

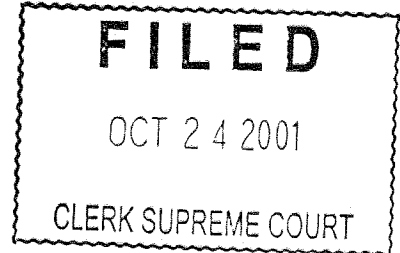
IN THE COURT OF APPEALS OF IOWA

No. 1-365 / 00-1411
Filed October 24, 2001

IN RE THE MARRIAGE OF PATRICIA A. WELTON AND MICHAEL O.
WELTON

Upon the Petition of
PATRICIA A. WELTON,
Appellee,

And Concerning
MICHAEL O. WELTON,
Appellant.



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

The respondent appeals various economic provisions of the parties'
dissolution decree. **AFFIRMED .**

Samuel C. Anderson of Swisher & Cohrt, P.L.C., Waterloo, for appellant.

C. Jean Pendleton of Pingel & Templer, P.C., West Des Moines, for
appellee.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

VOGEL, J.

Michael Welton appeals the economic provisions of the decree dissolving his marriage to Patricia Welton. We affirm both the economic division and the award of alimony made by the district court.

Background Facts and Proceedings.¹ Patricia and Michael were married on October 21, 1974, and at the time of trial were approximately fifty-one and fifty-five years of age, respectively. Michael was a physician prior to the marriage, completed a urology residency during the course of the marriage, and has had a private urology practice in Waterloo since 1980. The income from Michael's practice averaged approximately \$463,000 over tax years 1995 through 1999. The income is dependent upon a number of factors, including the number of hours worked and patients seen, as well as Medicare and private insurance reimbursement rates. During the marriage Patricia obtained a bachelors degree in finance, a two-year associate degree in health care administration, and a masters degree in information management systems. From 1981 to 1999, Patricia was employed as the administrator of the Cedar Falls Lutheran Home. At the time of Patricia's voluntary resignation from her position, she was earning approximately \$77,000 per year. Patricia remained unemployed from the time of her resignation until the time of trial.

¹ We note the massive appendix contained a great deal of duplicative material and inadequate page citations within the table of contents. We prompt appellant to comply with Iowa Rule of Appellate Procedure 15, by including only relevant portions of the record in the appendix, thereby reducing both printing expense and the burden on the appellate courts in referencing points on appeal. See *State v. Oppelt*, 329 N.W.2d 17, 21 (Iowa 1983).

During the marriage a \$257,000 Florida condominium was purchased for Patricia's mother. The parties also used joint assets to purchase Patricia a \$155,000 diamond ring. After Patricia filed for divorce in 1998, joint assets were used to purchase Patricia a \$446,522 house in Florida, near her mother. Michael also borrowed \$225,000 to purchase and improve a condominium for his own use.

The parties completed their exchange of financial information by December 30, 1998, and were able to reach a settlement on January 6, 1999, the day before the original trial date. Michael's attorney confirmed the stipulation terms in a letter to Patricia's attorney, who then drafted the agreement in conformity with those terms. Patricia was to be awarded both Florida properties as well as the marital residence, worth approximately \$500,000 to \$600,000. In exchange, Michael was to be relieved of any alimony obligation. Accounting for various other items such as Michael's practice and financial accounts and funds, Patricia was to receive slightly less than \$2,000,000 in net assets, with Michael to receive approximately \$1,700,000. Part of that distribution was the award to Patricia of one of the parties' Porsche automobiles, and the award to Michael of the sale proceeds from the other.

According to Patricia, when she received the proposed stipulation, she was immediately concerned by the fact the stipulation merely awarded her the three properties. She testified that it was her belief she had been guaranteed to receive the amounts at which the properties were valued, regardless of the properties' actual selling prices. However, it appears she did not take formal

action on this concern until shortly after Michael's attorney received his copy of the stipulation, in mid-April 1999. By that time Patricia had experienced some difficulties in selling the marital residence and requested a guarantee that she would net at least \$400,000 from its sale. In response, Michael offered to compensate Patricia, in the event of a net sale under \$400,000, for one-half of the difference between \$400,000 and the actual net proceeds. Michael's offer was apparently unacceptable, as Patricia refused to proceed until after the sale of the marital residence.

Patricia sold the Florida home and, after the death of Patricia's mother in the summer of 1999, Michael sold the Florida condominium and gave Patricia the net proceeds. In both cases the net sale proceeds exceeded the net value agreed upon by the parties in the joint statement of affairs. In contrast, the net proceeds from the sale of the marital residence fell short of both its estimated net values and Patricia's requested \$400,000 guarantee. The bulk of the proceeds from all three sales were transferred to non-retirement investment accounts in Patricia's name.

In September 1999 Patricia fired her attorney and retained new counsel, who apparently sought renegotiation of the prior agreement. Michael moved to enforce the settlement agreement on November 4, 1999, but the district court denied the request. After trial the court divided the assets in roughly the same fashion as provided for by the prior stipulation, awarding Patricia slightly over \$2,000,000 in net assets, and Michael slightly under \$2,000,000 in net assets. The court valued the diamond ring at \$70,000, but set it aside as gifted property.

The court also awarded Patricia \$7,000 per month in spousal support until she reached the age of fifty-nine and one-half or died, whichever occurred first. Michael appeals.

Scope of Review. Marital dissolutions are proceedings in equity. *In re Marriage of Knickerbocker*, 601 N.W.2d 48, 50-51 (Iowa 1999). Accordingly, our review is de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court, particularly on issues of credibility, but are not bound by those findings. Iowa R. App. P. 14(f)(7).

Equitable Property Distribution. Iowa does not require an equal division of marital assets, but rather the courts look to see what is fair and equitable under the circumstances. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa Ct. App. 1991). Michael argues the property distribution was inequitable, based on a number of factors.

Michael first argues that if relevant tax consequences and other equitable factors are taken into account, Patricia was in fact awarded over \$600,000 more in assets than he himself received. His primary complaint is that the court failed to take into account the deferred tax consequences relevant to the valuation of several assets. However, Michael was not ordered to liquidate any of these assets, nor will any have to be liquidated to otherwise meet his financial obligations under the decree. Thus, it was appropriate for the district court to consider their full value when crafting the distribution scheme. See *In re Marriage of Hayne*, 334 N.W.2d 347, 353 (Iowa Ct. App. 1983).

Michael further contends the district court drastically overvalued one fund, the A.G. Edwards Oracle fund, because the seed money for that investment was the proceeds from the sale of his Porsche. He urges us to assess only the amount of the sales proceeds, and not the fund's current value. However, the courts traditionally use the date of trial as the date for valuation of assets, and we do not see facts sufficient in this case to alter that standard. See *In re Marriage of Campbell*, 623 N.W.2d 585, 588 (Iowa Ct. App. 2001) (finding trial date to be appropriate date for valuation of assets, unless unique circumstances of case make it practicable and equitable to value at time of separation). He also contends that his condo was overvalued. However, the record supported the district court's valuation, and we will not set aside a trial valuation that is within the permissible range of evidence. *In re Marriage of Driscoll*, 563 N.W.2d 640, 643 (Iowa Ct. App. 1997).

Michael also complains that, in making the property division, the district court failed to properly consider Patricia's education and earning capacity, as well as the alimony award. Alimony and property division are intertwined, and one cannot be considered without reference to the other. Iowa Code § 598.21(1)(h) (1999). Thus, Patricia's earning capacity and education must be considered when assessing the fairness of the property division. However, even if Patricia were to obtain a position with a yearly salary commensurate with her past earnings, the length of the marriage, the relative financial positions of the parties at the start of the marriage, and the contributions each has made to marriage, all militate in favor of the district court's property division. See Iowa

Code § 598.21(1) (1999). The appropriateness of the alimony award itself will be addressed in the next section of this opinion.

Michael next contends that the trial judge was in some way bound by the failed stipulation. We are not persuaded by this argument. After the hearing on Michael's motion to enforce, the district court noted that:

[T]here are equitable, economic and practical reasons to enforce the terms of the parties' verbal agreement. However, those factors are not legally sufficient to enforce the agreement at this time. However, those factor may come into play at the time of trial in determining an appropriate division of property.

Clearly, the district court was not persuaded the agreement was binding, or it would have found it to be enforceable. By his ruling the hearing judge left the issues of property division for determination at the time of trial, and the consideration and relevant factors to the discretion of the trial court. While the trial court was free to consider the failed negotiations, it was not bound to do so. Iowa Code § 598.21(1)(m) (1999).

Michael further alleges the distribution should be altered due to Patricia's intentional diminution of marital assets, specifically the net sales proceeds from the two Florida properties and the marital home. As the stipulation was unenforceable, the fluctuation in the value of the various assets, and Patricia's use of the assets, is significant only if Patricia wasted or otherwise inappropriately disposed of those funds prior to trial. *See Campbell*, 623 N.W.2d at 588. While Patricia's actions did not work to Michael's benefit, they fall far short of waste or improper expenditures. Rather, they indicate a continuation of the parties' lifestyle. *Cf. In re Marriage of Johnson*, 350 N.W.2d 199, 200-01

(Iowa 1984) (husband effected unauthorized transfer of previously borrowed funds to make improvements to property, which then decreased in value).

Finally, Michael attacks the district court treatment of the diamond ring. He first seems to complain that ring was only valued at \$70,000, even though the purchase price was \$155,000. However, it was Michael's own expert who valued the ring at \$70,000, and the court accepted that evaluation. As previously noted, we will not disturb the court's assessment of a value that was within the permissible range of evidence. *In re Driscoll*, 563 N.W.2d at 643. Michael also argues the district court should have included the ring in the asset division. Even if Michael is correct and an intraspousal gift cannot be set aside as gifted property, the key question is whether, viewing all economic aspects of the decree as an integrated whole, the overall distribution scheme is in fact equitable. See *In re Marriage of Jensen*, 396 N.W.2d 367, 368 (Iowa Ct. App. 1986). The district court found the overall scheme of distribution to be equitable, and we agree with that assessment.

Alimony. The district court awarded Patricia \$7,000 per month in alimony, but did not designate the type of alimony being awarded. We agree with Michael's contention that neither reimbursement nor rehabilitative alimony is applicable in this case. Patricia has been amply compensated for any economic sacrifices made during the marriage, and given her education and employment background, Patricia does not require further education or training to be self-sufficient. See *In re Marriage of O'Rourke*, 547 N.W.2d 864, 866 (Iowa Ct. App. 1996) (defining types of alimony). However, we do find an award of traditional alimony to be appropriate. Although Patricia is capable of being self-

supporting, the question is whether she can be self-supporting at a standard of living comparable to that enjoyed during the marriage. Iowa Code § 598.21(3)(f) (1999). In making that determination we consider the parties' earning capacities and Michael's ability to pay. *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa Ct. App. 1994).

Michael points to the fact Patricia is unemployed, despite a demonstrated and substantial earning capacity, and that her claimed monthly expenses are excessively high. Even given these points, the fact remains that Michael's demonstrated income is at least six times that of Patricia's, and the couple's standard of living during their near twenty-six year marriage was keyed to Michael's earnings. Taking into account the property division, including substantial income producing assets, and assuming Patricia is able to find employment at her past level of income, alimony is still appropriate. See *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997) ("Following a marriage of long duration, we have affirmed awards of both alimony and substantially equal property distribution, especially where the disparity in earning capacity has been great.") Given Michael's income, even allowing for a gradual reduction over the next few years, he is capable of meeting this obligation. We therefore affirm the alimony award.

Attorney Fees. Both parties have ample assets to pay their own attorney's fees and we find no convincing argument on appeal to award such fees.

AFFIRMED.