

IN THE COURT OF APPEALS OF IOWA

No. 2-221 / 91-962

FILED

OCT 27 1992

CLERK SUPREME COURT

IN RE THE MARRIAGE OF GARRETT RIDGLEY, JR., AND
DIANNE DILLON-RIDGLEY

Upon the Petition of
GARRETT RIDGLEY, JR.,

Appellee,

And Concerning
DIANNE DILLON-RIDGLEY,

Appellant.

Appeal from the Iowa District Court for Des Moines
County, John C. Miller, Judge.

Respondent wife appeals certain provisions of the
decree dissolving the parties' marriage. **AFFIRMED AS
MODIFIED.**

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

Michael G. Dieterich of Cahill, Dieterich & Schilling,
Burlington, for appellee.

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

SCHLEGEL, J.

Garrett Ridgley, Jr. and Dianne Grandville James Dillon were married in June 1974. Dianne thereafter went by the name Dianne Dillon-Ridgley. The parties have two children: Karima Afia Ridgley, born December 3, 1976; and Dasal Ridgley, born May 26, 1980.

When the parties married Garrett had just finished medical school. They lived in Boston, Massachusetts, while Garrett finished an internship and residency. In July 1979 they moved to Washington, D.C., where Garrett attempted to establish a private practice in his area of specialty, nephrology. In the summer of 1980 the parties moved to Burlington, Iowa, and have remained there.

Garrett was forty-two years old at the time of the dissolution hearing. He is a general practitioner in medicine. Garrett works an average of ninety-five hours per week. His average income from 1987 to 1990 was \$97,810. The district court found Garrett would earn approximately \$100,000 per year in the future. His net monthly income is \$5,205.

Dianne was forty years old at the time of the dissolution hearing. She attended Howard University in Washington, D.C., but did not obtain a degree because she was a few hours short of graduation requirements. Dianne worked at the John F. Kennedy Library and at a local television station when the parties lived in Boston. She taught movement classes to preschool children when the parties lived in Washington.

Dianne was not employed outside the home after the parties moved to Burlington. Instead, she devoted her time to many charitable and civil rights organizations. For example, she was appointed by the governor to be a member of the Targeted Small Business Advisory Board and a task force on bias-related crime. Dianne was on the national board of directors for the Young Women's Christian Association (YWCA). Dianne is also a certified mediator. Because of her activities she has been asked to speak at many conferences and to write articles for various publications. Dianne's volunteer work caused her to travel extensively.

The district court awarded the parties joint legal custody of the children, with Dianne having primary physical care. Garrett was given visitation rights. Dianne was awarded rehabilitative alimony of \$1,200 per month for eighteen months. The district court concluded that while Garrett is paying alimony, it would consider his net income for purposes of applying the child support guidelines to be \$3,000 per month. The court found Dianne had the ability to earn at least \$1,000 per month. Garrett was ordered to pay child support of \$900 per month for eighteen months and \$1,200 per month thereafter.

The court divided the parties' property to award Garrett assets valued at \$129,504 and liabilities of \$114,218. Thus, Garrett received a net award of \$15,286. Dianne received assets valued at \$75,639 and liabilities of

\$15,104, which gives her a net award of \$60,535. Part of the reason for the difference in the property awards was due to some unwise investments which Garrett made without Dianne's approval. The district court charged these investments exclusively to Garrett. Garrett was ordered to pay \$3,500 toward Dianne's attorney fees. Dianne has 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. Dianne first contends she should have been awarded alimony for a longer period of time. She states that eighteen months is not a sufficient period of time to allow her to complete her education and obtain a job which will allow her to be self-supporting. She points out that she has been out of the job market for fifteen years.

It is well settled that alimony is not an absolute right and must be determined based on the facts and circumstances of each case. Brown, 487 N.W.2d at 334. Alimony is an allowance to a spouse in lieu of a legal obligation to support that person. Id. The determination of an amount of spousal support may take into account the property division. Id.

We agree with the district court's conclusion that eighteen months should give Dianne sufficient time to complete her degree and find a job which will allow her to be self-supporting. We note Dianne obtained many acquaintances in connection with her volunteer work. We affirm the award of rehabilitative alimony of \$1,200 per month for eighteen months. This alimony will terminate only upon the death of either party.

III. Dianne claims the district court should have divided Garrett's retirement fund equally between the parties. The district court awarded Dianne one-third of the retirement fund by means of a qualified domestic relations order and awarded the remaining two-thirds to Garrett.

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). In making a division of property, the determining factor is what is fair and equitable in each particular case. Id. Pension benefits are treated as marital property and are subject to equitable distribution. In re Marriage of Huffman, 453 N.W.2d 246, 248 (Iowa App. 1990).

We do not look to the division of the retirement plan alone, but look to the entire property division to determine whether the district court's division is fair and equitable. We also 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). As Dianne admits, she did receive a larger share of the property division as a whole. We determine it would be inequitable to award her a larger share of Garrett's retirement plan. We affirm the property division as set forth by the district court.

IV. Dianne also contends Garrett should be required to pay a greater amount in child support. Dianne does not dispute the district court's finding that she had the ability to earn at least \$1,000 per month.

There is a rebuttable presumption that the amount of child support specified by the guidelines is the correct amount of support to be awarded. In re Marriage of Lee, 486 N.W.2d 302, 305 (Iowa 1992). The guidelines are designed to consider both the ability of the parents to provide support for their children and the needs of the children. Id. at 306. The child support guidelines are to be strictly followed unless their application would lead to an unjust or inappropriate result. In re Marriage of Brown, 487 N.W.2d 331, 333 (Iowa 1992). The payment of alimony may be considered by the court in applying the child support guidelines. In re Marriage of Lalone, 469 N.W.2d 695, 697 (Iowa 1991).

In the present case, considering Garrett has net monthly income of \$5,205 and Dianne has net monthly income of \$1,001, Garrett's child support obligation is \$1,562.

If we deduct Garrett's alimony payments of \$1,200 from his net monthly income, his child support obligation would be \$1,202. We conclude Garrett's child support obligation should be \$1,202 during the time he is paying rehabilitation alimony to Dianne. After his obligation to pay alimony is completed, he should pay child support of \$1,562 per month while he is still paying child support for two children. Garrett's child support obligation will be reduced to \$1,171 when he is only paying for one child.

V. Finally, Dianne contends that the court should have required Garrett to maintain life insurance naming the children as beneficiaries. Dianne admits that the district court did not rule on this issue and that she did not raise it in her posttrial motion.

We have previously ruled that where a dissolution decree does not address an issue and the parties did not seek an enlargement of findings, the failure to present the trial court with the claimed error precludes the parties from first raising the issue on appeal. In re Marriage of Davis, 462 N.W.2d 703, 704 (Iowa App. 1990). We conclude Dianne failed to preserve error on this issue.

VI. In summary, we modified the dissolution decree to increase Garrett's child support obligation to comport with the child support guidelines. We affirm the district court decree in all other respects. Costs of this appeal are assessed one-half to each party.

AFFIRMED AS MODIFIED.

Hayden, J., concurs; Oxberger, C.J., dissents.

OXBERGER, C.J. (dissenting)

I respectfully dissent. The majority has granted the appellee relief although he did not appeal. I would not do so.