

IN THE COURT OF APPEALS OF IOWA

No. 8-731 / 08-0546
Filed November 13, 2008

**IN RE THE MARRIAGE OF PAUL GERALD GARMAN AND DEBRA ANN
GARMAN**

**Upon the Petition of
DEBRA A. GARMAN,**
Petitioner-Appellee,

**And Concerning
PAUL GERALD GARMAN,**
Respondent-Appellant.

Appeal from the Iowa District Court for Mills County, J.C. Irvin, Judge.

Paul Garman appeals the alimony and property division provisions of the decree dissolving his marriage to Debra Garman. **AFFIRMED AS MODIFIED.**

Craig M. Dreismeier of Hannan & Dreismeier, P.L.C., Council Bluffs, for appellant.

Stephen C. Ebke of Porter, Tauke, & Ebke, Council Bluffs, for appellee.

Considered by Sackett, C.J., and Miller and Potterfield, JJ.

MILLER, J.

Paul Garman appeals the alimony and property division provisions of the decree dissolving his marriage to Debra Garman. We affirm the judgment of the district court as modified.

I. BACKGROUND FACTS.

The parties were married in July 1993 when Debra was thirty-six years of age and Paul was thirty-nine. No children were born to their marriage. Debra filed a petition for dissolution of marriage in June 2007. Trial was held in late December 2007.

At the time of trial Debra was just short of her fifty-first birthday. She testified that she had health issues, including low resistance to infections, a chronic sinus infection, and shingles. None of her health issues are disabling. Debra was working three eight-hour days per week at Young Vision Care, earning ten dollars per hour with no fringe benefits.

At the time of trial Paul was fifty-four years of age. He was in good health. Paul had recently become unemployed, as he was not retained when his employer, Wright Welding, was purchased by a national welding distribution company, Air Gas. At the time of trial he had just started receiving unemployment compensation of \$360 per week and was actively seeking employment.

II. THE DISTRICT COURT DECISION.

The district court set aside to Paul any interest in property gifted to or inherited by him, consisting of one-half of the remainder interest in an undivided one-half interest in a ninety-acre farm.¹

The district court awarded Debra a vehicle, valued at \$7480, with Paul to pay the indebtedness on the vehicle, and made Debra responsible for \$3780 in debts, resulting in a property award of \$3700. It awarded Paul a vehicle worth \$5870, subject to indebtedness on it; tools worth \$1500; and a retirement fund the court valued at \$4500. It made Paul responsible for debts, including debt owed on the two vehicles, totaling \$34,738. Paul's property award thus consisted of \$22,868 of debts in excess of the assets he was awarded.²

The district court ordered Paul to pay alimony to Debra of \$1000 per month until Debra's death, remarriage, or attaining age sixty-seven, whichever first occurs.

Paul appeals. He claims (1) the district court erred in awarding alimony to Debra, and (2) the court's property division was inequitable. Debra seeks an award of appellate attorney fees.

¹ Although the record is not entirely clear on the point, it appears that Paul's mother and father owned the farm as tenants-in-common. Paul's mother died, leaving a life estate in her share to Paul's father, who was eighty-nine years of age at the time of trial, and leaving the remainder interest in her share to Paul and Paul's sister equally.

² A payment schedule, part of exhibit 15, appears to indicate that the value of the retirement fund awarded to Paul was \$3512 rather than \$4500. If such is the case, then Paul's property award consisted of \$23,856 of debts in excess of assets.

III. SCOPE AND STANDARDS OF REVIEW.

We review dissolution cases de novo. Iowa R. App. P. 6.4; *In re Marriage of Fennelly*, 737 N.W.2d 97, 100 (Iowa 2007). We examine the entire record and adjudicate rights anew on the issues properly presented. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). Because we review both the facts and the law de novo, we need not separately consider assignments of error in the trial court's findings of fact and conclusions of law, but instead make such findings and conclusions as from our de novo review we find appropriate. *Lessenger v. Lessenger*, 261 Iowa 1076, 1078, 156 N.W.2d 845, 846 (1968). Although not bound by the district court's factual findings, we give them weight, especially when considering the credibility of witnesses. Iowa R. App. P. 6.14(6)(g); *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). We do so because the trial court has a firsthand opportunity to hear the evidence and view the witnesses. *In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992). Prior cases have little precedential value as our decisions must depend on the facts of the particular case. *Fennelly*, 737 N.W.2d at 100.

IV. MERITS.

A. Alimony and Property Division.

Before addressing the issues, we note some general principles concerning alimony (spousal support) and property division.

"[Spousal support] is an allowance to the spouse in lieu of the legal obligation for support." *In re Marriage of Sjulín*, 431 N.W.2d 773, 775 (Iowa 1998). Spousal support is not an absolute right; an award depends on the

circumstances of each particular case. *In re Marriage of Deiger*, 584 N.W.2d 567, 570 (Iowa Ct. App. 1998). Any form of spousal support is discretionary with the court. *In re Marriage of Ask*, 551 N.W.2d 643, 645 (Iowa 1996). The discretionary award of spousal support is made after considering the factors listed in what is now Iowa Code section 598.21A(1) (2007). *Deiger*, 584 N.W.2d at 570. Even though our review is de novo, we accord the district court considerable discretion in making spousal support determinations and will disturb its ruling only where there has been a failure to do equity. *In re Marriage of Kurtt*, 561 N.W.2d 385, 388 (Iowa Ct. App. 1997).

When determining the appropriateness of an award of spousal support, the court must consider the length of the marriage, the age and health of the parties, the parties' earning capacities, the levels of education, and the likelihood the party seeking spousal support will be self-supporting at a standard of living comparable to the one enjoyed during the marriage. *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa Ct. App. 1998). The court must also balance a party's ability to pay against the relative needs of the other. *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997). In a marriage of long duration where the earning disparity between the parties is great, both spousal support and nearly equal property division may be appropriate. *In re Marriage of Weinberger*, 507 N.W.2d 733, 735 (Iowa Ct. App. 1993).

Iowa is an equitable distribution state, which means the partners in a marriage that is to be dissolved are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Robinson*, 542

N.W.2d 4, 5 (Iowa Ct. App. 1995). Adjudicating property rights in a dissolution action inextricably involves a division between the parties of both their marital assets and liabilities. *In re Marriage of Johnson*, 299 N.W.2d 466, 467 (Iowa 1980). The allocation of marital debts between the parties is as integral a part of the property division as is the apportionment of marital assets. *Id.* The allocation of marital debts therefore inheres in the property division. *Id.*; *In re Marriage of Siglin*, 555 N.W.2d 846, 849 (Iowa Ct. App. 1996). Iowa courts do not require an equal or percentage distribution. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa Ct. App. 1991). The determining factor is what is fair and equitable in each particular circumstance. *Id.* When distributing property we take into consideration the criteria codified in what is now Iowa Code section 598.21(5). *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa Ct. App. 1983).

The parties were married fourteen and one-half years. Debra is fifty-one and has some health issues. She worked full-time prior to the marriage and for the first five years of the marriage, with her earnings increasing from \$13,315 in 1993 to \$17,918 in 1997, the last year she worked full-time for the entire year. Debra has thereafter worked part-time. The trial court found that her current rate of pay, ten dollars per hour, reflects her earning capacity, and that she could work full-time, findings supported by the record and with which we agree.

Paul is fifty-four and in good health. He worked for Air Gas, the company that bought his most recent employer, Wright Welding, from September 2003 to May 2005. Paul earned an annual salary of \$47,500 when his employment by Air Gas ended. He thereafter worked for "NFIB," a national lobbying organization

for small businesses, for about six months ending in December 2005. His duties at NFIB involved recruiting new members and retaining current members, and his compensation was “strictly commission.” Paul then worked for Wright Welding, as a branch manager and account manager, from mid-January 2006 until his employment ended November 30, 2007 when Air Gas purchased Wright Welding. His compensation at Wright Welding consisted of an annual salary of \$57,500 plus use of a company vehicle.

In the period of four weeks between November 30, 2007 and trial, Paul diligently sought employment that would allow him to “continue to base out of Omaha, Nebraska” as he was “not anxious to relocate.” He had not yet found employment. Paul “certainly” expected to get a full-time job, and was “hoping for the 45 to \$50,000 range.” The district court found that Paul “should be able to secure employment, although his starting salary may be less than his prior [\$57,500] salary.” We agree with this finding.

We conclude, as the district court apparently did, that Debra has the capacity to earn about \$20,000 per year, and Paul has the capacity to earn \$45,000 to \$50,000 per year. There is thus a substantial disparity in their earning capacities. The record does not disclose either party’s level of education. Although the marriage is not of the lengthy duration seen in some cases in which traditional alimony is awarded, neither is it of short duration. There is little likelihood that Debra will be able to become self-supporting at a standard of living comparable to the one enjoyed during the marriage, and needs an award of alimony.

We conclude that the trial court's decision to award traditional alimony is appropriate. However, Paul has a somewhat limited ability to pay. Further, and rather importantly, property division and spousal support should be considered together in evaluating their individual sufficiency. *In re Marriage of Trickey*, 589 N.W.2d 753, 756 (Iowa Ct. App. 1998). The trial court's property division resulted in Debra receiving net assets of \$3700 and Paul receiving net debts of \$22,868 or \$23,856. We conclude that in consideration of Paul's substantially greater earning capacity the trial court's property division should not be disturbed, but that under all the facts and circumstances of the case, including but not limited to the length of the marriage and the property division, Paul's alimony obligation should be set at \$500 per month.

V. APPELLATE ATTORNEY FEES.

Debra requests an award of appellate attorney fees. Such fees are not a matter of right, but rather rest in this court's discretion. *Sullins*, 714 N.W.2d at 255. In arriving at our decision, we consider the parties' needs, ability to pay, and the relative merits of the appeal. *Id.* Applying these factors to the circumstances in this case, we award Debra \$500 in appellate attorney fees.

VI. DISPOSITION.

We modify the trial court's decree by reducing Paul's alimony obligation to \$500 per month. In all other respects the decree is affirmed. We award Debra \$500 in appellate attorney fees. Costs on appeal are taxed one-third to Debra and two-thirds to Paul.

AFFIRMED AS MODIFIED.

