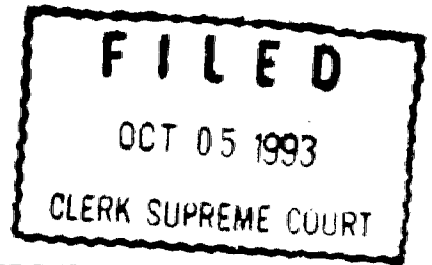


IN THE COURT OF APPEALS OF IOWA

No. 3-067 / 92-382



IN RE THE MARRIAGE OF KARIN LEDGER AND STEPHEN LEDGER

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Upon the Petition of

KARIN LEDGER,

Appellee/Cross-Appellant,

And Concerning

STEPHEN LEDGER,

Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Jefferson
County, James P. Rielly, Judge.

The former husband appeals and the former wife
cross-appeals the economic provisions of the parties'
dissolution decree. **AFFIRMED AS MODIFIED.**

Steven Gardner of Kiple, Kiple, Denefe, Beaver &
Gardner, Ottumwa, for appellant.

Richard J. Bell of Bell & Vilsack, Mount Pleasant, for
appellee.

Considered by Oxberger, C.J., and Schlegel and Habhab,
JJ.

HABHAB, J. 000280

Stephen and Karin Ledger were married on July 22, 1977. They have two children: Jessica, born March 3, 1979, and Erin, born July 6, 1983.

At the time of the hearing, Karin was thirty-three years old and Stephen was thirty-five years old. Karin's health is currently good although she has been treated for cancer in the past. Karin worked several years as a dental assistant and receptionist earning seven dollars an hour. In 1988, Karin enrolled as a full-time college student. With the exception of two summer classes, Karin's education has been financed by student loans and grants. At the time of the hearing, Karin intended to complete her master's degree, which will require additional student loans. Karin expects to graduate by September 1, 1994, and earn approximately \$25,000 to \$30,000 a year.

Stephen is a high school graduate with two additional years of farm mechanic training. He is a self-employed farmer and a farm equipment mechanic.

Karin filed a petition for dissolution of marriage. The parties stipulated to joint legal custody of the children with Karin having physical custody.

The district court found that Stephen's net yearly income in 1989 was approximately \$32,069 and approximately \$30,588 in 1990. The district court concluded that Stephen's yearly income is \$30,000, or approximately \$2500 a month. The district court ordered Stephen to pay Karin

rehabilitative alimony in the amount of \$500 per month until September 1, 1994. The district court deducted the \$500 per month alimony paid by Stephen from his net monthly income. Based upon a monthly income of \$2000 for Stephen and \$500 for Karin, the district court ordered Stephen to pay Karin \$686 per month child support. The district court ordered Stephen to carry health insurance on the children.

Prior to the parties' marriage, Karin's father gave her part interest in a grain elevator. During their marriage, Karin received a total of \$24,000 in interest and principal payments on the asset. The district court took into consideration the \$24,000 payments Karin received when it divided the assets and liabilities of the parties. The district court awarded Karin approximately \$61,799 in assets and Stephen received approximately \$53,317. The district court awarded Karin the house, its contents, and a car. Stephen received all of the farm equipment. The district court ordered Stephen to pay the remainder of the car loan.

Stephen filed a rule 179(b) motion which Karin resisted. Stephen argued that the district court erred in disallowing depreciation deductions in computing his net income for the purposes of child support and awarding rehabilitative alimony. The district court overruled Stephen's motion, concluding that the facts justified the inclusion of depreciation and the award of alimony. The district court did amend the decree so as to provide that

Stephen is entitled to take the two children as exemptions on his income tax.

On February 6, 1992, the district court entered a decree dissolving the parties' marriage. The provisions of the decree were consistent with its prior findings. Stephen appeals. Karin cross-appeals.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). 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).

I. Rehabilitative Alimony.

Stephen contends Karin is not entitled to rehabilitative alimony. He points out that Karin was scheduled to graduate in May 1992 with a Bachelor of Arts degree in psychology and sociology. He believes Karin could find full-time employment without having her master's degree in social work.

Alimony is an allowance to the ex-spouse in lieu of a legal obligation to support that person. In re Marriage of Oler, 451 N.W.2d 9, 13 (Iowa App. 1989). When determining the appropriateness of alimony, the court should consider the factors listed in Iowa Code section 598.21(3).

Rehabilitative alimony was conceived as a way of supporting an economically dependent spouse through a limited period of reeducation or retraining following a divorce, thereby creating incentive and opportunity for that spouse to become self-supporting. In re Marriage of Francis, 442 N.W.2d 59, 63 (Iowa 1989). Because self-sufficiency is the goal of rehabilitative alimony, the duration of such an award may be limited or extended depending on the realistic needs of the economically dependent spouse, tempered by the goal of facilitating the economic independence of the ex-spouse. Id. at 64.

We find Karin is entitled to rehabilitative alimony. Karin testified that if she found a job as a social worker now she could probably earn \$15,000 per year. She stated that she believed these positions were scarce for a person with a bachelor's degree and no experience. Karin has projected that she will obtain a master's degree by September of 1994. She believes at that time she can find employment with a starting salary between \$25,000 and \$30,000. By awarding Karin alimony of \$500 per month until September 1, 1994, Karin will be able to finish her master's degree and become better able to support herself and to contribute to the support of the parties' children.

II. Distribution of Assets and Liabilities.

Stephen also contends the property distribution is inequitable to him. Stephen claims he should not have been

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assigned the loan on the Acura Legend because the automobile was awarded to Karin.

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). The Iowa courts do not require an equal division or percentage distribution. Id. The determining factor is what is fair and equitable. Id.

Prior to the parties' marriage, Karin's father gave Karin part interest in the elevator. When the elevator was sold, Karin began receiving a portion of the contract payments. During the course of the marriage Karin received \$24,000 from the contract sale of an elevator. This money was used to help the parties buy their first home and to pay everyday living expenses.

Iowa Code section 598.21(2) (1991) provides:

Property inherited by either party or gifts received by either party prior to or 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.

The intent of the donor and the circumstances of the gift control whether the gift is to be set off in the dissolution. In re Marriage of Hoffman, 493 N.W.2d 84, 89 (Iowa App. 1992). Whether the gifts were placed in joint ownership is not controlling. Id.

The trial court awarded Karin net assets of \$61,799 and Stephen net assets of \$53,317. The trial court recognized that in making the above distribution that it was not fully compensating Karin for the full amount of the gift that she received; however, it found that the distribution was equitable considering all the circumstances surrounding the receipt of that property in this case.

We find the trial court properly considered the gift from Karin's father when dividing the parties' property. We also find, after carefully examining the record in light of the criteria codified in Iowa Code section 598.21(1) (1991), the district court's division of the parties' assets and liabilities was fair and equitable.

III. Child Support.

Stephen claims the district court erred in determining his income for child support purposes because it did not deduct depreciation before determining his net income.

The district court examined the parties' federal and state income tax returns for the years 1989 and 1990. The court noted that the depreciation deduction on the Schedule F farm schedule would be a noncash outlay item, so it added the depreciation deduction back into the net income.

Our supreme court in In re Marriage of Gaer, 476 N.W.2d 324, 328 (Iowa 1991) specifically rejected a rule that would categorically disallow depreciation in calculating net disposable income because it did not involve any cash

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outlay nor reduce actual dollar income. Instead, our supreme court adopted a rule that

depreciation should not categorically either be deducted as an expense or treated as income, but rather that the extent of its inclusion, if any, should depend on the particular circumstances of each case.

Id.

We find that Stephen's depreciation of his farm equipment is a business expense reasonably necessary to maintain his occupation as a farmer. We think adjustments relative to depreciation are therefore necessary to provide for the needs of the children and to do justice between the parties. See id. at 329.

Before recalculating Stephen's child support we must address Karin's cross-appeal. Karin claims that she should have been awarded the dependency exemption for the parties' two children. Since at this time Karin has no income, we believe the district court correctly awarded Stephen the dependency exemptions for the two children.

When Stephen's net monthly income is adjusted to take into account depreciation of his farm equipment and his children's dependency exemptions, it is \$1438 per month. When we deduct Stephen's alimony payment from his income and apply the child support guidelines, we find Stephen should pay \$349 per month in child support.

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IV. Abatement of Child Support During Summer Months.

Finally, Stephen seeks an abatement of his support obligation during the period of his summer visitation. Generally the support obligation is not reduced during periods of extended visitation, as the custodial spouse has the continuing obligation to maintain the house and other necessary expenses. In re Marriage of Toedter, 473 N.W.2d 233, 235 (Iowa App. 1991); In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976).

We find Karin's fixed expenses will probably remain the same except for a reduction in the food bill. We therefore refuse to abate Stephen's child support obligation during his six week summer visitation with the children.

Court costs are assessed one-half to Stephen, one-half to Karin.

AFFIRMED AS MODIFIED.