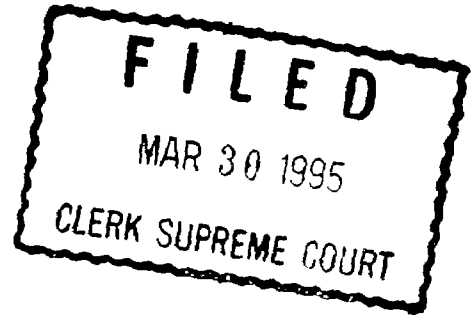


IN THE COURT OF APPEALS OF IOWA

No. 4-422 / 93-1466



IN RE THE MARRIAGE OF MARTHA D. WILBANKS AND
ROBERT D. WILBANKS

Upon the Petition of
MARTHA D. WILBANKS,

Appellee,

And Concerning
ROBERT D. WILBANKS,

Appellant.

Appeal from the Iowa District Court for Linn County,
Lynne E. Brady, Judge.

Respondent husband appeals various economic provisions
of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Kevin J. Visser of Moyer & Bergman, Cedar Rapids, for
appellant.

Benjamin W. Blackstock of the Blackstock Law Offices,
Cedar Rapids, for appellee.

Considered by Donielson, C.J., and Sackett and Habhab,
JJ.

DONIELSON, C.J.

Robert Wilbanks has appealed the economic provisions of the parties' dissolution decree. In our review of the parties' financial circumstances, we determine the decree should be affirmed as modified.

Robert and Martha Wilbanks were married in 1965. They have four children, only two of whom were minors at the time of the dissolution hearing. By agreement of the parties, Tim, born June 1, 1975, resides with his father, while Eric, born August 26, 1977, lives with Martha. Both sons suffer from attention deficit disorder:

Robert was fifty years old at the time of the hearing. He is a licensed pharmacist. He owns all of the stock of Lucky Leven, Ltd., which operates the First Avenue Pharmacy in Cedar Rapids. Robert is the sole employee of this corporation. Over a number of years he purchased 50% of the stock for \$58,000. In 1990 he purchased the remaining 50% for \$45,000. Robert additionally works part-time as a pharmacist for Hy-Vee Food Stores. His annual income is about \$50,000, which would give him net monthly income of about \$3,125.

Martha was forty-nine years old at the time of the hearing. She has a B.A. degree in business administration and was employed for several years during the marriage as a secretary. She was unemployed at the time of the hearing. In 1992, she enrolled at Kirkwood Community College in a program on health information management, which she hoped

to complete in May 1994. In 1992 Martha had surgery for a detached retina, and she has very little vision in her left eye. She has also been treated for depression since 1992.

The district court entered a dissolution decree for the parties on September 2, 1993. The court granted the parties joint legal custody of the children, with Martha having physical care of Eric, and Robert having physical care of Tim. The court found application of the child support guidelines would be inequitable in this case, and ordered Robert to pay child support of \$500 per month for Eric.

The court ordered Robert to pay alimony of \$1,300 per month for a period of five years, then \$1,000 per month for five years, and then \$500 per month. After the first five years the alimony would terminate on Martha remarriage or cohabitation, or upon her death. Robert was also ordered to pay for Martha's health insurance and prescription drugs for a period of two years.

The district court awarded Robert the pharmacy and his vehicle. The court found the value of the pharmacy was \$90,000 and his debt from the purchase of the business was \$27,096. Robert was awarded total net assets worth \$66,137. Martha was awarded her vehicle, her life insurance policies, her IRA and Robert's IRA, and the proceeds from the sale of the parties' house. She received total net assets worth \$67,783. Robert 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 demeanor of the witnesses when testifying. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992).

Robert contends the property distribution and award of alimony were not equitable to him. He claims the district court should have made a distinction between his earning capacity and that of the pharmacy. He believes his capitalized future earnings were used to assess the value of the pharmacy. He believes these same earnings were used to determine the amount of the alimony award, which in effect gave Martha a double benefit in the economic provisions of the decree.

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 circumstance. Id. We consider property division and alimony together in evaluating their individual sufficiency. Id.

The value of a closely held corporation operated by one person is difficult to ascertain. In re Marriage of Wiedemann, 402 N.W.2d 744, 747 (Iowa 1987). The general rule is that stock should be valued at market value if it

can reasonably be ascertained. In re Marriage of Steele, 502 N.W.2d 18, 21 (Iowa App. 1993).

The district court determined the value of the pharmacy was \$90,000. This conclusion was based on Robert's testimony that he had paid \$103,000 over a period of years for the pharmacy. The court also relied on the testimony of Jeffrey Hamilton, a C.P.A., who testified the value of \$90,000 was proper based on the recent sale of 50% of the stock for \$45,000 and a capitalization rate of the business' earnings.

One problem which occurs when a value is obtained by capitalization of earnings, is that it is assumed that the owner will continue to contribute his or her expertise and effort. Wiedemann, 402 N.W.2d at 747-748. In effect, this method essentially capitalizes the owner for his or her future earning capacity. Id.

We determine Robert paid a total of \$103,000 for the corporation because of its ability to generate an income for him, the sole employee of the corporation. The evidence showed Robert's return from the corporation was commensurate with what he could obtain working for the average hourly wage of pharmacists in the area. Once Robert's salary was paid, the corporation had very little income. Thus, the fair market value of the business, what a willing buyer would pay to a willing seller, would actually be less than \$90,000 because the pharmacy has little value independent of its pharmacist.

Although we find the district court overvalued the pharmacy, we decline to amend the property distribution. The most equitable division of the property is to award Robert the pharmacy, which gives him the means to pursue his career and to generate income. Because Martha is not yet situated in a career, and has more immediate needs due to her continuing education and health problems, it is more equitable to give her a greater share of the parties' assets.

Furthermore, as noted above, property division and alimony are considered together to evaluate their individual sufficiency. Russell, 473 N.W.2d at 244. Under the circumstances of this case, we determine it would be more equitable to adjust the award of alimony. By giving Martha a greater amount of the parties' property, as opposed to a large award of alimony, she will have more discretion as to how to use the funds.

Alimony is an allowance to a spouse in lieu of the other spouse's legal obligation for support. In re Marriage of Francis, 442 N.W.2d 59, 62 (Iowa 1989). Alimony is not an absolute right; an award depends upon the circumstances of each particular case. In re Marriage of Whelchel, 476 N.W.2d 104, 110 (Iowa App. 1991).

Under the facts of this case, we determine Robert's alimony obligation should be reduced. The district court awarded Martha, in a combination of child support and alimony, one-half of Robert's net monthly income. We

believe this amount is too high, considering that Robert must also pay back his loan for the business. We have also noted that Martha was awarded a greater share of the parties' assets.

We reduce the award of alimony to \$500 per month, to continue until Martha dies, remarries, or turns sixty-five years old, whichever occurs first.

We affirm the decision of the district court, except as here modified. Costs of this appeal are assessed one-half to each party.

AFFIRMED AS MODIFIED.

Habhab, J., concurs; Sackett, J., concurs in part and dissents in part.

SACKETT, J. (concurring in part; dissenting in part)

I concur in part and dissent in part. I do not agree with the majority that the alimony should automatically terminate at remarriage.