

IN THE COURT OF APPEALS OF IOWA

No. 3-607 / 12-1044
Filed August 7, 2013

**IN RE THE MARRIAGE OF DEAN W. HEIDEMAN
AND BARBARA A. HEIDEMAN**

**Upon the Petition of
DEAN W. HEIDEMAN,**
Petitioner-Appellant,

**And Concerning
BARBARA A. HEIDEMAN,
n/k/a BARBARA A. HENN,**
Respondent-Appellee.

Appeal from the Iowa District Court for Grundy County, Bradley J. Harris,
Judge.

A husband appeals the economic and attorney fee provisions of the
parties' dissolution decree. **AFFIRMED AS MODIFIED.**

John R. Walker Jr. and Kate B. Mitchell of Beecher, Field, Walker, Morris,
Hoffman & Johnson, Waterloo, for appellant.

Christy R. Liss of Clark, Butler, Walsh & Hamann, Waterloo, for appellee.

Considered by Danilson, P.J., Mullins, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

HUITINK, S.J.**I. Background Facts & Proceedings.**

Dean Heideman and Barbara Heideman, now known as Barbara Henn, were married in 1999.¹ Dean filed a petition for dissolution of marriage on July 5, 2011. A temporary order filed August 15, 2011, required Dean to pay \$750 per month in temporary spousal support. The temporary order also required each party to pay certain monthly bills. The bills assigned to Dean included a payment of \$414 per month for a 2008 Chevrolet Trailblazer driven by Barbara.

The dissolution hearing was held April 20, 2012. At the time of the hearing, Dean was forty-six years old. He had a high school degree and had been employed for most of his adult life as a truck driver. Dean was currently employed as a truck driver for Peterson Contractors, Inc. (PCI). He earned \$66,000 in 2011, which included about 1000 hours of overtime. Dean did not currently have any housing costs because he was living rent-free in his girlfriend's home.

At the time of the dissolution hearing, Barbara was forty-five years old. During the marriage she was employed at six different jobs and was fired from four of them. Her highest salary was approximately \$25,000 per year. At the time of the hearing, she was employed at Kwik Star, where she earned \$9.35 per hour and worked about thirty-nine hours per week, giving her an annual salary of approximately \$18,961. She was also attending Hawkeye Community College with the plan to obtain an associate's degree in corrections. She then planned to

¹ No children were born during the marriage. Barbara has two children from a previous marriage who lived with the parties.

attend the University of Northern Iowa for an additional two years. She was living in a mobile home she had owned since before the parties' marriage. The mortgage on the mobile home was \$256 per month, and she paid \$205 per month for the lot.²

The district court issued a dissolution decree for the parties on May 31, 2012. The court awarded Dean his pickup truck, a Harley Davidson motorcycle, a 401(k) valued at \$1678, and \$25,910.50, representing one-half of his profit sharing plan at PCI. The court assigned to Dean the loans on his vehicle and motorcycle and his credit card bill of about \$10,000. The court set aside to Barbara the mobile home as a non-marital asset and determined the mortgage on the mobile home and her student loans were non-marital liabilities. Barbara was awarded the Trailblazer, a Harley Davidson motorcycle, and \$25,910.50, as one-half of the profit sharing plan. She was assigned the debts for her vehicle and motorcycle.

In order to equitably divide the assets and liabilities, the court ordered Barbara to pay Dean \$1312.50. The court noted Barbara had previously been ordered to pay \$850 toward Dean's attorney fees. The court found Barbara owed Dean a total of \$2162.50. The court ordered Dean to pay \$3000 toward Barbara's attorney fees. The court offset these amounts and ordered Dean to pay Barbara \$837.50 for her trial attorney fees.

Although the court had assigned the loan on the Trailblazer (\$12,738) to Barbara, in calculating spousal support the court ordered Dean to pay \$414 per

² During the marriage Dean had paid the mortgage and lot fee for the mobile home.

month on the loan until it was paid in full, which was expected to be three years. The court also ordered Dean to pay \$600 per month in spousal support for a period of four years to assist Barbara while she was attending school.

Dean appeals the property division, spousal support, and attorney fee provisions of the parties' dissolution decree.

II. Standard of Review.

Our review in dissolution cases is de novo. Iowa R. App. P. 6.907; *In re Marriage of Fennelly*, 737 N.W.2d 97, 100 (Iowa 2007). We examine the entire record and determine anew the issues properly presented. *In re Marriage of Rhinehart*, 704 N.W.2d 677, 680 (Iowa 2005). We give weight to the factual findings of the district court but are not bound by them. *In re Marriage of Geil*, 509 N.W.2d 738, 741 (Iowa 1993).

III. Economic Provisions.

A. Dean contends the amount of spousal support awarded by the district court is excessive. He contends by requiring him to pay the loan on Barbara's Trailblazer, this liability was actually assigned to him, making the property distribution inequitable. He asserts that if he is required to pay the loan on the Trailblazer, he should not be required to pay any additional amount as spousal support. In the alternative, he asserts that if the loan on the Trailblazer is assigned to Barbara, he should be required to pay spousal support of \$600 per month for a period of three years.

"Property division and alimony should be considered together in evaluating their individual sufficiency." *In re Marriage of Trickey*, 589 N.W.2d 753, 756 (Iowa Ct. App. 1998). In matters of property distribution, we are guided

by Iowa Code section 598.21 (2011). Iowa courts do not require an equal division or percentage distribution. *In re Marriage of Campbell*, 623 N.W.2d 585, 586 (Iowa Ct. App. 2001). The determining factor is what is clear and equitable in each particular circumstance. *In re Marriage of Miller*, 552 N.W.2d 460, 463 (Iowa Ct. App. 1996). The allocation of marital debt inheres in the division of property. *In re Marriage of Sullins*, 715 N.W.2d 242, 251 (Iowa 2006).

In this case, the district court carefully considered the parties assets and debts, and made a largely equal division. In making this division of property, the court assigned to Barbara the debt of \$12,738 on the Trailblazer awarded to her. In considering the economic provisions in a dissolution decree, we will disturb a district court's ruling "only when there has been a failure to do equity." *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998) (citations omitted). We conclude this property division is equitable and therefore affirm the division.³

B. We then turn to the issue of spousal support. Spousal support, or alimony, is a stipend to a spouse in lieu of the other spouse's legal obligation for support. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). Spousal support is not an absolute right; an award depends upon the circumstances of the particular case. *Id.* In making an award of spousal support, the court considers the factors set forth in Iowa Code section 598.21A(1). *In re Marriage of Olson*, 705 N.W.2d 312, 315 (Iowa 2005). One type of support, rehabilitative alimony, is "a way of supporting an economically dependent spouse through a limited period of re-education or retraining following divorce, thereby creating

³ In making this determination, we conclude Dean's name should be removed from the title and the loan for the vehicle.

incentive and opportunity for that spouse to become self-supporting.” *In re Marriage of Probasco*, 676 N.W.2d 179, 184 (Iowa 2004).

We determine the spousal support payments should not be specifically tied to the loan on Barbara’s vehicle. As noted above, the allocation of marital debt inheres in the division of property. *Sullins*, 715 N.W.2d at 251. By ordering Dean to pay a debt assigned to Barbara, the court in effect was undoing its equitable division of property. We therefore modify to delete the spousal support provision specifically requiring Dean to pay the loan on the Chevrolet Trailblazer awarded to Barbara. The loan on the vehicle is Barbara’s responsibility.⁴

In this case, the court essentially ordered Dean to pay spousal support of \$1014 per month for three years and \$600 per month for one year after that. In determining an appropriate amount of spousal support, we consider the ability of one spouse to pay, the needs of the other spouse, and the parties’ standard of living during the marriage. *In re Marriage of Siglin*, 555 N.W.2d 846, 850 (Iowa Ct. App. 1996). Dean earns a base salary of \$49,667 and, due to overtime, earned \$66,000 in 2011. His expenses are about \$2846 per month. Barbara earns about \$18,961 per year, and her expenses were about \$2242 per month.⁵ It is clear Dean has the ability to pay spousal support and Barbara needs financial support, at least during the period while she is completing her education.

⁴ Our decision gives Barbara more flexibility in providing for her own transportation and assists in separating the parties’ finances.

⁵ The district court found Dean’s monthly expenses were \$4010. We have subtracted his temporary alimony payment of \$750 and the \$414 he had been paying for Barbara’s vehicle. The court found Barbara’s monthly expenses were \$2634 per month. This amount included a payment of \$392 per month on her motorcycle, which she stated she was going to pay off with proceeds from the dissolution, so we have subtracted that amount. Her monthly expenses included \$414 per month for her vehicle loan.

We modify the dissolution decree slightly to provide Dean should pay spousal support of \$1000 per month for three years and \$600 per month for one year after that. This will give Barbara an opportunity to complete her education and hopefully become self-supporting in a new career. See *Probasco*, 676 N.W.2d at 184 (noting the purposes of rehabilitative alimony). As noted above, this payment is not tied to the loan on Barbara's vehicle. We therefore affirm the spousal support provisions of the decree as modified.

IV. Attorney Fees.

A. Dean appeals the district court's order requiring him to pay \$3000 toward Barbara's trial attorney fees. An award of attorney fees is not a matter of right but rests within the court's discretion. *In re Marriage of Romanelli*, 570 N.W.2d 761, 767 (Iowa 1997). We find the district court did not abuse its discretion in requiring Dean to pay \$3000 for Barbara's trial attorney fees. The court offset this amount against amounts Barbara owed Dean, and in fact, Dean is required to pay Barbara a net amount of \$837.50 for her trial attorney fees.

B. Barbara seeks attorney fees for this appeal. This court has broad discretion in awarding appellate attorney fees. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). An award of appellate attorney fees is based upon the 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 Berning*, 745 N.W.2d 90, 94 (Iowa Ct. App. 2007). An award of attorney fees rests within the court's discretion. *Sullins*, 715 N.W.2d at 255. Considering these factors, we determine each party should pay his and her own attorney fees for this appeal.

We affirm the parties' dissolution decree, except as expressly modified in this opinion. Costs of this appeal are assessed to Dean.

AFFIRMED AS MODIFIED.