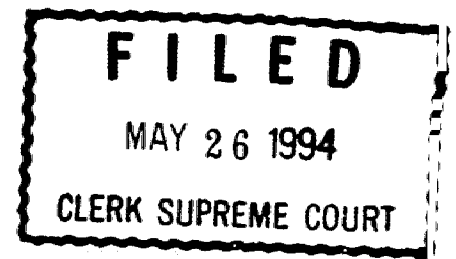


IN THE COURT OF APPEALS OF IOWA

No. 4-123 / 93-1080



IN RE THE MARRIAGE OF DIANNE L. MULLIGAN
AND EDWARD C. MULLIGAN

Upon the Petition of
DIANNE L. MULLIGAN,

Appellee,

And Concerning
EDWARD C. MULLIGAN,

Appellant.

Appeal from the Iowa District Court for Jones County,
William L. Thomas, Judge.

The respondent appeals various economic provisions of
the parties' dissolution decree. **AFFIRMED IN PART,
MODIFIED IN PART, AND REMANDED.**

Steven K. Warbasse and Lisa A. Warbasse of Warbasse &
Roush, P.C., Cedar Rapids, for appellant.

Gary L. Robinson of Klinger, Robinson, McCuskey & Ford,
Cedar Rapids, for appellee.

Heard by Hayden, P.J., and Cady and Huitink, JJ.

HAYDEN, P.J. **DA 7016**

Edward and Dianne Mulligan were married in 1975. They have three minor children, Angela, born in 1980; Stephen, born in 1982; and Philip, born in 1984. At the time of trial, Edward was thirty-nine years old, and Dianne was thirty-four.

At the beginning of the marriage, Dianne worked in the accounting department at Rockwell International in Cedar Rapids. Edward worked as a hired hand in Marion. In 1976 they moved to Waubeek, Iowa, where Edward worked in a hog operation with two other men until 1978. In 1978 Edward and Dianne moved to Olin, where Edward began crop farming and purchasing livestock. After their first child was born, they mutually agreed Dianne would not continue working at Rockwell but would intensify their efforts in farming and obtaining livestock. To help with finances, Edward also worked at a QuikTrip.

In 1984 Edward and Dianne declared bankruptcy. Shortly thereafter, Edward joined a partnership with two other men in a construction business, primarily working for Sears. This partnership lasted two years. In 1985 Edward was injured in a car accident. In 1986 Edward began working on his own for Sears, installing dishwashers, storm windows, and other home improvements. Edward has maintained this employment to the present.

Edward and Dianne continued to operate their crop operation in Olin. Due to Edward's surgery to correct

problems related to his car accident, Dianne obtained employment with the Van Meter Electric Supply Company and earns \$1150.94 net per month. Since 1990 Edward has been the primary caretaker of the children. As a result, his income from Sears decreased from \$13,464 in 1991 to \$11,655 in 1992.

The family residence and the six acres on which it stands was purchased in 1978. The total purchase price was \$41,250. Edward and Dianne have been paying \$2000 each year on the principal in order to avoid a \$10,000 balloon payment scheduled for 1998. The balance remaining on the contract is \$13,000. They also own a small lot in Hale, Iowa.

On March 16, 1992, Dianne filed a petition for dissolution of marriage. Following trial, the district court entered its decree. The district court valued the parties' homestead and small lot at \$40,000, with an encumbrance of \$12,000. The balance of \$28,000 was divided between Edward and Dianne. Edward was awarded the homestead and small lot, these properties being subject to a lien in the amount of \$25,000 in favor of Dianne. The \$25,000 sum was considered by the district court to be a property adjustment due to Edward's alleged "financial machinations." The district court specifically found Edward had sold a number of marital assets to meet his living expenses and had taken over the financial futures account without Dianne's consent. Because Edward was

awarded primary physical care of the children, Dianne was ordered to pay \$350 per month in child support. Neither party was awarded alimony, and both were held responsible for their respective attorney fees.

Dianne subsequently filed a rule 179(b) motion requesting the court to award her token alimony in the amount of one dollar per year in order to protect the property adjustment award. Dianne based her motion on her fear Edward might attempt to discharge the property adjustment in bankruptcy. The district court awarded Dianne one dollar per year alimony.

Edward argues the district court erred in awarding Dianne a \$25,000 property adjustment. Edward points out he paid off two loans with the \$15,000 in the futures account, thereby leaving a balance of \$4,000. Edward claims he changed the debt on the account from joint to his alone and if Dianne is entitled to anything from this account, it would be one-half the \$4000 left after payment of the loans. Edward also notes he paid off the machinery loans with \$39,000 he received from the machinery sale, thereby further reducing debt on which Dianne was technically liable. Edward contends as a result of these sales of machinery and crops he will have to pay at least \$12,000 in income taxes.

Edward additionally claims the district court should have awarded him \$402.83 per month in child support. Edward next asserts the district court erred in awarding

Dianne one dollar per year alimony, since her property adjustment is already protected by the decree itself. Both Dianne and Edward seek appellate attorney fees.

Our review in cases such as these is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We are not bound by these determinations, however. Id. Prior cases have little precedential value, and we must base 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).

Edward first contends the trial court erred in entering judgment against him in the amount of \$25,000 as a property adjustment. We find the value placed on the assets by the trial court to be well within the permissible range of evidence and will not disturb them on appeal. See In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973); In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984). However, we do note a \$1000 discrepancy in the trial court's determination of the debt against the home at the time of trial. The trial court found the debt to be \$12,000; however, the evidence indicates a debt of 13,000. This would reduce Dianne's equity in the home by \$500. Therefore the judgment against Edward should be a total of \$24,500 instead of \$25,000.

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In his second point on appeal Edward contends the court erred in figuring proper child support. In the decree the court ordered Dianne pay \$350 a month in child support but provided no facts to support that figure. Edward alleges the child support guidelines mandate a figure of \$402.83 a month. Based upon the evidence it appears the proper figure mandated by the child support guidelines is \$402.83 per month. The amount of child support shall be modified accordingly. The evidence indicates Dianne had refused to provide health insurance, and therefore the cost of health insurance should not be deducted from the figure used to determine child support. Because Dianne is paying the child support, we affirm the trial court's decision allowing Dianne to claim the children as exemptions.

The final issue raised by Edward on appeal involves the trial court's granting of Dianne's 179(b) motion and the court's modification of the decree in awarding alimony to Dianne in the amount of one dollar per year. The trial court determined a risk existed Edward might seek discharge of the property award in bankruptcy, and therefore an award of alimony was justified. This award of alimony is affirmed.

Both parties request attorney fees. Iowa trial courts are permitted considerable discretion in allowing attorney's fees and costs in dissolution actions. In re Marriage of Morehead, 224 N.W.2d 242, 245 (Iowa 1974). Based upon our review of the facts, we determine each party should be responsible for his or her own attorney fees.

We remand to the trial court to enter these modifications in the decree. We do not retain jurisdiction. Costs on appeal are taxed to Dianne.

AFFIRMED IN PART, MODIFIED IN PART, AND REMANDED.