

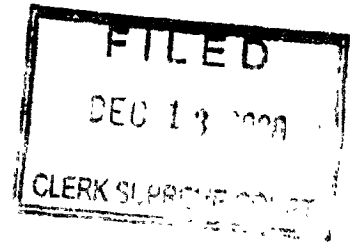
IN THE COURT OF APPEALS OF IOWA

No. 0-627 / 99-1975
Filed December 13, 2000

IN RE THE MARRIAGE OF CHARLENE J. PRICE
AND MICHAEL R. PRICE

Upon the Petition of
CHARLENE J. PRICE,
Petitioner-Appellant/Cross-Appellee,

And Concerning.
MICHAEL R. PRICE,
Respondent-Appellee/Cross-Appellant.



Appeal from the Iowa District Court for Black Hawk County, Todd A. Geer,
Judge.

The petitioner appeals, and respondent cross-appeals, from the property
distribution provisions of their dissolution decree. **AFFIRMED AS MODIFIED.**

John R. Walker, Jr. and Eric Johnson of Beecher, Field, Walker, Morris,
Hoffman & Johnson, P.C., Waterloo, for appellant.

Kellyann M. Lekar of Roberts, Stevens & Lekar, P.L.C., Waterloo, for
appellee.

Heard by Streit, P.J., and Vogel and Vaitheswaran, JJ.

VAITHESWARAN, J.

Charlene and Michael Price appeal those portions of a dissolution decree relating to property distribution and alimony. Charlene maintains the district court acted inequitably in refusing to award interest on her property award. Michael challenges the court's alimony award and a provision relating to the distribution of his business assets. We conclude the district court should have awarded interest on Charlene's award but find the remaining challenged provisions equitable. We affirm as modified.

I. Background Facts and Proceedings

Charlene and Michael married in 1963 at ages eighteen and nineteen respectively. Charlene has an eleventh grade education and Michael a general education degree. During the course of the marriage, Michael bought and sold various businesses, eventually winding up with a pest control operation.

Thirty-five years after they married, Charlene sought a divorce, which the district court granted. The court also: (1) granted Charlene the parties' home, valued at \$145,000 and held her solely responsible for the \$103,000 mortgage; (2) equally divided the net proceeds from the sale of rental property, the cash value of all life insurance policies and retirement accounts, and household property; (3) awarded Charlene a 1997 Ford Taurus; and (4) awarded the assets of the pest control business to Michael, with an equalizing payment to Charlene of \$422,225, payable over ten years without interest. The court allocated certain debts equally. Finally, the court ordered Michael to pay Charlene alimony of \$1,200 per month as well as \$3,000 of her trial attorney fees.

Charlene filed a motion for enlarged or amended findings and conclusions pursuant to Iowa Rule of Civil Procedure 179(b), asserting the court should have awarded her interest on the deferred equalizing asset payments. The court denied her motion and Charlene appealed. Michael cross-appealed from a portion of the decree accelerating the property settlement payments in the event he transferred partial ownership of the company. He also contests the alimony award.

II. Scope of Review

Our review of a dissolution proceeding is de novo. *In re Marriage of Knickerbocker*, 601 N.W.2d 48, 50 (Iowa 1999). We review the entire record and adjudicate anew the issues properly presented. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). While we give weight to the district court's fact findings, especially with respect to witness credibility, we are not bound by them. *Knickerbocker*, 601 N.W.2d at 51.

III. Interest on Deferred Property Payments

The parties to a marriage are entitled to a just and equitable share of property accumulated through joint efforts. *In re Marriage of Miller*, 552 N.W.2d 460, 463 (Iowa App. 1996). We do not mandate equal division of assets. We must determine what is fair and equitable under the circumstances, considering the factors set forth in Iowa Code section 598.21(1).¹ *Id.* This standard is also used to determine whether interest should be paid on property settlements. See

¹ These factors include the marriage length; property brought into the marriage; contributions to the marriage; age and health of the parties; contribution of one party to the education, training or increased earning power of the other; award of the home; alimony award; the economic circumstances of each party; tax consequences; written agreements; terms of a prenuptial agreement and any other factors deemed relevant by the court. Iowa Code § 598.21(1).

In re Marriage of Callenius, 309 N.W.2d 510, 515 (Iowa 1981); *In re Marriage of Conley*, 284 N.W.2d 220, 223 (Iowa 1979).²

In declining to award interest on the deferred property payments, the court reasoned: (1) Michael's business was "essentially a non-performing asset"; (2) the value of the business would not be realized until the business was sold; (3) Michael would be paying substantial alimony in the interim; and (4) Michael would have to pay the property settlement in after-tax dollars. Charlene contests each of these reasons for denying interest. We find her arguments persuasive.

First, the undisputed evidence reflects Michael's pest control business was a performing rather than a non-performing asset. Charlene's expert testified sales jumped forty-seven percent from 1994 to 1995, another ten percent in 1996, twenty-eight percent in 1997, and five percent in 1998. Additionally, the expert testified the business had an ability to produce a return on its investments of at least ten percent annually. Accordingly, as of the time of trial, the pest control business was a viable, performing asset.

Second, we agree with Charlene that the fact that the value of the business will not be realized until the time of sale is immaterial for purposes of determining whether Charlene is entitled to interest. We readily concede sale of the company would raise tax consequences, a factor which a court may consider in making a property division. *In re Marriage of Friedman*, 466 N.W.2d 689, 691 (Iowa 1991). However, Michael testified he had no intention of selling the company. He stated he elected to leave money in the company to enhance the

² Cf. *In re Marriage of Baculis*, 430 N.W.2d 399, 403 (Iowa 1988) (holding Iowa Code section 598.21(1) superceded old version of Iowa Code section 535.3 providing for pre-judgment interest and, accordingly, latter provision would not be "construed to apply as a matter of course to property distribution awards in dissolution proceedings.").

value of the business and to improve its cash flow. He further agreed the company had value and he had an obligation to buy out Charlene's fifty-percent equity ownership interest in the company, whether or not he sold the property. Therefore, we do not consider this a significant factor.

The third rationale for denying interest, the fact that Michael also has an alimony obligation, is relevant in determining whether interest should be awarded. See *Conley*, 284 N.W.2d at 223. However, the awards serve distinct functions. *In re Marriage of Hitchcock*, 309 N.W.2d 432, 437 (Iowa 1981). The property award affords a spouse a "just and equitable share" of the property accumulated as a result of the parties' joint efforts, whereas alimony is a support allowance. *Id.*

While the monthly alimony award of \$1200 may be viewed as generous, we cannot conclude it warrants a denial of interest. To hold otherwise would be to allow Michael to hold and use Charlene's equity interest in the property for up to ten years without paying her for that privilege, a result we deem inequitable in light of Charlene's lengthy and substantial contributions to the marriage and the development of Michael's businesses. See *In re Marriage of Will*, 489 N.W.2d 394, 400 (Iowa 1992) (awarding interest at seven percent on property settlement); *In re Marriage of Hansen*, 465 N.W.2d 906, 909-910 (Iowa App. 1990) (awarding interest at legal rate on property settlement paid in installments); *Callenius*, 309 N.W.2d at 515 (adding interest to property award); *Hitchcock*, 309 N.W.2d at 436 (affirming award of \$400,000 property settlement in 120 equal monthly installments with interest of eight percent per year and alimony of \$1000 per month); *In re Marriage of Williams*, 303 N.W.2d 160, 166

(Iowa App. 1981) (awarding interest at statutory rate on unpaid balance of property settlement); *Conley*, 284 N.W.2d at 223 (concluding alimony award "no basis for tempering" goal of equal property division and ordering interest at legal rate on unpaid property installments). *Cf. In re Marriage of Briggs*, 225 N.W.2d 911, 913 (Iowa 1975) (affirming property award without interest on deferred annual payments unless not paid when due). Finally, we are not persuaded by the district court's statement that Charlene is not entitled to interest because Michael will have to pay the settlement with after-tax dollars. As Charlene points out, this is not a fact unique to Michael's situation and does not warrant the denial of interest. For these reasons, we conclude Charlene is entitled to interest on the \$422,275 property settlement at the rate of 4.75 percent per year, to be paid over the period specified in the decree.

IV. Alimony

On cross-appeal, Michael challenges the district court's alimony award of \$1200 per month for ten years. He maintains the parties' respective income and expenses in combination with the property settlement do not warrant any alimony award or, in the alternative, a lower award.

Alimony is an allowance to a former spouse in lieu of a legal obligation to support that person. *In re Marriage of Gonzales*, 561 N.W.2d 94, 99 (Iowa App. 1997). Our courts have recognized three types of alimony: rehabilitative, reimbursement, and traditional. The goal of rehabilitative alimony is self-sufficiency. *Smith*, 573 N.W.2d at 926. That form of payment is designed to assist "an economically dependent spouse through a limited period of education and retraining." *Id.* The goal of reimbursement alimony is to compensate a

spouse for economic sacrifices made during the marriage which enhanced the future earning capacity of the other spouse. *Id.* Traditional alimony is paid for life or for as long as a dependent spouse is incapable of self-support. *Id.*

Alimony awards are appropriate following a marriage of long duration, especially where there is a great disparity in earning capacity. *In re Marriage of Bell*, 576 N.W.2d 618, 622 (Iowa App. 1998). In determining an appropriate alimony award, we consider the factors set forth in Iowa Code section 598.21(3).³ Though our review is de novo, "we accord the trial court considerable latitude" in determining the amount of alimony and "will disturb the ruling only when there has been a failure to do equity." *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996).

We find the district court's alimony award equitable. The parties were married for thirty six years. Charlene was fifty-four years old at the time of trial, had an eleventh grade education, and no formal vocational training. Charlene never earned full-time wages outside the home. Her sole wages following the marriage derived from a waitress position she held for a month and a \$500 per month stipend she received from the pest control business for performing miscellaneous unskilled clerical duties. Additionally, Charlene cleaned homes for her daughter's Molly Maid business, assisted Michael in managing certain rental properties, worked as a waitress and bartender for her husband's bar, and, for a short period in 1981, managed another of his bars, all without compensation.

³ These factors include: the marriage length; the age and health of the parties; property distribution; education of the parties; the earning capacity of the spouse seeking alimony; feasibility of attaining self-sufficiency; tax consequences; mutual agreements by the parties regarding financial or service contributions; terms of a prenuptial agreement; any other factors deemed relevant by the court. Iowa Code § 598.21(3).

Although she gained some job skills assisting Michael and her daughter with their businesses, the record suggests these skills did not qualify her for anything but low-paying jobs in the general labor force. Charlene testified she looked into getting a job after the parties' separation but was told she was only qualified to work at a fast food restaurant or as a maid. Even assuming Charlene could perform more skilled work than that, Michael concedes her skills would not afford Charlene the earning capacity he enjoys. Based on this record, we agree with the district court's finding that "while Charlene is capable of full-time employment, she has limited job skills."

Michael, in contrast was and is a self-made, successful businessman who single-handedly expanded his pest control business to a point where it was generating more than one million dollars in sales. There is little in the record to suggest the business will not continue to grow, affording Michael a source of income to finance an alimony payment. *Cf. In re Marriage of McNamer*, 452 N.W.2d 812, 814 (Iowa App. 1990) (noting business owner had ready access to cash from business whose value was likely to continue to appreciate).

We conclude Charlene is entitled to reimbursement alimony in the amount prescribed by the district court. During the parties' lengthy marriage, Charlene assumed primary responsibility for the home and children while at the same time assisting with most of Michael's business ventures on an uncompensated basis. Her assistance freed Michael to work more than sixty hours per week and allowed him to generate a customer base for his pest control business.

This case is not unlike *In re Marriage of Hitchcock*, 309 N.W.2d 432 (Iowa 1981) in which the court was faced with dividing the wife's interest in a company

and determining the appropriateness of an alimony award. The court ordered the husband to pay the property award in monthly installments with interest and ordered traditional alimony of \$1000 per month, citing the long duration of the marriage. *Id.* at 436-438. In making the alimony award, the court stated, "the payment of the property division in installments is largely for Pat's convenience and is no substitute for the alimony support to which [the wife] is entitled" *Id.* at 438. The same rationale applies here. We conclude the alimony award falls within the range of the stated goal of equal division. *In re Marriage of Andersen*, 243 N.W.2d 562, 564 (Iowa 1976); *cf. In re Marriage of Wiedemann*, 402 N.W.2d 744, 749 (Iowa 1987) (awarding \$1050 in monthly alimony in addition to cash payment of \$450,000 for wife's share of business).

V. Lump Sum Transfer on Sale

On cross-appeal, Michael takes issue with the following provision of the decree:

In the event Michael sells, transfers or encumbers any shares of corporate stock, or more than 20 percent of the assets of the corporation, the entire principal balance shall be immediately due and payable.

He maintains this provision is inequitable because it potentially prevents him from using 80% of his business assets despite the fact Charlene's interest in the business is only 50%. We disagree.

Michael conceded and the court found he was a key person in the business and the absence of his involvement would likely reduce the value of the company. Therefore, the district court's decision to accelerate Michael's payments in the event of a partial sale of the company was a reasonable attempt

to protect Charlene's interest in the company. See *In re Marriage of Muelhaupt*, 439 N.W.2d 656, 661 (Iowa 1989) (imposing virtually identical provision). Accordingly, we find this provision equitable.

We affirm the district court's decision as modified.

AFFIRMED AS MODIFIED.