

IN THE COURT OF APPEALS OF IOWA

No. 1-971 / 11-0981
Filed February 15, 2012

**IN RE THE MARRIAGE OF TAMMY COOK
AND TERRY COOK**

**Upon the Petition of
TAMMY COOK,**
Petitioner-Appellee,

**And Concerning
TERRY COOK,**
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Karen A. Romano,
Judge.

A husband appeals the economic provisions of the parties' dissolution
decree. **AFFIRMED.**

Scot L. Bauermeister of Fitzgibbons Law Firm, L.L.C., Estherville, for
appellant.

Lynn C.H. Poschner of Borseth Law Office, Altoona, for appellee.

Considered by Tabor, P.J., Mullins, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

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

Terry and Tammy Cook were married in 1992. They are the parents of one child, who was born in 1995. Tammy filed a petition for dissolution of marriage on September 11, 2009. The parties stipulated to joint legal custody of the child, with Terry having physical care. Tammy has visitation with the child and was ordered to pay child support of \$280 per month.

Terry was forty-five years old at the time of the dissolution hearing, held in January 2011. He has a degree in communications from the University of Nebraska. He owns several small businesses in partnership with Jon Galloway.¹ Terry takes a draw of \$10,000 per month from one of these businesses, All-Iowa Score Tables, L.L.C. There is no deduction for income tax, health insurance, FICA, or Social Security from this monthly draw. Terry does not have any health problems.

Tammy was fifty-two years old at the time of the dissolution hearing. She has a degree in social work from Ball State University. She had worked for more than sixteen years as an administrator at Crest Services. She was terminated from her employment about one week before the dissolution hearing due to two recent instances of no-call, no-show. Tammy has struggled for several years with alcoholism and has attended treatment three times. Tammy was also being treated for depression, anxiety, and problems sleeping. She testified her problems have worsened due to the stress of the dissolution.

¹ Terry owned an interest in the following companies: All-Iowa Score Tables, L.L.C.; J.T., L.L.C.; J.T. Acquisitions, L.L.C.; GCG Holdings, L.C.; JTR, L.L.C.; and Complete Residential Services, Inc.

The district court issued a dissolution decree for the parties on April 4, 2011. The court divided the parties' property equally. In order to accomplish this equal division, Terry was required to pay a property settlement of \$32,570 to Tammy. Terry was also ordered to pay Tammy alimony of \$2500 per month until Tammy reaches age sixty-five, at which time alimony will be reduced to \$1500 per month for life. Terry's alimony obligation shall terminate earlier if either party dies or Tammy remarries, whichever occurs first. The court ordered Terry to pay \$15,000 toward Tammy's attorney fees and \$12,000 towards Tammy's expert witness fees.

The court denied Terry's post-trial motion. Terry has appealed several economic provisions in the dissolution decree.

II. Standard of Review.

In this equity action our review is de novo. Iowa R. App. P. 6.907. In equity cases, we give weight to the fact findings of the district court, especially on credibility issues, but we are not bound by the court's findings. Iowa R. App. P. 6.904(3)(g). We examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Ales*, 592 N.W.2d 698, 702 (Iowa Ct. App. 1999).

III. Alimony.

Terry contends the district court should not have awarded alimony to Tammy. In the alternative, he claims the amount and duration of the alimony award should be reduced. He points out that prior to her discharge from Crest Services Tammy earned about \$46,000 per year. Terry claims Tammy voluntarily quit her job by not showing up for work. He believes she has the

ability to be self-supporting. Terry asserts that he owes significant debt against his business interests, and states he is very concerned about his own financial situation.

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). Alimony is not an absolute right; an award depends upon the circumstances of the particular case. *Id.* In making an award of alimony, the court considers the factors set forth in Iowa Code section 598.21A(1) (2009). *In re Marriage of Olson*, 705 N.W.2d 312, 315 (Iowa 2005). We give the district court considerable discretion in awarding alimony; we will disturb the 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).

The district court found Tammy was capable of working and that she had an earning capacity of \$30,000 per year. Noting this, however, the court found "[i]t is clear that Terry will continue to make at least four times as much income as Tammy." The court, in a very detailed and thorough decision, concluded, "[t]hese disparate incomes mean that it is unlikely that Tammy will be able to support herself in a standard of living comparable to that enjoyed during the marriage on her salary and property settlement alone." We conclude the court acted equitably in determining Terry should pay alimony to Tammy, and in setting the amount and duration of alimony. We affirm the award of alimony.

IV. Property Division.

A. Terry contends the property division is inequitable because the court improperly valued his interest in GCG Holdings at negative \$8217. Terry claims

the actual value of this business is negative \$114,000. GCG Holdings owns a strip mall in Altoona, Iowa, which was valued at \$3.65 million, and was subject to a debt for \$3.8 million. The property had been owned twenty-five percent by Terry, twenty-five percent by Galloway, and fifty percent by Randy Walter. In November 2010, GCG Holdings purchased Walter's fifty percent interest for \$225,000. Terry claims this purchase price did not accurately reflect the value of Walter's interest in the business because he and Galloway, through the entity of GCG Holdings, paid more than Walter's interest was worth in order to end their business relationship with him. Terry and Galloway now each have a fifty percent interest in GCG Holdings.

We are guided by Iowa Code section 598.21 in matters of property distribution. *In re Marriage of Hansen*, 733 N.W.2d 683, 702 (Iowa 2007). The purpose of valuing assets is to assist a court in making an equitable property award. *In re Marriage of Moffatt*, 279 N.W.2d 15, 19 (Iowa 1979). "Valuation is difficult and trial courts are given considerable leeway in resolving disputes as to valuation." *In re Marriage of Shanks*, 805 N.W.2d 175, 177 (Iowa Ct. App. 2011). We will not disturb the district court's valuation of an asset if it is within the permissible range of the evidence. *In re Marriage of Sullins*, 715 N.W.2d 242, 251 (Iowa 2006).

Tammy hired Alan Ryerson and Jennifer Julander of BCC Advisers to give an opinion as to the value of Terry's business interests. Terry did not present any expert testimony regarding the value of his businesses. After receiving the information regarding the purchase of Walter's fifty percent interest, BCC Advisers concluded the value of GCG Holdings was negative \$8217. Ryerson

testified at the hearing that after consideration of Terry's claims regarding the sale, he did not change his opinion as to the value of the business. The district court accepted the values in the report by BCC Advisers. The value of Terry's business interests as determined by the court was clearly within the permissible range of the evidence, and we will not disturb the court's findings on appeal.

B. Terry also claims the district court improperly divided the parties' household contents. In making the property division, the court placed a value of \$15,000 on the contents of the marital home. The household contents and the home were awarded to Terry. Terry asserts the court should have ordered the parties to equally divide the household property and should have awarded the same dollar value to each party for household contents. After considering the evidence, we determine no adjustment to the property division is warranted based on the award of household contents.

V. Attorney & Expert Fees

Terry contends the district court abused its discretion by ordering him to pay \$15,000 for Tammy's attorney fees and \$12,000 for her expert fees. He notes Tammy received \$32,570 as a property settlement. He states she has the ability to pay for her own 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 note Terry did not present expert testimony regarding the value of his business interests. Presentation of evidence in this area was left to Tammy and her attorney. We conclude the district court did not abuse its discretion in ordering Terry to pay these fees. As noted above, Terry's income far exceeds Tammy's earning capacity.

Tammy also 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). We conclude Terry should pay \$3000 toward Tammy's appellate attorney fees.

We affirm the district court on all of the issues raised in this appeal. Costs of this appeal are assessed to Terry.

AFFIRMED.