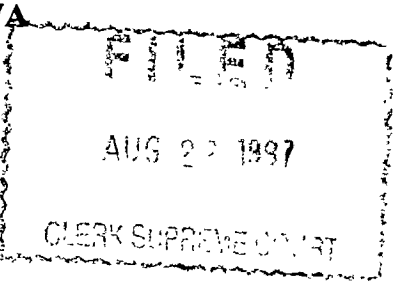
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IN THE COURT OF APPEALS OF IOWA



No. 6-643 / 96-0048

IN RE THE MARRIAGE OF BECKY L. HIGGINS AND PAUL D. HIGGINS

Upon the Petition of
BECKY L. HIGGINS,
Petitioner-Appellee,

And Concerning
PAUL D. HIGGINS,
Respondent-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Robert J. Curnan, Judge.

Paul Higgins appeals from the district court's order dissolving the parties' marriage. **AFFIRMED AS MODIFIED.**

Donna Lesyshen of Tyler & Lesyshen, Waterloo, for appellant.

David Correll of Correll & Sheerer, Cedar Falls, for appellee.

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

STREIT, J.

Paul D. Higgins (Doug) appeals from the economic provisions of the decree dissolving his marriage to Becky Higgins. Doug disputes the court's valuation of his stock options, orders for child support and alimony, and the award of attorney fees. We affirm as modified.

I. Background Facts and Proceedings. Doug, age forty-eight, and Becky, age forty-five, were married in April 1974. They have three children who reside with Becky: Christopher, age nineteen; Brian, age sixteen; and Jennifer, age fourteen. In October 1994, Becky filed a petition for dissolution.

Becky has a B.S. degree in education with little employment experience. She works part-time as an insurance broker. Doug has a bachelor's degree and works as a manager at John Deere.

On November 2, 1995, the district court dissolved the marriage. The court found Doug's net monthly income was $8500 and Becky's was $619. These amounts reflected an addition for Doug's anticipated annual profit-sharing income and the parties' investment income from assets awarded. The district court ordered Doug to pay $2400 monthly child support for three children, reduced to $2000 for two children, and $1800 for one child. Becky was awarded $1000 monthly alimony for 120 months.

The Higgins' acquired substantial property during their marriage, including John Deere stock options. Doug claims the options had no value because they were not

exercisable until December 1995. The trial court found the options had a net value of $81,600 based on a pre-tax value of $133,733 (the amount of taxable gain if the options were exercised at the time of trial).

Among the property in dispute was the parties' collection of John Deere memorabilia. The court ordered Becky should be allowed to purchase the memorabilia by paying Doug $20,000. If she declined to purchase it, then Doug could acquire it by paying Becky $5000. If neither option was elected, the collection was to be divided by an alternate selection scheme. The district court divided their remaining property with Becky and Doug receiving $341,061 and $344,864, respectively.[1]

Finally, the court ordered Doug was to pay $5000 of Becky's attorney fees and the court costs.

Both parties filed 179(b) motions. The court sustained Becky's motion which argued the trial court had miscalculated the value of the stock options. Becky argues the value of the five options was $154,015. She argued it was this number, rather than $133,733 which should be used to determine the net value of this stock. The court

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[1] With the court seeking an approximately equal division of property, the court attempted a buy-out scheme based on the claimed values of the property. However, by setting the buy-out cost at the full value of the property, the "purchaser" would pay the "seller" the whole value for the theoretical one-half interest in the property the seller was relinquishing.

agreed. To rectify its miscalculation, the court ordered Becky's property settlement increased from $4750 to $10,936.[2]

II. Standard of Review. 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 of the district court's trial perspective. *In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa App. 1995); *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992).

III. Property Division. The main issue on appeal is the valuation of the John Deere stock options. The district court found the stock options had a net pre-tax value of $154,015. Doug contends the district court overvalued the value of the stock options. He argues the unmatured options could not be exercised at the time of trial and their value could not be determined until they matured.

The purpose of determining the value of the parties' assets is to assist the court in making an equitable property division and other allowances. *In re Marriage of Steele*, 502 N.W.2d 18, 21 (Iowa App. 1993). It is the province of the trial court to determine the value of marital property and the trial court cannot delegate this

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[2] An addition of $6186. This calculation was arrived at by applying a thirty-nine percent tax to the $154,015 value of the five stock options. After applying the thirty-nine percent tax to $154,015, approximately $93,972 remained. This was a $12,372 increase in net value from the original net value arrived at by the trial court. Becky's property settlement was increased by one-half of the increase in net value, $6186, making her total property settlement $10,936.

responsibility to the parties. *In re Marriage of Dennis*, 467 N.W.2d 806, 808 (Iowa App. 1990). We are reluctant to disturb the district court's valuations if they are within the range of permissible evidence. *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).

Doug acquired stock options in John Deere stock throughout his years of employment. These options give him the opportunity to purchase certain shares at a certain price during certain periods of time. There was no expert at trial to testify to the value of these options. Doug testified they had no value. Becky claimed they had substantial value. Beyond these assertions, the district court had little direct evidence of value to rely on. The trial court determined Becky's claim was credible and had merit.

The record includes evidence of the market and option price of John Deere stock as of the trial date. The district court correctly determined these options had value and appropriately determined their value based on the gain if they were exercised on the date of trial. The net value of the stock was determined by reducing $154,015 by the tax liability which will result from Doug's exercise of the options.

Although we do not endorse this method, the result reached by the district court provided a reasonable value. Because the court's method led to an amount within the range of permissible evidence, a net value of $93,972, the valuation of the options will not be disturbed on appeal.

Doug also argues the district court should have awarded him the John Deere memorabilia. He contends these items had substantial sentimental value and were awarded to him for his employment achievements. This ignores the simple fact these assets have real monetary value. Sentimental value may be considered in awarding an asset to a party. *In re Marriage of Wallace,* 315 N.W.2d 827, 832 (Iowa App. 1981). It cannot be used to exempt it from being considered in an equitable division of the marital property. The trial court's innovative solution to the divergent values in the evidence is a just solution to this issue. The court gave due consideration to the sentimental value in the John Deere memorabilia, as well as to the monetary value of those items, as it strove to effect an equitable division. *Id.* at 833. The memorabilia should be divided by the scheme devised by the trial court.

Finally, Doug challenges the district court's division of the household goods. Becky, as primary caretaker of the children, has a greater need for these items than Doug. We will not disturb the district court's award of the household goods to Becky.

IV. Alimony. Doug contends an award of long-term alimony in this case is unnecessary. He cites Becky's age, education, earning capacity, and substantial property award as factors weighing against an alimony award. He also argues the amount awarded exceeds his ability to pay.

Alimony is an allowance to the former spouse in lieu of a legal obligation to support that person. *See In re Marriage of Hitchcock*, 309 N.W.2d 432, 437 (Iowa

1981). When determining the appropriateness of alimony, the court must consider: "(1) the earning capacity of each party, and (2) present standards of living and ability to pay balanced against the relative needs of the other." *In re Marriage of Miller,* 524 N.W.2d 442, 445 (Iowa App. 1994); *In re Marriage of Estlund*, 344 N.W.2d 276, 281 (Iowa App. 1983) (citation omitted). The discretionary award of alimony is made after considering the factors listed in Iowa Code section 598.21(3)(1997); *see also In re Marriage of Hayne*, 334 N.W.2d 347, 350 (Iowa App. 1983). Following a marriage of long duration, we have affirmed awards of both alimony and substantially equal property distribution, especially where the disparity in earning capacity has been great. *In re Marriage of Geil,* 509 N.W.2d at 742; *In re Marriage of Hitchcock,* 309 N.W.2d 432, 438 (Iowa 1981). The court should also consider the feasibility of the party seeking alimony becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. *In re Marriage of Debbler,* 459 N.W.2d 267, 270 (1990); Iowa Code § 598.21(3)(f) (1997).

Because of her role as the primary care provider, Becky worked little outside the home. Becky's ability to earn income is higher than her actual earnings. Her earning capacity as a teacher or insurance broker is $20,000-$30,000. It is uncertain how long it would take for Becky to actually earn up to her capacity. Becky is not capable of self-support at the standard of living she enjoyed during the marriage even if her

earnings reach these projections. Doug's compensation provides sufficient income to pay alimony without a significant reduction in his accustomed standard of living.

Doug contends the provisions for automatic termination of alimony should be expanded to include cohabitation. Cohabitation is not grounds for automatic termination or limitation of alimony payments. *See In re Marriage of Orgren*, 375 N.W.2d 710, 713 (Iowa App. 1985); *In re Marriage of Schober*, 379 N.W.2d 46, 47 (Iowa App. 1985). Cohabitation is a factor the court considers in determining the recipient's need for alimony. *Orgren,* 375 N.W.2d at 713. We decline to automatically terminate Becky's alimony in the event of her cohabitation.

We affirm on this issue.

V. Child Support. Doug contends the district court's child support award is excessive. He argues the district court overstated his income and failed to deduct the amount of his monthly alimony obligation. He also agues Becky's monthly income should be increased by the amount of alimony she receives.

In the 1995 decree, the district court determined Doug's net monthly income by using the 1993 tax return and adding ten percent. The court used the 1993 tax return instead of the 1994 tax return because the profit sharing reflected on the 1994 tax return was four times that of the previous year and higher than any other year. It was an anomaly and unlikely to occur at that amount on a regular basis. The district court

found the 1993 reflected a more exact historical prospective of profit sharing and stock options affecting income calculations for child support.

We agree with the district court in this analysis, but we are unable, based on our review of Doug's tax returns, to reach the same net monthly figure as the district court. After our calculations we find Doug's net monthly income before alimony payments is $7500. The district court determined Becky's net monthly income was $619. The evidence supports this finding and we adopt it as our own.

Doug's child support is determined by reference to the applicable child support guidelines. These guidelines are to be strictly followed unless their application would lead to an unjust or inappropriate result. Iowa Code § 598.21(4)(a) (1997). The amount determined by the guidelines may be adjusted upward or downward if the court finds it is necessary to provide for the needs of the children and do justice between the parties. *State ex rel. Nicholson v. Toftee*, 494 N.W.2d 694, 695 (Iowa 1993).

The guidelines permit a reduction of parental income for prior alimony obligations. *In re Marriage of Lalone*, 469 N.W.2d 695, 697 (Iowa 1991). Although the guidelines do not provide for a deduction of current alimony, it may be considered by the court in its effort to do justice between the parties. *Id.* It is within the discretion of the trial court whether to deduct alimony before determining child support. *Id.* Long-term alimony that is substantial is properly deductible in fixing child support. *See In re Marriage of Hardy,* 539 N.W.2d 729, 732 (Iowa App.1995); *In re Marriage of*

Benson, 495 N.W.2d 777, 780 (Iowa App. 1992); *In re Marriage of Allen,* 493 N.W.2d 273, 275 (Iowa App. 1992).

Doug's net monthly income places the amount of child support awarded in the discretionary range. *See* Child Support Guidelines, effective 1995. Application of the guideline percentage for the appropriate number of children produces results nearly equal to the district court's award in all instances except the amount awarded for one child. We affirm the district court's support award for two and three children. The amount ordered for the support of one child is reduced from $1800 per month to $1500 per month. We find this amount to be more than the minimum required by the guidelines, but well within the permissible range of discretion.

VI. Attorney Fees. The district court awarded Becky $5000 for attorney fees. Iowa trial courts have considerable discretion in awarding attorney fees. *In re Marriage of Miller,* 524 N.W.2d 442, 445 (Iowa App. 1994). The amount of fees awarded, if any, depends on the parties needs and ability to pay. *Id.* We will not interfere absent an abuse of discretion. *Id.*

Becky's uncertain employment prospects, the substantial property award, and the reduction of Doug's income resulting from his alimony and child support make the award of attorney fees a close question. We, however, cannot say the district court abused its discretion and accordingly affirm the award of attorney fees.

Becky asserts further Doug should be ordered to pay $2500 towards her attorney fees associated with her defense of this appeal. We determine each party shall pay their own appellate attorney fees. Costs are taxed equally to the parties.

The district court decree is affirmed as modified.

AFFIRMED AS MODIFIED.

HUITINK, J. (dissenting)

I respectfully dissent. Iowa trial courts have considerable discretion in awarding attorney fees. *In re Marriage of Miller,* 524 N.W.2d 442, 445 (Iowa App. 1994). The amount of fees awarded, if any, depends on the parties' needs and ability to pay. *Id.* We will not interfere absent an abuse of discretion. *Id.*

Becky's substantial property award of $390,000, and the reduction of Paul's income resulting from his alimony and child support make an award of attorney fees unneccessary and unreasonable.