

**IN THE COURT OF APPEALS OF IOWA**

No. 7-332 / 06-1686  
Filed September 19, 2007

**IN RE THE MARRIAGE OF JEANNE MARIE SHIELDS  
AND MICHAEL EUGENE SHIELDS**

**Upon the Petition of  
JEANNE MARIE SHIELDS,**  
Petitioner-Appellee,

**And Concerning  
MICHAEL EUGENE SHIELDS,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Linn County, Douglas S. Russell, Judge.

Michael Shields appeals from the alimony and property provisions of the decree dissolving the parties' marriage. **AFFIRMED AS MODIFIED AND REMANDED.**

David P. McManus of Glasson, Sole, McManus & Pearson, P.C., Cedar Rapids,  
for appellant.

Sherry L. Schulte of Crawford, Sullivan, Read & Roemerman, P.C., Cedar  
Rapids, for appellee.

Considered by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

**VAITHESWARAN, J.**

Michael Shields appeals the alimony and property provisions of a dissolution decree. We affirm as modified and remand.

***I. Background Facts and Proceedings***

Michael and Jeanne Shields began living together in 1984. They married in 1990.

The Shields lived in a Cedar Rapids house owned by Jeanne's parents. In 1990, Jeanne and Michael bought the home on contract for \$15,000. The contract was paid off in 1999.

Jeanne and Michael separated in 2001. Following their separation, Jeanne continued to live in the Cedar Rapids home with the parties' adult son. Michael eventually purchased a home in Durant.

Michael initially made monthly support payments to Jeanne, ranging from \$800 to \$1600. He stopped those payments when Jeanne refused to file a joint income tax return with him for the 2004 tax year.

Jeanne petitioned to dissolve the marriage. The district court ordered Michael to pay temporary alimony of \$1000 a month.

At trial, the only issues were financial. After considering the evidence, the district court (1) ordered Michael to pay Jeanne traditional alimony of \$1000 a month until Jeanne turns sixty-six years old, (2) ordered the parties to sell the Cedar Rapids home and divide the proceeds, with Jeanne receiving \$4500 more as an equalization payment, and (3) awarded Jeanne half of Michael's retirement and pension plans. Following a ruling on a post-trial motion, Michael appealed.

## **II. Spousal Support**

Michael argues that the district court should not have awarded spousal support. In the alternative, he maintains the amount and duration of the award should be modified. We give considerable latitude to the district court's determination of alimony and disturb that determination only if we find a failure to do equity. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005).

Applying the factors set forth in Iowa Code section 598.21(3) (2005), the district court thoroughly analyzed the spousal support issue, as follows:

The Petitioner requests alimony from the Respondent based primarily on the disparity of their incomes and their income-earning capacity. This is a fifteen and one-half year marriage in which the Petitioner is nine years older than the Respondent. Both are in relatively good physical and mental health and capable of working full-time. Jeanne takes medication for nerve damage to her back which causes a lifting restriction at work and also takes an antidepressant medication. She has high cholesterol and high blood pressure. Michael reports no medical problems. Michael's expected career before he reaches Social Security retirement age is 25 years; Jeanne's is 16. The property in this case is equally divided between the parties, but Michael has both the newer home and the newer vehicle. The property Jeanne will receive is relatively modest and is inadequate to support her if it were invested. Michael's training is complete and he has a good-paying career. His training and apprenticeship were completed during a time when he was supported, at least in part, by Jeanne. Jeanne is unlikely at her age to find better employment even if she were to seek additional education or training. She is not capable of being self-supportive at a similar level to that she had before the parties' separation without spousal support. Jeanne receives health insurance benefits through her employment. Michael, to his credit, did provide support to Jeanne and Brandon without court order during the early part of the parties' separation. He paid \$1,000 per month in temporary alimony from and after December 2005 pursuant to the Court's order.

On his income Michael is able to maintain a new house in which he lives with his girlfriend, Mary Maine, and three of her four children. Ms. Maine works full-time earning approximately \$32,000 per year and receives \$800 per month in child support. She shares household expenses with Michael but also maintains her own home which she is trying to sell. The Court does not take her income into account in

determining the equities between the parties but notes these facts to show that Michael's income is not obligated to support Ms. Maine, her children or her pets.

The Court concludes that traditional alimony is appropriate until Jeanne reaches age 66 at which time she is entitled to receive government benefits and her portion of the retirement benefits awarded to her. Without alimony, Jeanne would leave this marriage at a distinct economic disadvantage compared to Michael.

The court's detailed findings are supported by the record. Based on those findings, we discern no inequity in the court's decision to award spousal support or in the amount and duration of that award.

### ***III. Property Division and Debt***

#### ***A. Cedar Rapids Home***

Michael maintains the district court should have awarded the Cedar Rapids home to Jeanne rather than ordering it sold. He also takes issue with the court's valuation of the home and the court's decision to award more of the sale proceeds to Jeanne.

Our court has recognized that a party's financial ability to maintain a home is a valid consideration in deciding whether it should be sold. See *In re Marriage of Lovetinsky*, 418 N.W.2d 88, 89-90 (Iowa Ct. App. 1987). Jeanne testified:

I can't maintain the home myself. I mean, the chimney needs [to be] replaced. I mean, there's just a lot of work. There's mold in the basement. And it's just too big of a house. I mean, I can't afford the bills, the electricity, the gas.

Based on this testimony, we conclude the district court's order to sell the home was equitable.

Turning to the court's valuation, the district court adopted a professional appraiser's value of \$51,000. Michael disputed this figure, testifying the value was in fact "right around seventy, seventy-five thousand." Although the 2006 assessed value

of \$81,064 lends support to Michael's assertion, Jeanne testified she challenged this assessment and was told the value would be closer to \$50,000 the following year. We conclude the \$51,000 figure adopted by the district court was within the range of evidence. *In re Marriage of Decker*, 666 N.W.2d 175, 180-81 (Iowa Ct. App. 2003). For that reason, we will not disturb it. *Id.*

We are left with the district court's \$4500 equalizing payment to Jeanne. This amount reflected (1) \$1500 for Jeanne's portion of the equity in Michael's Durant home, purchased during the marriage, and (2) \$3000 for the difference in value of the parties' vehicles. Michael's challenge to this payment has two components.

First, even though he had no intention of selling the Durant residence, Michael argues "the closing costs, including real estate commission, should be subtracted from [the house's] value because that was going to [be] done by Jeanne in her own proposal for the marital residence." As Michael expressed no intention to sell his home, the district court acted equitably in declining to consider these costs. *Cf. In re Marriage of Friedman*, 466 N.W.2d 689, 691 (Iowa 1991) (rejecting reduction of value of assets due to tax consequences of sale because there was "no evidence that a sale was pending or even contemplated.").

Second, Michael maintains the district court's valuation of his vehicle does not support the \$3000 portion of the equalizing payment. The court declined to value Michael's vehicle at \$12,000 as proposed by Jeanne but instead adopted a value of \$8000. Even with this lower value Michael's vehicle was valued at \$6650 more than Jeanne's vehicle. Therefore, an equalizing payment of \$3000 was justified, based on the difference in the vehicle values.

### **B. Pension Funds**

Michael had two pension plans. The district court acknowledged a portion of both funds was acquired before Michael and Jeanne married. The court nonetheless awarded half of each fund to Jeanne. Michael argues Jeanne relinquished her right to the portion of the pensions acquired before the marriage. We agree.

In her pretrial statement Jeanne only asked for the “marital share” of the retirement plan. With respect to one plan, she stated: “The Petitioner . . . requests that the marital share of this retirement plan also be split.” With respect to the other, she stated, “The Petitioner requests that she receive 50% of the Petitioner’s Plumbers and Pipefitters Fund benefits which accrued during the course of their marriage up until the date of the Decree.”

At trial, Jeanne testified as follows:

Q. And are you asking that the Court divide the pension—excuse me, the U.A. Local 125 Retirement Plan so that you would receive 50 percent of the marital share of that portion? A. Yes.

Q. And you are simply asking for one-half of the marital share of this Plumbers and Pipefitters National Pension Fund, is that correct? A. Yes.

Q. Even though you were living with him and helping to support him during the pre-marital period as well, is that correct? A. Yes.

We conclude Jeanne relinquished her right to the pre-marital portion of the pension funds and she cannot now seek affirmance of that portion of the award. See *Johnson v. Johnson*, 188 N.W.2d 288, 291-92 (Iowa 1971) (stating relief granted under a general request must be consistent with the case made by the pleadings because a defendant must have notice of and opportunity to defend from requests for relief that may be granted against him); cf. *In re Estate of Voss*, 553 N.W.2d 878, 880 n.1 (Iowa 1996)

(authorizing affirmance on any basis appearing in the record and urged by the prevailing party). We modify the decree to provide Jeanne shall receive only the portion of the two pension funds accumulated during the marriage.

***C. Appellate Attorney Fees***

Jeanne requests appellate attorney fees. As Michael prevailed on the pension issue we decline to order him to pay any portion of Jeanne's appellate attorney fees. Costs are taxed equally to each party.

**AFFIRMED AS MODIFIED AND REMANDED.**