affirm the trial court's award of alimony and allocation of corporate liability. We modify the trial court's rule 179(b) ruling to clarify the appellant's entitlement to all of his diamond rings.

I. ALIMONY

Margaret and Robert Breese were married on September 12, 1975. A decree dissolving their marriage was filed on April 2, 1993. At the time of the dissolution trial Margaret was fifty-seven years of age, in good health and had an eleventh-grade education. Robert was forty-eight years old and a high school graduate. He had some health problems, but they did not prevent him from operating the couple's steel fabrication business.

At the time of the parties' marriage, Margaret was employed in a clerical position. Subsequent to the marriage Robert began a welding business, which was later incorporated and known as Newport Manufacturing ("Newport"). Margaret helped with bookkeeping, payroll, taxes, accounting, and some of the metal fabrication work

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at Newport. She eventually went to work full-time for the corporation. Through Robert and Margaret's work, Newport became very successful and their life-style improved substantially. Robert and Margaret each owned fifty percent of the stock of the business and the land upon which it was located. At the time of the dissolution the parties had assets valued at between \$850,000-\$900,000. Their only debts were their current business operating expenses and a liability of unknown amount stemming from a products liability lawsuit.

Prior to trial the parties agreed on the valuation of a majority of the assets and how they should be divided. They agreed Robert should be awarded the business and the land upon which it is located and Margaret should be awarded the parties' homestead. The trial court ordered Robert to pay Margaret \$135,000 to offset the difference in the value of the assets awarded the parties.

Margaret had requested \$3,500 a month in alimony. The trial court awarded her \$1,200 a month in alimony until the age of sixty-five. On appeal Robert claims his income is insufficient to require him to pay both the \$135,000 cash award and alimony, and he wishes to be relieved from any alimony obligation.

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

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the factors listed in Iowa Code section 598.21(3). "[T]he spouse with the lesser earning capacity is entitled to be supported, for a reasonable time, in a manner as closely resembling the standards existing during the marriage as possible, to the extent that that is possible without destroying the right of the party providing the income to enjoy at least a comparable standard of living as well." In re Marriage of Hayne, 334 N.W.2d 347, 351 (Iowa App. 1983).

We agree with the well-reasoned analysis of the trial court as to the need for alimony in this case. Robert is receiving the family business. This income-producing asset was the parties' primary source of income and will continue to provide considerable income for Robert. Due to the dissolution Margaret will no longer be employed in the business and will receive no financial remuneration or benefits from it. At age fifty-seven, and with her limited education and clerical skills, it is unlikely she could obtain employment which will come anywhere near to supporting a life-style comparable to that which she had while married.

Robert argues the business has shown recent losses and he will not be able to afford to pay alimony. Robert's arguments are not convincing. He contends he will be receiving less rental income from the corporation. His testimony on this issue was not definite and the evidence indicated the couple had regularly received \$45,000 in

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annual rental proceeds. Similarly, the corporation's five-year history indicated annual sales had previously exceeded \$800,000 and present downturns in sales could be attributable to Robert's absences or difficulties related to the divorce proceedings.

The record supports an award of alimony to Margaret and the evidence indicates Robert will have the earning capacity to pay it. We affirm the trial court's award of \$1,200 a month until Margaret is age sixty-five.

II. ALLOCATION OF CORPORATE LIABILITY

Robert contends the trial court should have ordered the parties to share the legal expenses and liability associated with a products liability suit pending against Newport. The lawsuit was filed less than a month before the dissolution trial. Evidence introduced at the dissolution trial indicated the projected legal expenses in defending the suit would be \$30,000 and the amount of potential liability from an adverse verdict was unknown.

The trial court carefully considered this potential liability and concluded it should be regarded as a business expense for which Robert should be responsible since he was being awarded the business. Robert contends this was an extraordinary expense which adversely affected the value of the business.

Robert sought, and obtained, an order of limited remand from this court for the purpose of making a record

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regarding the outcome and costs of the suit. In August 1994, a jury found Newport liable in the amount of \$52,827.60. Newport subsequently negotiated a settlement of its liability in the amount of \$25,000. Evidence taken during the remand hearing indicated the corporation had incurred \$30,000 in legal expenses and \$3,580.77 in deposition, trial, and court costs. It was estimated \$2-3,000 of the legal expenses had been paid prior to the dissolution trial.

The allocation of marital debts is an integral part of a property division. In re Marriage of Johnson, 299 N.W.2d 466, 467 (Iowa 1980). While the exact amount of the corporation's liability was not known at the time of trial, the trial court was presented with an accurate estimate of the projected legal expenses. We have reviewed the evidence presented at trial and in the remand hearing and conclude allocation of the lawsuit expenses and liability to Robert is equitable. These expenses are tax-deductible for the corporation, but would not be deductible for Margaret.

There is not conclusive evidence to establish the adverse judgment and legal expenses had a negative effect on the value of the company. We conclude it was equitable to assign liability for these matters to Robert. He received the highly-successful business and was in the better position to absorb these expenses.

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III. DIAMOND RINGS

Each party submitted an affidavit of financial status which listed "woman's diamond" and "man's diamond" rings among the parties' assets. The only evidence introduced at trial regarding the rings pertained to the different values each party attributed to them. In its decree the trial court awarded the woman's ring to Margaret and the "men's diamond ring" to Robert. In his rule 179(b) motion Robert brought to the court's attention the fact there were two men's diamond rings and asked for clarification as to which ring the court intended for him to have. The trial court was subsequently advised the parties had three men's diamond rings and it ordered the parties to submit affidavits regarding them.

The parties' affidavits differed substantially as to the number and value of diamond rings they had. In ruling on the rule 179(b) motion the trial court appears to have relied on the assertions in Margaret's affidavit and ordered her to return the men's diamond wedding ring to Robert.

On appeal Robert claims the case should be remanded for the purpose of making a more complete record on this issue. We conclude such a remand is not necessary. Both parties were required to complete an affidavit of financial status and make a true and complete statement of their assets. Iowa Code § 598.13 (1993). In their posttrial affidavits each party admitted the existence of more than

one diamond ring belonging to Robert, even though their pretrial affidavits had listed only one. We presume this omission by both parties was a mutual mistake. Such an oversight is not unusual considering the considerable amount of assets the parties had.

We believe a remand would unduly increase the time and expense associated with this case. Equity warrants Robert be awarded all (whether there are two or three) of the men's diamond rings, and Margaret is ordered to turn over all of the men's rings she has in her possession.

IV. APPELLATE ATTORNEY FEES

Margaret requests appellate attorney fees. An award of attorney fees on appeal may be granted depending upon the parties' respective abilities to pay. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). 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. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). We have considered the parties' respective financial positions and find each party can and should pay his or her own appellate attorney fees.

AFFIRMED AS MODIFIED.