IN THE COURT OF APPEALS OF IOWA

No. 5-530 / 13-0066
Filed July 24, 2013

**IN RE THE MARRIAGE OF ANGELA SUE TETER
AND CLARENCE W. TETER**

**Upon the Petition of
ANGELA SUE TETER,**
Petitioner-Appellee/Cross-Appellant,

**And Concerning
CLARENCE WAYNE TETER,**
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Boone County, James C. Ellefson, Judge.

Both spouses appeal the economic provisions of their divorce decree. **AFFIRMED.**

Jennie L. Wilson-Moore of Wilson Law Firm, Marshalltown, for appellant.

Meredith C. Mahoney Nerem of Jordan & Mahoney Law Firm, P.C., Boone, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

TABOR, J.

After nineteen years of marriage, Clarence and Angela Teter divorced. The district court ordered Clarence to pay Angela $600 per month in spousal support until Angela remarries, either party dies, or Clarence reaches the age of retirement. The court also divided the parties' marital assets and debt and assessed child support for the three minor children.

On appeal, Clarence contends the court erred in awarding any spousal support or, alternatively, in awarding traditional instead of rehabilitative support. Angela cross-appeals arguing the court erred in not awarding a greater amount of spousal support and not awarding additional alimony when the child support is reduced. Plus, Angela disagreed with the district court's equal division of martial debt, the denial of a postsecondary education subsidy for the two oldest children, and the amount of trial attorney fees. Angela also requests appellate attorney fees.

Given the disparity in the parties' earning capacities, we find the district court acted equitably in fixing the amount and duration of spousal support. The district court equitably divided the parties' debt, and appropriately refused to allocate the daughter's senior trip debt. We also find the court properly denied the postsecondary education subsidy for the two oldest children and acted within its discretion in awarding Angela trial attorney fees. We award Angela $1500 in appellate attorney fees.

I. *Background Facts and Proceedings*

Angela and Clarence were married in October 1993. Five children—two daughters and three sons—were born during the marriage and ranged in age from twenty years old to nine years old at the time of the dissolution trial.

Before the dissolution, the parties lived in a home appraised at $405,000 on twelve acres. The family fell behind on payments and no longer own the home.

Clarence was forty-eight years old at the time of trial. He has been employed for the Union Pacific Railroad as a locomotive engineer during the entirety of the parties' marriage and was the primary income earner. His income largely depends on the particular assignments he accepts, which often require travel, and the freight the railroad hauls, which varies with the economy. The court assessed his salary at $110,000 annually. Clarence also helps his farmer friends during the planting and harvesting seasons, earning around $500 in cash or bartering for something he needs.

At the time of trial, Angela was forty-three years old. She has an associate's degree. Angela primarily served as a stay-at-home spouse during the marriage and solely handled the family's finances. She earned occasional income by working at a bank, local restaurants, and babysitting. Her hours of employment were often limited because Clarence was frequently gone during the night hours or for several consecutive days due to his work schedule.

In 2009, Angela had her highest income year during the marriage when she earned $14,504 working part-time at the Ogden school district and the

Boone County Hospital. Angela briefly left these positions in 2011 to home school the parties' two youngest children. She still home schools the youngest child. She currently works for Ogden schools as a para-educator, earning $7.40 per hour, and doing one-on-one-assignments, earning $9.08 per hour. She additionally works for the Boone County Hospital for less than forty hours per month performing home care, earning $11.25 per hour. The court assessed her salary at $18,700. The court based its estimate on a combination of Angela's current hourly wages and various hours working. This estimate is close to the full-time, thirty-two hour position at Boone County Hospital Angela testified she hoped to obtain when the position became available.

On November 29, 2011, Angela filed a petition to dissolve the marriage. The court ordered Clarence to pay temporary child support in the amount of $1777.42 per month in February 2012. Between the filing of the petition and February 2012, Clarence offered assistance for food, but the parties' testimony differed as to whether Clarence paid any expenses relating to the home, including mortgage payments or utility expenses. The district court did not consider whether Clarence made support payments before the January 30, 2012 temporary support order in making its property distribution.

The parties stipulated that Angela should be granted physical care of the children. They also stipulated to joint legal custody of the children, medical insurance coverage for the children, maintenance and beneficiaries of Clarence's life insurance policy, division of most of their personal property, and equal division of Clarence's retirement account and 401K.

In its decree dissolving the parties' marriage, the district court calculated child support in the amount of $1719 per month,[1] denied postsecondary education subsidies for the oldest two children, and divided the remaining marital property roughly equally between the parties.[2] The court did not allocate the daughter's senior-trip debt of $1040 between the parties. Additionally, the court ordered Clarence to pay spousal support to Angela in the amount of $600 per month until Angela remarries, either party dies, or Clarence turns sixty-seven in July 2031—whichever occurs first. The court also awarded Angela $4000 in trial attorney fees.

II. *Scope and Standard of Review*

We review dissolution-of-marriage proceedings do novo. *In re Marriage of Kimbro*, 826 N.W.2d 696, 698 (Iowa 2013). We defer to the district court's fact findings, though we are not bound by them. *Id.* Precedent is of little value because we base our decision on the unique facts of each case. *In re Marriage of Brown*, 776 N.W.2d 644, 647 (Iowa 2009).

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[1] The court increased the child support by twenty dollars per month to compensate Angela for the assignment of all three eligible children as tax dependents to Clarence. The parties originally stipulated to assign one child to Angela but, upon review, the court found assigning all three minor children to Clarence reduced his tax liability by $1900 and compensated Angela for the slight raise in her tax liability.

[2] The parties stipulated much of the property division, and although the court noted it had little information to determine if the stipulated division of personal property was equitable, it presumed the stipulation divided the property evenly and accepted it. The court was then left to divide primarily debts between the parties.

III. *Analysis*

A. Spousal Support

Clarence challenges the district court's award of traditional spousal support of $600 per month. He argues the amount of spousal support is not equitable and, alternatively, that rehabilitative support would be more appropriate. Clarence focuses on the age and good health of the parties, the equal division of assets, and Angela's future earning capacity as allowing her to become self-supporting. Angela cross-appeals and contends the court erred in not awarding a greater amount of alimony and not providing additional alimony when child support is reduced once the children are no longer minors.

The district court has considerable latitude in determining a spousal support award. *In re Marriage of Schenkelberg*, 824 N.W.2d 481, 486 (Iowa 2012). We only disturb an award if it fails to do equity between parties. *Id*. The award of supposal support depends on the facts of each case taking into account several statutory factors, including: (1) the length of the marriage; (2) the age and physical and emotional health of the parties; (3) the property distribution; (4) the parties' education levels; (5) the earning capacity of the party seeking spousal support; and (6) the feasibility of the party seeking spousal support becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. Iowa Code § 598.21A(1) (2011). When dissolving long-term marriages, the court can apply a traditional alimony analysis "where life patterns have largely been set and the earning potential of both spouses can be

predicted with some reliability." *In re Marriage of Kurtt*, 561 N.W.2d 385, 388 (Iowa Ct. App. 1997).

Although Clarence believes Angela's earning capacity could increase with training, earning capacity is only one factor determining the spousal support award. Clarence has specialized training and a secure job with seniority; Angela does not. Clarence worked for the entirety of the nineteen-year marriage at an earning capacity nearly eight times greater than Angela's highest income during the marriage, and six times greater than the court's estimated earning capacity for Angela. Angela maintains physical care of the children and has sacrificed traditional employment to raise the parties' children because Clarence's work schedule is variable. These sacrifices are likely to continue after the divorce.

Angela is in her mid-forties, and she will receive spousal support until she is sixty-two years old at the rate of $7200 per year, unless she remarries or either party dies. At most, this support totals $129,600 over eighteen years—only $20,000 more than Clarence's estimated earning capacity for a single year. To increase her salary by the same amount, Angela would have to (1) substantially improve her hourly earnings; (2) work more than forty-five hours per week at her highest hourly wage of $11.25; or (3) work thirty-two hours per week at $11.25 per hour in addition to more than fifteen hours at Ogden schools. Based on the record and Angela's childcare obligations, neither the salary hike nor the expansion of work hours is feasible. Spousal support equalizes the disparity between the parties. Even using Clarence's unsupported estimate that Angela could earn $35,000 to $40,000 per year if she trained to be a certified nursing

assistant (CNA), he would still earn nearly three times more than Angela. Further training is unlikely to allow Angela to become self-supporting to the standard of living enjoyed during the marriage, making rehabilitative support a less equitable option. *See In re Marriage of Becker*, 756 N.W.2d 822, 826 (Iowa 2008).

We adopt the district court's award of traditional support as equitable in duration and amount and fully supported by the record.

B. Property division

In her cross appeal, Angela asserts the court erred in dividing the parties' marital debt equally and not allocating the debt incurred for the second oldest daughter's high school senior trip. The district court evenly divided the debt between the parties. The district court refused to allocate the daughter's senior trip expenses, holding the outstanding balance was not the debt of a minor and its payment was "expressly not required of either party."

In Iowa, spouses are entitled to just and equitable distribution of their marital property. *See In re Marriage of Hazen*, 778 N.W.2d 55, 59 (Iowa Ct. App. 2009). What constitutes equitable distribution depends upon the circumstances of each case. *In re Marriage of Hansen*, 733 N.W.2d 683, 702 (Iowa 2007); *In re Marriage of Gensley*, 777 N.W.2d 705, 719 (Iowa Ct. App. 2009). Distribution of martial debts is as important as the distribution of marital assets. *In re Marriage of Sullins*, 715 N.W.2d 242, 251 (Iowa 2006). Most often district court property distribution determinations are given considerable latitude and only disturbed when inequitable. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005).

1. Marital Debt

Because of the disparity between the parties' earning capacity, Angela contends the court should not have divided the marital debts evenly. Moreover, she contends some of the debts were incurred during the pendency of the divorce.

The district court split the parties' marital debts as follows:

Debt assigned to Angela:		
Federal student loan (Oldest daughter)		$6266
Capital One credit card		$1039
GE credit card		$555
Kohl's credit card		$1434
HSBC credit card		$1060
Dentist bill		$627
	Total	$10,981
Debt assigned to Clarence:		
Chase credit card		$1747
Best Buy credit card		$2742
Union Plus		$345
Capital one credit card		$1727
Signature loan		$1119
Bridgestone		$100
Citi credit card (Angela's)		$3234
	Total	$11,014

We find the debt division is equitable. While Clarence does earn more than Angela, entitling Angela to receive spousal and child support, the district court noted the division of property and debt "probably leaves each of the parties with a negative net worth."[3] All of the debt assigned to Angela was in her name and the district court reasoned "requiring [Angela] to pay them gives her some measure of control over her own credit rating." The court additionally equally

[3] The court further noted "[Clarence] is in a much better position to recover from his financial situation than [Angela] to recover from his financial situation than [Angela] is from hers." Yet the court found it equitable to divide the debt equally.

divided the parties' state and federal tax refunds, providing Angela an additional $5701.50 and also awarded Angela trial attorney fees. Given the district court's nearly equal division and the allowances for child support and spousal support, we affirm the district court's allocation of debt to the parties. *See In re Marriage of Fennelly*, 737 N.W.2d 97, 106 (Iowa 2007).

2. Senior Trip Debt

The parties disagree who should pay the debt incurred by their daughter, Ashlea, for her senior high school trip. On appeal, Angela maintains Ashlea was a minor when she took the trip and therefore the debt should be allocated between Clarence and Angela. Angela testified they paid for their eldest daughter's trip and had no reason to believe the parties would not split the cost for Ashlea. Clarence testified the parties did not discuss paying for the trip and because the daughter had a job he expected her to pay for the trip.

The district court refused to allocate the debt. Ashlea incurred the debt while a minor. But the record indicates Angela's parents loaned the money to pay for the balance of the trip–$1040.[4] Angela offered no evidence to show whether her parents intended the amount to be a loan or a gift, how much, if any, has been repaid, and whether the balance was paid before the parties' separation. Furthermore, Clarence showed little to no understanding of the parties' expenses and Angela solely handled the family finances. If the amount was a loan, the record indicates Clarence had no knowledge of the transaction. We decline to modify the district court's ruling regarding the repayment of this

[4] Angela also testified the parties paid for the trip expense.

amount. *See Sullins*, 715 N.W.2d at 251 (refusing to disturb the district court "credibility judgment" in not allocating a debt owed to family because evidence failed to show repayment was necessary); *see also In re Marriage of Havran*, 406 N.W.2d 450, 452 (Iowa Ct. App. 1987) (holding credible evidence established a family loan to be a marital debt because the parties paid interest during the marriage), *overruled on other grounds by In re Marriage of Wertz*, 492 N.W.2d 711, 714 (Iowa Ct. App. 1992); *but see In re Marriage of Vrban*, 359 N.W.2d 420, 426-27 (Iowa 1984) (overturning the district court's decision to not allocate a family loan because significant evidence revealed the parties knew of the family's demand for repayment). Moreover, a divorce proceeding is not the action for the family (creditor) to recover an unpaid debt with unclear repayment terms. *See, e.g. Sullins*, 715 N.W.2d at 251.

C. Postsecondary education subsidy

Angela argues the court erred in failing to award a postsecondary education subsidy for the parties' two daughters, Amanda and Ashlea. She contends the two children are within the statutory age and "the court did not have enough evidence to make a determination that the two eldest children did not qualify." At trial, Angela testified both daughters planned to attend postsecondary education at community colleges within a year of trial; Amanda planned to enroll in community college courses the month after trial, and Ashlea planned to enroll in nursing training shortly after trial and in college courses during August 2012.

Clarence testified his eldest daughter, Amanda, attended and quit school several times and had financial resources she could devote to school because she holds a job and received a settlement payment for an accident. Clarence also denied the parties' youngest daughter, Ashlea, planned to enroll in college at the time of trial or devote herself to education.

The district court did not order postsecondary education subsidies, determining neither child showed commitment to postsecondary education and "it is not clear to the Court that there are funds available for this [subsidy] even in light of [Clarence's] considerable earning capacity." The court retained jurisdiction for determining if subsidies were appropriate for the three minor children.

Iowa Code section 598.21F allows the court to order a postsecondary education subsidy if good cause is shown. Postsecondary education subsidies are

> for educational expenses of a child who is between the ages of eighteen and twenty-two years if the child is regularly attending a course of vocational-technical training as a part of a regular school program . . . or is, in good faith, a full-time student in a college, university, or community college; or has been accepted for admission to a college, university, or community college and the next regular term has not yet begun.

Iowa Code § 598.1(8). Factors to consider include "the age of the child, the ability of the child relative to postsecondary education, the child's financial resources, whether the child is self-sustaining, and the financial condition of each parent." Iowa Code § 598.21F(2); *see also In re Marriage of Vaughan*, 812 N.W.2d 688, 692-95 (Iowa 2012) (tracing the evolution of the postsecondary education credit in Iowa). Even when the parents have few resources, a

"modest" educational subsidy may be appropriate, but must not cause undue financial hardship. *Vaughan*, 812 N.W.2d at 695 (citing *In re Marriage of Neff*, 675 N.W.2d 573, 579 (Iowa 2004)). While our review is de novo, weight is given to the district court's factual findings and determinations of credibility. *Fennelly*, 737 N.W.2d at 100; *see also* Iowa R. App. P. 6.904(3)(g).

We find no reason to alter the district court's finding given the daughters' lack of commitment to postsecondary plans. At trial, Angela did not offer evidence demonstrating the daughters' commitment to education. *Cf. In re Marriage of Vannausdle*, 668 N.W.2d 885, 886-87 (Iowa 2003) (citing evidence of the child's high school and college grade point averages and other academic successes); *see also* Iowa Code § 598.21F(5) (subsidy terminates "if the child fails to maintain a cumulative grade point average in the median range or above during [his or her] first calendar year" in school). Because good cause has not been shown, we affirm the portion of the decree denying a postsecondary education subsidy for the two oldest children.

D. *Trial Attorney Fees*

Angela contends the district court erred in not awarding her a greater portion of her trial attorney fees. She argues Clarence's actions generated

greater legal fees.[5] The district court awarded Angela $4000 in attorney fees "[b]ecause [Clarence] has a significantly greater earning capacity."[6]

"Ordinarily an award of attorney's fees rest in the sound discretion of the trial court and will not be disturbed on appeal in the absence of an abuse of discretion." *In re Marriage of Wessels*, 542 N.W.2d 486, 491 (Iowa 1995). We review the district court's award of attorney fees for abuse of discretion. *Sullins*, 715 N.W.2d at 255. Here, we find no abuse of discretion in the district court's award of attorney fees.

E. *Appellate Attorney Fees*

Angela requests an award of appellate attorney fees. We have discretion in awarding appellate attorney fees and the award is not a matter of right. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). "We consider the needs of the party making the request, the ability of the other party to pay, and whether the party was required to defend the district court's decision on appeal." *In re Marriage of Berning*, 745 N.W.2d 90, 94 (Iowa Ct. App. 2007). Because Clarence's income is greater than Angela's and Angela was required to defend the district court's decision on spousal support, though her counterclaims were not successful, we believe it is equitable to award her $1500 in appellate attorney fees. The parties shall divide the costs of appeal equally.

AFFIRMED.

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[5] The parties each brought contempt actions against one another. The court dismissed both actions for lack of proof beyond a reasonable doubt either party intentionally violated any court order. Neither party disputes the court's dismissal of the contempt actions.

[6] The district court determined Angela accumulated attorney fees of $14,600. The $4000 payment covers approximately twenty-seven percent of Angela's attorney fees.