

IN THE COURT OF APPEALS OF IOWA

No. 2-563 / 92-548

FILED

DEC 29 1993

CLERK SUPREME COURT

IN RE THE MARRIAGE OF EUGENE C. HESS AND MADELINE HESS

Upon the Petition of
EUGENE C. HESS,

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Petitioner-Appellee,

And Concerning
MADLINE HESS,

Respondent-Appellant.

Appeal from the Iowa District Court for Scott County,
Edward B. deSilva, Jr., Judge.

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

J. Bryan Schulte of Baur, Schulte, Hahn, Swanson &
Crowley, Burlington, for appellant.

Edward N. Wehr of Wehr, Berger, Lane & Stevens,
Davenport, for appellee.

Considered by Schlegel, P.J., and Hayden and Sackett,
JJ.

SCHLEGEL, P.J. 000240

Eugene and Madeline Hess were married on May 15, 1987. This was a relatively short marriage, as the parties separated in October 1990. No children were born during the marriage. However, Madeline's child from a previous relationship, Cherie, lived with the parties for a period of time.

At the time of the dissolution, Eugene was thirty-seven years old. He was employed at Linwood Mining and Minerals as a general mechanic when the parties married. He subsequently obtained a job at Alcoa in Bettendorf. He currently earns \$45,480 and has net monthly income of about \$2,500. Eugene brought assets worth about \$20,000 to the marriage.

Madeline was thirty-five at the time of the dissolution. She had been employed as a truck driver and lingerie model when the parties married. Madeline worked at various jobs and attended various classes during the marriage. She began attending Eastern Iowa Community College in the fall of 1989 and is pursuing an associate degree in nursing. She planned to complete her degree by May 1993. Madeline brought assets worth about \$2,500 to the marriage.

As noted above, the parties separated in October 1990. While Eugene was on a fishing trip, Madeline had a yard sale and sold most of the parties' household goods for \$2,500. She also took \$1,000 from the parties' savings

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account, leaving \$700 for Eugene. She left for Las Vegas, Nevada, and then went to Denver, Colorado, where Cherie was living. After Madeline left, the house was broken into and the remaining household goods were stolen. Eugene received \$560 from insurance for the stolen property. Madeline later moved back to Iowa and resumed her studies to be a nurse.

The district court issued a decree of dissolution for the parties on August 28, 1991. The court divided the marital property to award Madeline her 1983 pickup and the household goods in her possession. She received net assets worth about \$3,800. Eugene received the marital residence, the 1989 Chevrolet Blazer, his boat, 401K plan, tools, and household goods in his possession. He received net assets worth about \$32,715. The court ordered Eugene to pay Madeline a cash property settlement of \$1,000. Eugene was ordered to pay Madeline rehabilitative alimony of \$150 per month for twenty-four months in order to allow her to complete her nursing degree. Eugene was also ordered to pay \$500 towards Madeline's attorney fees.

The district court denied Madeline's motion pursuant to Iowa Rule of Civil Procedure 179(b). Madeline has appealed.

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

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demeanor of the witnesses when testifying. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992).

Madeline contends the distribution of property was inequitable to her. During the marriage the parties purchased a house in Davenport for \$10,000. They agree it is now worth \$26,000 with a mortgage of \$4,078. The parties' equity in the house is thus \$21,922. Madeline asks to be awarded half of this amount. She claims the increase in value of the house is primarily due to her efforts in restoring the house.

Madeline also asks for an increase in the award of alimony. She states that her educational expenses greatly exceed the alimony award.

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 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 do not require an equal division or percentage distribution. Id. The determining factor is what is fair and equitable in each particular circumstance. Id.

Also, alimony is not an absolute right; an award depends upon the circumstances of each particular case. Whelchel, 476 N.W.2d at 110. Rehabilitative alimony was conceived as a way of supporting an economically dependent

spouse through a limited period of education or retraining following 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).

We determine the property division and award of alimony, when considered together, are equitable. We note that the parties were married for a relatively short time. Because the marriage is of short duration we determine we may equitably award to each party the value of the assets he or she brought to the marriage and divide any increase in the parties' net worth during the marriage. See In re Marriage of Grauer, 478 N.W.2d 84, 86 (Iowa App. 1991); In re Marriage of Knust, 477 N.W.2d 687, 688 (Iowa App. 1991).

In the present case, the parties' net worth increased by about \$14,000 during the marriage. Considering the total property and alimony awarded to Madeline, and subtracting the assets she brought to the marriage, Madeline will receive approximately \$5,900 of that increase.

We also note that Madeline has job skills in the areas of truck driving and tax preparation. We conclude she has the ability to supplement her income by working part-time while continuing her education.

We find the division of property and award of alimony are equitable. We affirm the district court on these issues.

Madeline seeks attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Hunt, 476 N.W.2d 99, 103 (Iowa App. 1991). We determine each party should pay his or her own attorney fees for this appeal.

We affirm the district court on all issues raised in this appeal. Costs of this appeal are assessed to Madeline Hess.

AFFIRMED.