

IN THE COURT OF APPEALS OF IOWA

No. 8-619 / 97-1807

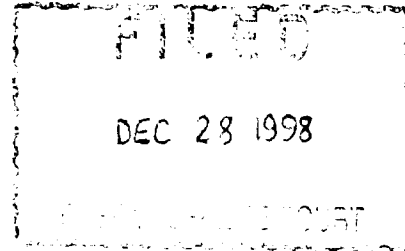
**IN RE THE MARRIAGE OF RICHARD FRANK
RICHARDS AND MISTY LEE RICHARDS**

**Upon the Petition of
RICHARD FRANK RICHARDS,**

Petitioner-Appellant/Cross-Appellee,

**And Concerning
MISTY LEE RICHARDS,**

Respondent-Appellee/Cross-Appellant.



Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul,
Judge.

Petitioner appeals, and respondent cross-appeals, from various economic
provisions of the parties' dissolution decree. **AFFIRMED.**

Thomas A. Vakulskas of Vakulskas & Hoffmeyer, P.C., Sioux City, for
appellant.

Dennis R. Ringgenberg of Crary, Huff, Inkster, Hecht & Sheehan, P.C., Sioux
City, for appellee.

Heard by Sackett, C.J., and Huitink, Streit, Vogel, and Mahan, JJ.

SACKETT, C.J.

Petitioner-appellant Richard Frank Richards appeals, and respondent-appellee Misty Lee Richards cross-appeals, challenging the economic provisions of the decree dissolving their marriage. Richard contends the district court: (1) should not have awarded the parties' three minor children a share of the equity the parties held in the home they occupied during the marriage; (2) failed to correctly determine his net income for purposes of applying the child support guidelines; and (3) failed to properly value certain stock. Misty on cross-appeal contends the district court: (1) should have awarded her rehabilitative alimony; (2) should not have required her to pay \$10,000 to Frank; and (3) should have ordered Frank pay the fee incurred by her trial attorney. Misty also requests appellate attorney fees. We affirm.

Richard and Misty were married in 1982. Richard, thirty-six years old at the time of trial, and Misty, then thirty-four, are both high school graduates. They have three children: Leathen, born in 1984; Keegan, born in 1986; and Amethyst, born in 1990. It was agreed primary physical care of the children would be with Misty. The trial court determined visitation. The custody and visitation issues have not been appealed.

The district court ordered Richard pay monthly child support of \$1028. The decree provided Richard pay the children's health insurance and necessary medical, hospital, dental, and optical expenses not covered by insurance. The decree further provided if Richard were current with his child support at the end of each calendar year, he should be allowed to claim the children as dependents for income tax

purposes. Richard was ordered to keep current life insurance in force with the children as sole beneficiaries until his child support obligations were satisfied.

The district court further ordered Richard pay Misty alimony of \$300 a month from September 1, 1997 to August 31, 1998 or until she remarries or cohabits, whichever occurs first.

The parties' major asset acquired during the marriage was the parties' equity in their Plymouth County home. This equity was awarded to Misty.

Richard filed a rule 179(b) motion and the district court amended the decree, striking the alimony award and ordering Misty pay Richard the sum of \$10,000.

Richard and Misty basically both contend the property award is not equitable. We review de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court but are not bound by them. Iowa R. App. P. 14(f)(7). Each division depends on the unique circumstances and facts relevant to each issue. *In re Marriage of Wiedemann*, 402 N.W.2d 744, 747 (Iowa 1987). We rest our decision primarily on the particular circumstances of the parties presently before us. *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983).

Richard advances the Plymouth County home was not correctly valued and should not have been granted totally to Misty. Misty contends the district court should not have amended the decree to order she pay Richard \$10,000.

The equity that went into the Plymouth County home came from a number of sources. In July of 1993, the parties sold a home they owned in Sioux City. The sale

netted about \$33,000. They bought a second house which they sold in 1996. They netted about \$25,000 from the second sale.

Planning to build a new house, the family moved into a trailer home in 1996. The new home was constructed close to the home of Misty's parents, the DeStigters, on a lot Misty's parents gave them. The DeStigters paid for rezoning the property as well as providing use of their well. Misty contends the value of the gifted lot and attendant circumstances totaled \$25,000. Misty's brother, an engineer, and her father, who owned a construction company, both were substantially involved in the home construction, as were Misty, the children, and Richard.

The district court valued the work of Misty's father at \$5000. Her father's construction equipment was used and Misty contends the gifted rental value of the equipment was about \$14,000.

The district court valued the home at \$150,000. At the time of trial, it was subject to a mortgage of approximately \$68,000. Misty contends \$150,000 is a fair value. Richard contends the home was appraised for loan purposes at \$165,000 and this is the value the court should have used. Misty challenges this value as being a value for a completed house. She advances the home was not complete because of certain unfinished repairs. Additionally, she points out the water supply came from the well of her parents, and access to the home was available only on a road running across her parents' property.

Richard also challenges the value given certain stock in a family corporation. The value the district court placed on the real estate and stock was well within the

permissible range of evidence. *In re Marriage of Wilson*, 449 N.W.2d 890, 894 (Iowa App. 1989). The district court was in the best position to determine the credibility of the valuation evidence presented. *In re Marriage of Gaer*, 476 N.W.2d 324, 330 (Iowa 1991). We find no reason to establish different values and affirm the trial court's valuations.

Richard claims he should have a credit for an inheritance from the estates of his mother and his father which he contends went into the home as the down payment. Misty advances, in essence, this is offset by a \$5000 inheritance she received from an aunt.

The net result of the trial court's allocation of assets was Misty received a net award of about \$82,000 which included her gifted property. Richard received a net award of \$48,000 including the money to be paid by Misty. Additionally, Richard left with inherited stock valued in March of 1996 in excess of \$120,000. The award made by the district court resulted in a nearly equal division of property accumulated during the marriage. The allocation of inherited and gifted property was equitable.

We fail to find, as Richard argues, the district court allocated any property to the children. Consequently, we do not consider this issue.

The property award made by the district court is equitable. We affirm on this issue on both the appeal and cross-appeal.

Richard contends the child support ordered is not correct and the district court failed to properly compute his net income for purposes of applying the child support guidelines.

Richard is employed at Sioux Harbor Enterprises and earns approximately \$32,500 per year. Richard also earns \$300 per year parking cars for Rivercade. Richard also received a number of benefits, including a company truck, gas, meals, lodging, and additional monthly cash distributions of between \$75 and \$100. The district court determined Richard's net monthly income to be \$2831.49.

Misty is currently a banking assistant at Norwest Bank. She earns \$24,500 per year. The district court found her net monthly income to be \$1616.32. Under the guidelines, "net monthly income" is defined as gross monthly income less certain enumerated deductions. *In re Marriage of Titterington*, 488 N.W.2d 176, 178 (Iowa App. 1992). We find no reason to disagree with the district court's determination of the parties' income and affirm on this issue.

Misty asks for alimony. She received substantial property. She is employed and has job security and opportunity for advancement. When determining the appropriateness of alimony, the court must consider the earning capacity of each party and the present standards of living and ability to pay balanced against relative needs of the other. *In re Marriage of O'Rourke*, 547 N.W.2d 864, 866 (Iowa App. 1996). 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). We consider property division and alimony together in evaluating their individual sufficiency. *O'Rourke*, 547 N.W.2d at 866. We affirm on this issue.

Misty asks for trial and appellate attorney fees. An award of attorney fees is discretionary and acknowledges the parties' financial positions. *In re Marriage of*

Kern, 408 N.W.2d 387, 390 (Iowa App. 1987); *In re Marriage of Castle*, 312 N.W.2d 147, 150 (Iowa App. 1981). The district court's refusal to award attorney fees is affirmed. We award Misty \$1500 in appellate attorney fees.

AFFIRMED.