

IN THE COURT OF APPEALS OF IOWA

No. 5-625 / 95-0468

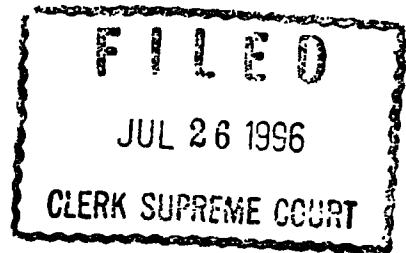
**IN RE THE MARRIAGE OF BEVERLY P.
DUBERSTEIN AND DANNY LEE DUBERSTEIN**

Upon the Petition of
BEVERLY P. DUBERSTEIN,

Petitioner-Appellant/Cross-Appellee,

And Concerning
DANNY LEE DUBERSTEIN,

Respondent-Appellee/Cross-Appellant.



Appeal from the Iowa District Court for Polk County, Robert A. Hutchison,
Judge.

Beverly Duberstein appeals and Dan Duberstein cross-appeals from the
economic provisions of their dissolution decree. **AFFIRMED AS MODIFIED.**

Timothy M. Duffy, Des Moines, and Jeanne K. Johnson, Des Moines, for
appellant.

David S. Wiggins of Wiggins, Anderson & Conger, West Des Moines, for
appellee.

Considered by Huitink, P.J., Streit, J., and McCartney, S.J. *

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

PER CURIAM

The wife appeals the parties' dissolution decree on the issues of child support, payment of college expenses for the children, alimony, property division, and attorney fees. The husband cross-appeals on the issue of the property distribution. We affirm as modified by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Beverly and Dan Duberstein were married in 1968. They have four children. The eldest child, Stephanie, attends Grand View College. The three youngest children were minors at the time of the dissolution. Susan was born in December 1976, Stacie was born in September 1978, and Sarah was born in October 1981.

Dan is a doctor specializing in gastroenterology. He has annual income of about \$390,500 and net monthly income of \$22,517. Beverly was employed as an elementary teacher for a few years after the parties married, but has not been employed outside the home since.

The district court entered a dissolution decree for the parties on January 4, 1995. The parties were granted joint legal custody of the minor children, with Beverly having primary physical care. Dan was ordered to pay child support of \$1,200 per month for the three minor children. He was also ordered to pay for the college education of the children, limited to the costs of tuition, room and board at a regents' school.

The court ordered the parties to sell the marital home and the divide the proceeds evenly. In addition, Beverly was awarded assets worth about \$1.1 million

and Dan was awarded assets worth about \$1 million. Dan was ordered to pay alimony of \$3,000 per month for two years, \$2,000 per month for the next two years, and then \$1,000 per month for the next six years. Beverly appealed and Dan cross-appealed.

I. 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 the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992).

II. Beverly believes Dan's child support obligation should be increased to \$3,000 per month. She believes Dan can afford to pay more than the amount awarded, \$1,200. We note that new child support guidelines are now in effect. Because Dan's net monthly income exceeds \$6,000, under the present child support guidelines, the award of child support was within the district court's discretion as long as the amount was not less than the amount required to be paid by a parent with a net monthly income of \$6,000. *See In re Marriage of Vanderpol*, 529 N.W.2d 603, 605 (Iowa App. 1994).

We determine that as of July 1, 1995, Dan should pay child support under the new child support guidelines, which went into effect on that date. By July 1, 1995, only the two youngest children, Stacie and Sarah, were minors. Under the new child support guidelines, Dan would be required to pay at least \$1,416 for the two children.

We determine his child support obligation should be \$1,750 per month for support for the two minor children until Stacie becomes eighteen or graduates from high school, whichever occurs last. Dan must pay \$1,300 per month in support of Sarah until she becomes eighteen or graduates from high school, whichever occurs last. We make this determination based on the fact that his net monthly income is substantially more than \$6,000. Prior to July 1, 1995, his child support obligation remains as set by the district court.

III. Beverly also claims the district court should have required Dan to pay more of the children's college expenses. She asks that Dan be made responsible for the costs of books and other fees. Iowa Code section 598.1(2) allows a trial court, in its discretion, to order support continued through college under certain circumstances. *In re Marriage of Mayfield*, 477 N.W.2d 859, 862 (Iowa App. 1991). We find no abuse of discretion under the facts of this case. In addition to the fact that Beverly was awarded sufficient assets to also help pay the children's education, the children may assist through scholarships, grants or loans.

IV. Beverly asks to have her alimony award increased to \$7,500 per month for a period of twelve years. She states that even if she decides to return to work, her income would never approach that of Dan. We consider property division and alimony together in evaluating their individual sufficiency. *In re Marriage of Whelchel*, 476 N.W.2d 104, 110 (Iowa App. 1991). The discretionary award of alimony is made after considering those factors listed in section 598.21(3).

Here, the district court decided it would be better to award Beverly a greater amount of the parties' assets rather than award her a greater amount of alimony. The court stated it took this approach because Dan had health problems due to two heart attacks and diabetes, and it was difficult to project his future earning capacity. We agree with the district court that under the facts of this case, the award of alimony is adequate when considering the amount of property awarded to Beverly.

V. Beverly challenges the distribution of property. In particular, she believes the court should not have awarded her the Southern Manor apartment complex because the complex is owned in partnership with Dan's brother. She asks to be awarded \$81,299 instead. We find that Beverly should be awarded Southern Manor. This apartment complex has a shorter time left on the mortgage than some of the other apartment complexes owned by the parties, and thus, will become a source of income sooner.

Beverly also claims the court should not have ordered her to pay one-half of the mortgage, utilities and insurance on the parties' home. Beverly was ordered to contribute to these costs until June 1, 1995, or the house was sold, whichever occurred first. Beverly states that in view of the low child support and alimony awards, she should not be required to contribute to these expenses. We find Beverly has sufficient financial resources to contribute to these expenses.

VI. Beverly contends the district court abused its discretion in refusing to award her trial attorney fees. Iowa trial courts have considerable discretion in

awarding attorney fees. *In re Marriage of Hunt*, 476 N.W.2d 99, 103 (Iowa App. 1991). We find no abuse of discretion in the present case. Beverly was awarded a large amount of assets, which should enable her to pay her trial attorney fees.

VII. Beverly also asks for attorney fees for this appeal. We determine each party should pay his or her own attorney fees for the appeal and cross-appeal.

VIII. Dan's cross-appeal requests that if we changed any of the support provisions in the parties' dissolution decree, we reconsider the property distribution. Although we have modified Dan's child support obligation, we find the distribution of property was equitable under the fact of this case. The partners in 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).

We have modified the parties' dissolution decree to increase Dan's child support obligation. We affirm the district court on all other issues raised in the appeal and cross-appeal. Costs of this appeal are assessed one-half to each party.

AFFIRMED AS MODIFIED.