

IN THE COURT OF APPEALS OF IOWA

No. 0-698 / 89-1965

FILED

AUG 27 1991

CLERK SUPREME COURT

**IN RE THE MARRIAGE OF KIMBERLY ANN HOLCOMB AND
DAVID MYRON HOLCOMB**

Upon the Petition of

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KIMBERLY ANN HOLCOMB,

Petitioner-Appellee/Cross-Appellant,

And Concerning

DAVID MYRON HOLCOMB,

Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Dallas County,
Peter A. Keller, Judge.

Both parties challenge the economic provisions of their
dissolution decree. Kimberly also requests attorney's fees
on appeal. **AFFIRMED.**

Emil Trott, Jr., Des Moines, for appellant/cross-
appellee.

William R. Byers, Adel, for appellee/cross-appellant.

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

PER CURIAM

Kimberly and David Holcomb were married in 1985. They have one child, a girl born in December 1988. The dissolution decree placed the child in joint legal custody and in Kimberly's physical care. These custody provisions are not challenged in the present appeal.

David is a pharmacist working in a drug store owned by his father. His salary is \$22,000 per year. However, his father, through the corporate pharmacy, pays at least half of David's outstanding student loans per month. The district court found that David's net monthly income is \$1,600. David testified he has chosen to forgo a higher salary elsewhere because he wants to take over the family business in the future.

Kimberly is a bookkeeper and clerk at a grocery store. She earns \$5.50 per hour for a thirty-two-hour work week. She has expressed an interest in attending college.

The dissolution decree directed David to pay Kimberly alimony of \$150 per month for five years and child support of \$326 per month. The decree also directed David to contribute \$1,000 toward Kimberly's trial attorney's fees, in addition to \$500 already ordered.

The dissolution decree awarded David the parties' house, which was valued by the court at \$29,500, but was subject to a debt of nearly \$24,000. David was also awarded an IRA account worth nearly \$5,000 and a vehicle subject to a sizable debt. David was directed to pay

Kimberly a cash property award of \$6,366.35. Each party was awarded various household goods and personal effects.

David was directed to assume all of his educational debts, which apparently total around \$15,000, and various other debts as well. Kimberly was directed to assume debts of about \$3,500.

David has appealed and Kimberly has cross-appealed. Both parties challenge the economic provisions of the dissolution decree. David contends that his child support obligation should be reduced, that his alimony obligation should be reduced or eliminated, that the cash property award to Kimberly should be eliminated, and that certain gifts from his parents should be set aside to him alone. In her cross-appeal, Kimberly contends her child support and alimony awards should be increased. She also contends she should have been granted a larger award of trial attorney's fees. Finally, she requests attorney's fees on appeal.

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. Child Support. David contends the amount of child support he has been ordered to pay exceeds the amount set by our child support guidelines. He contends his net monthly income is \$1,245 and accordingly his support obligation should be \$254 per month. We disagree.

David's computation of his net income has not included the voluntary pension plan amount deducted from his salary, nor the amount the corporation pays toward his outstanding student loans. The trial court computed David's net monthly income to be \$1,600. We find this amount supported by the evidence.

Kimberly seeks an increase in the child support award. She suggests, based on a survey of area pharmacists, David could make a greater salary in another location. She asks that we base his child support obligation on a net earning capacity of \$38,000 per year because David "could obtain employment" at that amount. We decline Kimberly's invitation to engage in the speculation. While a "self-inflicted" or voluntary reduction in income is not a ground for modifying child support, In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987), this court will not dictate where a divorcing party must live and work and what salary that party is to make.

The child support obligation of \$326 per month is affirmed.

II. Property Distribution. David complains about the property distribution of the dissolution decree, asserting

that Kimberly received too much. He argues that he alone should have the benefit of the gifts from his parents. He also suggests a valuation and division of property where Kimberly would receive assets and debts with a net value of \$1,743; David would receive assets and debts with a net value of \$11,751.88. This court does not find David's suggestions equitable.

The partners in the marriage are "entitled to a just and equitable share of the property accumulated through their joint efforts." In re Marriage of Havran, 406 N.W.2d 450, 452 (Iowa App. 1987). The distribution of the property of the parties should be that which is equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(1). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983).

David's parents have been quite generous monetarily in contributing toward David's education, insurance, and pension, and toward the couple's living expenses. Like the trial court, we conclude the contributions were used as marital property and should be distributed as such. Upon our de novo review of this record we find the property and debt distribution equitable. We affirm.

III. Alimony. David was ordered to pay \$150 per month in alimony for five years. David argues the amount and term of payment are excessive; Kimberly argues they are insufficient.

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). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3). See In re Marriage of Hayne, 334 N.W.2d 347 (Iowa App. 1983). The district court found alimony warranted "to balance the equities of the property division, to recognize the marital contributions of [Kimberly], to recognize the difference in earning capacities and to allow [Kimberly] a chance to further her education and to simply adjust to the financial situation after this dissolution." We find no reason to disturb the award.

IV. Attorney's Fees. The district court ordered David to pay \$1,500 toward Kimberly's attorney fees. Kimberly argues the district court's award should be increased to \$3,500. David argues that Kimberly has not preserved this issue for appeal. Even if Kimberly's notice of appeal properly raised the issue, we are not inclined to disturb the trial court's award. We affirm the award as ordered by the trial court.

In view of the property division, the alimony award, and David's heavy debt load, we conclude each party will be responsible for his or her own appellate attorney fees.

Each party will be responsible for one-half of the costs of this appeal.

AFFIRMED.