

**IN THE COURT OF APPEALS OF IOWA**

No. 2-206 / 01-1090

Filed April 10, 2002

**IN RE THE MARRIAGE OF PAMELA K. DAVIDSON AND RICHARD DAVIDSON**

**Upon the Petition of  
PAMELA K. DAVIDSON,**  
Petitioner-Appellant,

**And Concerning  
RICHARD DAVIDSON,**  
Respondent-Appellee.

---

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

Petitioner-appellant Pamela Kay Davidson appeals from the decree  
dissolving her nearly twenty-year marriage. **AFFIRMED AS MODIFIED.**

Andrew B. Howie of Hudson, Mallaney & Shindler, P.C., Des Moines, for  
appellant.

Brad McCall of Brierly Charnetski, L.L.P., Grinnell, for appellee.

Considered by Sackett, C.J., and Zimmer and Vaitheswaran, JJ.

**SACKETT, C.J.**

Petitioner-appellant Pamela Kay Davidson appeals from the decree dissolving her nearly twenty-year marriage. She contends that in addition to a substantial property award the district court should have awarded her spousal support including traditional alimony, rehabilitative alimony and reimbursement alimony. Pamela also contends she should be awarded appellate attorney fees. We modify to award Pamela alimony. We deny her other claims. We affirm as modified.

Pamela and respondent-appellee Richard Davidson were married in 1982. A district court decree, entered June 26, 2001, dissolved the marriage. Pamela, who was forty-four, was a high school graduate and in good health. Richard, who was forty-nine, was also in good health and held a bachelor's and master's degree from Drake University. The parties had two sons, born in 1988 and 1996, who were thirteen and four years old at the time of trial. Under the decree the parties had joint physical care of the children with Pamela having primary physical care. The custodial arrangement was agreed to in the district court and is not an issue on appeal.

Richard has been president of Thombert Corporation since early 1990. He worked for the company in a lesser position at the time of the marriage. Pamela did not work outside the home for eight years preceding the dissolution. Prior to that time she worked in retail and in a Maytag Industries factory. She also had other jobs, including a clerk position with the school district, a position in the accounts payable department at Riverview Release Center, and a job at a Younkers department store. In the year 2000 Richard earned a salary of

\$159,122, and the family had investment income of about \$35,000. This is representative of the family income in the recent previous years.

In fixing child support the district court took Richard's earnings and calculated that Pamela could earn \$20,000 to \$26,000 if she were to work outside the home. The court recognized the parties had investment earnings but did not consider the investment income, reasoning that the investments were being equally divided and would generate the same income for each marriage partner. These calculations determined that Richard owed Pamela \$1,710 per month in child support. Richard was also ordered to maintain medical insurance for the children and pay any uncovered medical expenses that exceeded \$250 per child or \$500 for both children. He was further ordered to maintain \$250,000 in life insurance with the children named as beneficiaries in the event of his death. These findings are not challenged on appeal.

The district court divided the parties' property. Neither the district court nor Pamela attempted to summarize the value of the property awarded to each party. Richard did provide a summary in his brief. From that summary and the district court decision, we have attempted to determine the value of the award made to each party. Based on values established by the district court, it appears that Pamela received assets and liabilities with a net value of \$730,000. Richard received assets and liabilities with a net value of about \$580,000. Richard brought stock and a retirement account into the marriage with values at the time of the dissolution of approximately \$12,250 and \$94,036 respectively. In making its calculations the district court considered that only the \$94,036 represented property that should not be divided with Pamela. For the purpose of this opinion,

however, the \$580,000 we show as going to Richard includes the \$94,036, as this amount is relevant on the issue of alimony. See *In re Marriage of Hardy*, 539 N.W.2d 729, 732 (Iowa Ct. App. 1995); *In re Marriage of Voss*, 396 N.W.2d 801, 804 (Iowa Ct. App. 1986).

After making the property division the district court denied Pamela's request for alimony, finding that property division would adequately provide for her needs. The district court also ordered the parties to pay their own trial attorney fees.

Pamela contends that the district court did not correctly determine her earning capacity and that the property division does not allow her to maintain the standard of living she enjoyed prior to the marriage. She asks that we modify the district court decree and award her alimony of \$2500 a month. Pamela claimed at trial that she needed \$7845 to pay her monthly expenses and claims on appeal that that figure is now \$7000. Pamela contends the property she received does not generate this kind of income, and that she needs alimony from Richard to maintain her standard of living.

Richard contends that Pamela has received sixty percent of the property accumulated by the parties during the marriage and that an additional award of alimony is not necessary, nor is it equitable. He contends the district court correctly determined Pamela's earning capacity, that her property settlement, coupled with the child support award, sufficiently provides for her, and that she has the ability to increase her income by taking a job outside the home.

We review de novo. *In re Marriage of Craig*, 462 N.W.2d 692, 693 (Iowa Ct. App. 1990). While not bound by the trial court's factual findings, we give

them weight, especially when considering the credibility of witnesses. *In re Marriage of Farrell*, 481 N.W.2d 528, 530 (Iowa Ct. App. 1991).

We first address Pamela's challenge to the district court's valuation of assets and its determination that she has an earning capacity between \$20,000 and \$26,000.

Included in the property awarded to Pamela was stock in Thombert, the company where Richard is employed. These shares were valued by the district court at about \$500,000. One half of the shares were given to Pamela, and one half of the shares were given to Richard. Pamela contends the \$500,000 valuation is incorrect because it is based upon a letter of intent to buy the stock at that price. There was testimony that there was great likelihood that the sale would go through at that price. Pamela presented no evidence on the valuation of the stock. She contends, however, that assets should be valued at the time of dissolution, and because the sale was in the future the stock should have been valued at present-day worth. We agree with Pamela that the date of the dissolution is the only reasonable time when an assessment of the parties' net worth should be undertaken. *Locke v. Locke*, 246 N.W.2d 246, 252 (Iowa 1976); *Schantz v. Schantz*, 163 N.W.2d 398, 405 (Iowa 1968). We value property for division purposes at its value at the time of the dissolution. *In re Marriage of Fall*, 593 N.W.2d 164, 168 (Iowa Ct. App. 1999). It is the net worth of the parties at the time of trial which is relevant in adjusting property rights. *In re Marriage of Muelhaupt*, 439 N.W.2d 656, 661 (Iowa 1989); *In re Marriage of Moffatt*, 279 N.W.2d 15, 20 (Iowa 1979). The question here is whether the valuation used is within the permissible range of the evidence. If it is, we will not disturb it on

appeal. See *In re Marriage of Steele*, 502 N.W.2d 18, 21 (Iowa Ct. App. 1993); see also *In re Marriage of Alexander*, 478 N.W.2d 420, 422 (Iowa Ct. App. 1991). We find that it is, and we accept the district court's valuation. The district court also valued stock in two other companies at approximately \$124,000 and divided that stock equally between the parties. Pamela does not appear to contend this stock is overvalued; rather, she argues this stock will not give her the cash she needs to live. We find nothing in the record to cause us to disagree with the valuations established by the district court and affirm it on appeal. See *id.*

Further, we do not disagree with the district court's conclusion that Pamela has an earning capacity of between \$20,000 and \$26,000 a year. She is forty-four years old, in good health, and has a high school education. She has been gainfully employed at a number of different jobs in the past and appears able to adjust to employment challenges. Moreover, there is expert testimony that she is employable in the Newton area at this salary.

We next address Pamela's contention that she deserves alimony. Any form of alimony is discretionary with the court. *In re Marriage of Ask*, 551 N.W.2d 643, 645 (Iowa 1996); *In re Marriage of Wessels*, 542 N.W.2d 486, 490 (Iowa 1995). Before awarding alimony, the district court is required to consider the factors listed in Iowa Code section 598.21(3) (2001). These factors include (1) the length of the marriage; (2) the age and the physical and emotional health of the parties; (3) the property distribution made in the dissolution decree; (4) the educational levels of the parties; (5) the earning capacity of the party seeking maintenance; (6) the ability of the party seeking maintenance to become self-supporting at the standard of living enjoyed during the marriage; (7) the tax

consequences to each party; (8) any mutual agreements by the parties concerning financial or service contributions; (9) the provisions of any antenuptial agreement; and (10) any other factors the court determines relevant on a case-by-case basis. See *Marriage of Crotty*, 584 N.W.2d 714, 719 (Iowa Ct. App. 1998). Whether spousal support is justified is dependent on the facts of each case. See *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976). In assessing a claim for alimony, we consider the property division and alimony together in determining their sufficiency. *In re Marriage of Sychra*, 552 N.W.2d 907, 908 (Iowa Ct. App. 1996); See also *In re Marriage of Lattig*, 318 N.W.2d 811, 815 (Iowa Ct. App. 1982). They are neither made nor subject to evaluation in isolation from one another. *In re Marriage of McLaughlin*, 526 N.W.2d 342, 345 (Iowa Ct. App. 1994); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa Ct. App. 1984). An alimony award is justified when the distribution of the assets of the marriage does not equalize the inequities and economic disadvantages suffered in marriage by the party seeking the alimony who also has a need for support. *Sychra*, 552 N.W. 2d at 908; *In re Marriage of Weiss*, 496 N.W.2d 785, 787-88 (Iowa Ct. App. 1992).

Pamela seeks alimony under three theories. She seeks traditional alimony. Traditional or permanent alimony is usually payable for life or for so long as the dependent is incapable of self-support. *In re Marriage of Francis*, 442 N.W.2d 59, 64 (Iowa 1989). The purpose of a traditional or permanent alimony award is to provide the receiving spouse with support comparable to what he or she would receive if the marriage continued. *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997).

In assessing Pamela's request for traditional alimony, we consider the fact that the parties agreed that she stay home for eight years and care for the children and the home while Richard worked outside the home. Pamela has had an eight-year absence from the job market and because of that she is disadvantaged in returning to the job market. She has sacrificed promotions, pensions in her own right and other job-related benefits by staying home and caring for her family. Richard has a larger income than she can expect to earn. These factors support her claim for traditional alimony. Factors weighing against the claim of traditional alimony are that she is in good health and is employable. At forty-four it is reasonable to assume she can spend twenty years in the work force. She also is receiving a substantial property award. As we have noted, it is appropriate to consider the property distribution made in the decree when assessing alimony. *In re Marriage of Van Regenmorter*, 587 N.W.2d 493, 495 (Iowa Ct. App. 1998). Furthermore, she is leaving the marriage with pension benefits nearly equal to Richard's.

Pamela also contends that she should have rehabilitative alimony. Rehabilitative alimony was conceived as a way of supporting an economically dependent spouse through a limited period of re-education or retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting. *Francis*, 442 N.W. 2d at 63-64 (citing Krauskopf, *Rehabilitative Alimony: Uses and Abuses of Limited Duration Alimony*, 21 Fam.L.Q. 573, 581 (1988) (hereinafter Krauskopf); Sackett & Munyon, *Alimony: A Retreat from Traditional Concepts of Spousal Support*, 35 Drake L.Rev. 297, 314 (1985-86); *In re Marriage of Bevers*, 326 N.W.2d 896, 900 (Iowa 1982)).

At age forty-four and with good health and a history of prior employment, taking into account an eight-year absence from the job market, Pamela is employable. We agree with her that there is a good chance her opportunities for employment would be enhanced if she had further education and training. Rehabilitative alimony is appropriate here. The difficulty we have, which apparently the district court also had in fixing rehabilitative alimony, is that Pamela made no record from which we can intelligently fix such an award. Pamela does not contend that she wants to go back to work, and she has presented no evidence of the type of employment she would seek and the expense and time necessary for her to be educated so she would qualify for such employment. Because self-sufficiency is the goal of rehabilitative alimony, the duration of such an award may be limited or extended depending on the realistic needs of the economically dependent spouse, tempered by the goal of facilitating the economic independence of the ex-spouses. *Francis*, 442 N.W. 2d at 64; see also *Krauskopf*, 21 Fam.L.Q. at 582.

Pamela next contends that she should receive reimbursement alimony. "Reimbursement" alimony is predicated upon economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the other. See *Francis*, 442 N.W.2d at 64. Similar to a property award, it is based on future earning capacity rather than a division of property. *Id.* It is awarded where there is insufficient property to compensate for sacrifices made during marriage and it is most appropriate in cases where one spouse has obtained education during the marriage that will lead to a well-paying career or job but has not worked long enough at such a job to accumulate property to be

shared with the sacrificing spouse. See *id.* Reimbursement alimony is not called for here. Richard did complete work on his master's degree during the marriage, but he was gainfully employed during the time he pursued it. Additionally, any enhancement the education he obtained during the marriage made to his earning capacity is being shared with Pamela in that she is receiving sixty percent of the assets the parties accumulated during the marriage. Also, she shared the enhanced standard of living afforded the parties as a result of Richard's education during the marriage, and she is being compensated for the sacrifices she made, in that she is sharing the wealth accumulated during the marriage.

We do not disagree with the district court that with the bitterness that frequently follows a dissolution, where possible, each party should be given his or her own assets. See *In re Marriage of Dahl*, 418 N.W.2d 358, 362 (Iowa Ct. App. 1987). A property award alone rather than a property award and alimony can be used to achieve equity. See *id.* However, we do not believe the property division alone was sufficient to achieve equity for Pamela here. Having determined that Pamela has shown criteria that we consider in awarding both traditional and rehabilitative alimony, we disagree with the district court's decision not to award her any alimony.

The question is how much alimony should be awarded. This is not so much a computation of dollars and cents as a balancing of equities. See *In re Marriage of Mouw*, 561 N.W.2d 100, 102 (Iowa Ct. App. 1997). In making the award we assess Pamela's actual needs. We look to the substantial property settlement she received and the fact that she leaves the marriage with substantially the same pension benefits as Richard does. We look not so much

at the income from the assets in their present form and the debts that each party was ordered to pay, but rather at the net value transferred to Pamela. Pamela has control of the assets transferred to her. She has a debt on her home but can sell the property and discharge that obligation. We also recognize, as she argues, that there are some limitations on stock transferred to her. That stock, however, is still marketable. Consequently, future investment of her assets and handling of the debt transferred to her is at her discretion. While Pamela claims that she needs net income of \$7,000 or more a month to live, a major portion of that claim is the expense of the former marital home. The home was valued in the dissolution at \$330,000 and was built by the parties in the last five years of their marriage. Pamela requested the home be transferred to her. At the time of the dissolution when the home was transferred to Pamela subject to the mortgage, the parties' equity in the home was \$80,000. The monthly house payment, which Pamela is required to make, is nearly \$2800. In addition, other expenses on the house, including insurance, taxes, and utilities, total nearly \$1,100. The cost of living in that house is nearly \$4,000 a month. We understand Pamela's desire to keep this house for herself and the children and recognize that some of the expenses noted above would continue should she have a less expensive residence. However, continued occupancy of this residence is not necessary for Pamela and the children to live a lifestyle similar to the one they enjoyed by the parties during most of the marriage. Unfortunately, Richard's paying all household and family expenses during the separation while Pamela continued to live in the house, temporarily isolated her from the realities of dissolution. We do not believe that the cost to Pamela of maintaining a

lifestyle similar to the one she enjoyed during the marriage must be \$7000 a month.

The income from family investments is shown on prior tax returns to be about \$35,000 a year. With the split of these assets, Pamela could conceivably have about \$17,500 income added to her current projected earning of \$20,000 to \$26,000. This should give her an annual income of \$37,500. In addition to that, her \$80,000 home equity value is an asset to her and could be utilized to buy a less expensive home and greatly reduce her monthly expenses. She also has a substantial retirement account. Richard's income is about \$160,000. Out of that amount, he is paying child support of \$1710 a month with post-tax dollars. He, too, will have the additional \$17,500 income, and he, too, has a substantial retirement account equal to Pamela's. He is five years older than Pamela and, in all probability, will not be able to remain in the labor force as long.

We modify the decree to award Pamela alimony of \$750 a month. The alimony shall terminate on Richard's sixty-second birthday, Pamela's remarriage, or the death of either party, whichever event occurs first.

We deny Pamela's request for attorney fees. While she was partially successful in this appeal, she did not receive all the relief she requested. She also has ample assets to pay her own fees. Costs on appeal are taxed one half to each party.

**AFFIRMED AS MODIFIED.**