IN THE COURT OF APPEALS OF IOWA

No. 0-852 / 10-0894
Filed January 20, 2011

IN RE THE MARRIAGE OF GREGORY BRUNS AND SUSAN BRUNS

Upon the Petition of

GREGORY BRUNS,
Petitioner-Appellee,

And Concerning

SUSAN BRUNS,
Respondent-Appellant.

Appeal from the Iowa District Court for Jasper County, Paul R. Huscher, Judge.

Susan Bruns appeals from the economic provisions of the decree dissolving her marriage to Gregory Bruns. **AFFIRMED AS MODIFIED.**

Becky S. Knutson of Davis, Brown, Koehn, Shors & Roberts, P.C., Des Moines, for appellant.

Steven J. Holwerda of Holwerda Law Office, Newton, for appellee.

Considered by Mansfield, P.J., and Danilson and Tabor, JJ.

TABOR, J.

This appeal involves the property division and spousal support imposed following the dissolution of the long-term marriage between Gregory and Susan Bruns. Susan contends the decree undervalued Gregory's dental practice, inequitably divided the retirement accounts, and should have awarded her substantially more alimony. Because the district court's valuation of the professional practice fell within the permissible range of evidence and its remaining division of the property was equitable, we affirm on those issues. Taking into account the length of the marriage and the disparity between the parties' anticipated Social Security benefits, we modify the duration of the alimony award.

I. Background Facts and Procedures

Susan and Gregory started their relationship as high school sweethearts in Sioux City. They married in 1974, after Gregory finished his second year of dental school in Iowa City. After Gregory's graduation, the couple settled in Newton. Gregory initially practiced in the office of another dentist. During the marriage, Susan finished her bachelor's degree at Grinnell College, and worked as a teacher in the Newton and Baxter school districts. In 1980, Gregory bought his own dental practice for $75,000 or $78,000. Susan filled in as his receptionist and chair-side assistant for several years.

In recent years, Gregory has earned approximately $150,000 per year, working three and one-half days per week. At the time of trial, he employed three staff members at the dental office, including a receptionist whom he was

dating. Susan's employment has included more than twenty years of substitute teaching. She also taught medical and dental assistants at Vatterott College in Des Moines from 2005 until 2008. She earned approximately $43,000 in her last year in that position. The couple raised two daughters, who were adults by the time of the dissolution.

At the time of the trial, Gregory was fifty-eight years old and Susan was fifty-seven. Susan testified that she has concerns about her health, including an auto-immune deficiency disease which is currently in remission.

Gregory filed a petition for dissolution on October 8, 2008. The district court held a trial on January 27, 2010, and issued the decree on April 14, 2010. The decree provided for the parties to place their house and acreage on the market, and to divide the proceeds one-half to each party, with Gregory paying an additional $22,665 from his half of the proceeds to Susan. The district court valued Gregory's dental practice at $115,450, and awarded the practice and the parcel of real estate where it was located to Gregory. The court obligated Gregory to assume a total debt load of $191,079, including a home equity loan of $42,934; student loans for the couple's daughters totaling $51,974; dental practice loans of $64,918; credit card debt of $26,703; and various auto repair bills and debts totaling $4550. Susan was ordered to pay her credit card debt of $3666. The district court awarded Gregory's retirement accounts in the amounts of $29,587 and $92,000 to him and awarded Susan's retirement accounts in the amounts of $11,813 and $63,204 to her.

On the question of alimony, the decree ordered Gregory to pay $1000 per month to Susan until the proceeds from the sale of the residential real estate have been divided.[1] After that division, the amount of spousal support increases to $1800 per month. The decree provided that the spousal support would terminate "upon the death of either party or the remarriage of the Respondent, or the Respondent attaining the age of 66 years, whichever occurs first." The district court ordered Gregory to pay $2500 of Susan's attorney fees.

Susan appeals, challenging the property division, alimony and attorney fee provisions of the decree. Gregory does not cross-appeal.

II. Scope of Review/General Principles

We engage in a de novo review of the economic provisions of a divorce decree, examining the entire record and adjudicating anew the issues properly presented on appeal. *In re Marriage of Dean*, 642 N.W.2d 321, 323 (Iowa Ct. App. 2002). While we are not bound by the fact-findings of the district court, we accord them weight. *Id*.

Iowa courts strive to divide marital property equitably, considering the factors outlined in Iowa Code section 598.21(5) (2009). *See In re Marriage of Hansen*, 733 N.W.2d 683, 702 (Iowa 2007). An equitable division is not necessarily an equal division. *Id*.

In addition to the property division, courts deciding dissolution-of-marriage cases may also award alimony. *Id*. No former spouse has a right to receive

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[1] The court allowed Susan to retain possession of the homestead while it was on the market and ordered Gregory to continue to pay the mortgage, insurance, and tax payments until the real estate was sold.

alimony; the alimony award depends on the peculiar circumstances of the parties involved. *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976). The legislature provided the courts with criteria for determining spousal support in Iowa Code section 598.21A. *Hansen*, 733 N.W.2d at 703. Even though our appellate review of spousal support awards is de novo, we accord the district court considerable discretion in such determinations and will disturb the district court ruling only where it fails to do equity between the parties. *In re Marriage of Kurtt*, 561 N.W.2d 385, 388 (Iowa Ct. App. 1997).

III. Analysis

A. Property Distribution.

We turn first to Susan's challenges to the value placed on Gregory's dental practice and the division of the couple's retirement accounts.

1. Valuation of Dental Practice

The parties presented dueling experts on the question of how much Gregory's dental practice was worth. Gregory offered the testimony of John Trask, a management consultant and dental practice broker from Minnesota. Trask had been in the business of selling dental practices for thirty-four years and had completed more than 500 appraisals of such professional practices. Trask estimated that as of May 2009 Gregory's practice had a value of $77,000 including the equipment, supplies and accounts receivable. When Trask calculated in the goodwill value, he appraised the practice at $198,307. Susan offered the testimony of Cyril Mandelbaum, a certified public accountant and accredited senior appraiser. She had been doing business valuations for more

than twenty years and appraised several dental practices, as well as other medical practices, over her career. In Mandelbaum's opinion, Gregory's practice was worth $241,000. In reaching her estimate, she adjusted the value of the practice to account for the wages paid to the dentist's receptionist, with whom he had a romantic relationship, asserting that they were higher than the market value of her services considering her training and that this "normalizing adjustment" provided a more realistic value to a hypothetical buyer.

The decree addressed the divergent opinions as follows:

> The court has carefully reviewed the appraisals presented by the parties, including the "adjustments" assumed by Ms. Mandelbaum. While the true market value of this dental practice cannot be exactly determined without a sale of the practice, the court finds that for the purposes of this dissolution proceeding, the value of Dr. Bruns' practice, excluding good will, is $115,450.

On appeal, Susan questions the methodology used by Trask and asserts the district court's valuation is unsupported by evidence presented at trial. Gregory counters that the considerably higher value assigned by Mandelbaum "must have included 'good will'" because the appraiser did not believe that the value of the business would change depending upon whether any eventual sale would include a non-compete clause.

Our court has recognized that valuing professional practices is difficult because their income flows almost exclusively from the efforts of the professional who owns the business. *See In re Marriage of Bethke*, 484 N.W.2d 604, 607 (Iowa Ct. App. 1992)*; In re Marriage of Hogeland*, 448 N.W.2d 678, 681 (Iowa Ct. App. 1989). In *Hogeland*, we were asked to assign a value to stock held by one dentist practicing with another dentist as a professional corporation. *Hogeland*,

448 N.W.2d at 681. Our court held that the good will in a professional practice depends on the ability of the professional to continue to practice his or her profession. *Id*. Thus, goodwill bears on the professional's future earning capacity (for the purposes of determining alimony), but should not be additionally listed as an asset in the valuation of a professional practice. *Id*.

The district court followed *Hogeland* in determining the market value for Gregory's practice. The court noted that Gregory testified to purchasing the dental practice in 1980 for $75,000 or $78,000 (he could not precisely recall) and also testified that he would not sell his practice for the $77,000 value assigned by his appraiser. On the other hand, the district court was free to discount the value placed on the practice by Mandelbaum based on her more limited experience in appraising dental practices and her opinion that the existence of a non-compete agreement would make no difference in the valuation. The court's decision to assign a value of $115,450 to the dental practice was within the permissible range of evidence, and we will not disturb it on appeal. *See In re Marriage of Hansen,* 733 N.W.2d at 703 ("[A] trial court's valuation of an asset will not be disturbed when it is within the permissible range of evidence.").

2. Retirement Accounts.

Susan next contends that the district court did not do equity in awarding the parties the value of their own retirement accounts. The decree provides for Gregory to receive his US Bank retirement account of $29,587 and his Merrill Lynch account of $92,000, and for Susan to receive her US Bank account of $11,813 and her Merrill Lynch account of $63,204. She urges us to modify the

decree to allow for an equal division of all the retirement accounts, which would provide her approximately $23,000 in additional assets. Susan acknowledges that this distribution "may result in her receiving more than a mathematical one-half of the parties' current assets." But she argues that her proposed re-distribution would be equitable because of the disparity in the parties' incomes and the unlikelihood that she will be able to save much more for her retirement.

We believe the current division of the retirement accounts is equitable when considered as a component of the district court's overall scheme of property distribution and award of alimony, as modified in this decision. The district court explained the interdependency of the economic provisions of the decree as follows:

> While the Petitioner's earning capacity greatly exceeds that of the Respondent, the property division herein will result in a substantial cash distribution to the Respondent. The Petitioner's receipt of assets is largely his dental practice, which cannot be converted to cash without loss of his earnings. The Petitioner will shoulder the burden of satisfaction of the greatest portion of the parties' debt.

When similar retirement security is provided for both parties through the overall scheme of an equitable property division, an equal division of retirement benefits is not required. *See In re Marriage of Fall*, 593 N.W.2d 164, 167 (Iowa Ct. App. 1999). We affirm the district court's distribution of the parties' retirement accounts as equitable.

B. Spousal support.

Susan also challenges the amount and duration of spousal support ordered in the decree: $1000 per month while she lives in the house and Gregory pays the mortgage, insurance and property taxes, and $1800 per month

after the house is sold. She argues on appeal that Gregory should pay "not less than" $3370 per month in spousal support, which would cover her health insurance, utilities and basic living expenses. She also argues that the alimony award should be permanent, with a reduction based on any Social Security benefits. Gregory takes the position on appeal that the alimony award was equitable and should not be disturbed. He contends that Susan has the ability to support herself, pointing out that as recently as 2008 she was earning more than $40,000 per year.

No right to spousal support exists and the individual award depends on the circumstances of each particular case. *In re Marriage of Dieger*, 584 N.W.2d 567, 570 (Iowa Ct. App. 1998). The criteria for determining support includes the length of the marriage, the age and health of the parties, the property distribution, the parties' educational level, the earning capacity of the party seeking support, and the feasibility of that party becoming self supporting at a standard of living comparable to that enjoyed during the marriage and the length of time necessary to achieve this goal. Iowa Code § 598.21A. Courts may apply a traditional alimony analysis when dissolving long-term marriages "where life patterns have largely been set and the earning potential of both spouses can be predicted with some reliability." *Kurtt*, 561 N.W.2d at 388.

In determining the amount of spousal support, the district court appreciated that these parties were married almost thirty-six years and that Gregory's dental practice had been the primary source of income throughout the marriage. At the same time, we must consider that Susan possesses her own

marketable education, skills, and experience. During the marriage, she obtained a college degree, worked as a dental assistant, and pursued a teaching career. She did not leave the job market for long periods of time. Her earning capacity was reflected in the $40,000 annual salary she received just two years before the dissolution when she worked as an instructor for a career training college. Iowa's family law requires both parties, if they are in reasonable health, to earn up to their capacities to pay their own bills and not lean unduly on the other party for permanent support. *See In re Marriage of Wegner*, 434 N.W.2d 397, 399 (Iowa 1988). Further, we consider the dissolution decree's property division and spousal support together when evaluating their individual sufficiency. *In re Marriage of Tzortzoudakis*, 507 N.W.2d 183, 186 (Iowa Ct. App. 1993). When considering Susan's earning capacity, the significant cash distribution provided to Susan, and the substantial debt load assumed by Gregory, we see no inequity in the amount of spousal support ordered in the decree.

We do believe that given the long duration of the marriage, the alimony award should be permanent. We modify the decree to award Susan $500 per month in spousal support after she reaches sixty-six years of age. *See Hogeland*, 448 N.W.2d at 682 (finding a permanent alimony award was equitable because wife's more modest employment history resulted in a less social security benefits than husband's dental profession). Gregory's obligation to pay this spousal support shall terminate upon the death of either party or Susan's remarriage, whichever event shall occur first.

C. Attorney fees.

The district court ordered Gregory to pay $2500 in attorney fees incurred by Susan for the dissolution trial. On appeal, Susan claims that Gregory should have been required to pay the full cost of hiring her attorney and expert witness, which she listed in trial motions as $7000 for expert fees and $15,000 for attorney fees. Iowa trial courts enjoy considerable discretion in determining the award of attorney fees in dissolution cases. *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa Ct. App. 1994). The complaining party must show an abuse of that discretion to prevail on appeal. *Id*. We perceive no abuse of discretion here. The attorney fee award ordered by the district court approximates the respective ability of the parties to pay those expenses.

In exercising our broad discretion on the question of appellate attorney fees, we consider several factors: the financial needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal. *In re Marriage of Okland,* 699 N.W.2d 260, 270 (Iowa 2005). Because the decree provides a fair distribution of assets to Susan and because she does not prevail on the merits of her appellate claims, we determine that each party should pay his or her own attorney fees for this appeal. Each party is taxed one-half the costs of this appeal.

AFFIRMED AS MODIFIED.