

IN THE COURT OF APPEALS OF IOWA

No. 2-512 / 11-1835
Filed August 8, 2012

**IN RE THE MARRIAGE OF HOLLY ANN MCCREEDY
AND ROBERT JAMES MCCREEDY,**

Upon the Petition of

HOLLY ANN MCCREEDY,
Petitioner-Appellant,

And Concerning

ROBERT JAMES MCCREEDY,
Respondent-Appellee.

Appeal from the Iowa District Court for Clinton County, Gary D. McKenrick, Judge.

Holly McCreedy appeals from the economic provisions of the decree dissolving her marriage to Robert McCreedy. **AFFIRMED AS MODIFIED.**

Bradley L. Norton, Clarence, for appellant.

Steven J. Kahler of Schoenthaler, Robert, Bartelt & Kahler, Maquoketa, for appellee.

Considered by Vogel, P.J., and Tabor and Bower, JJ.

BOWER, J.

Holly McCreedy appeals from the economic provisions of the decree dissolving her marriage to Robert McCreedy. She contends the district court erred in declining to award her traditional alimony and in dividing the marital property. She also contends the court erred in denying her request for attorney fees. Robert seeks an award of his appellate attorney fees.

While we agree that an award of traditional spousal support is not appropriate under this record, we modify the property division provisions of the decree to award each party their separate retirement funds. The district court was within its discretion to deny Holly's request for attorney fees. We decline to award Robert his appellate attorney fees.

I. Background Facts and Proceedings.

Holly and Robert were married in March 1990. They have three children, all of whom are over the age of eighteen and are not at issue herein.

Holly was born in 1966 and is in good health. She has a bachelor of arts degree in education, the coursework for which was completed prior to the marriage. From 1996 to 1998 she worked briefly as the director of the child development department at Good Samaritan Hospital in Clinton and then as a teacher in the Midland Community School District.

With the assistance of a grant, Holly began working towards a master's degree in counseling in January 2006. At first, she attended school while working full-time. In the fall of 2006, she worked two part-time jobs at Delwood and Davenport schools. In 2009, she began a full-time position with the Mount

Vernon School District as a middle school counselor. She earned her master's degree in 2010. In 2010, Holly's W-2 shows she earned \$51,546.14. Just before trial, Holly accepted a position with North Scott Community School District.

Robert was born in 1967 and is also in good health. He attended classes at the University of Iowa for approximately five or six years—some of which were after the parties' marriage—but did not earn a degree. He was employed for thirteen years at MCI where he worked his way up from a telemarketer to a management position, and then began working as a computer programmer. In 2006, he took a position with Go-Daddy.com as a computer programmer. He worked there for approximately two and a half years before going to work for Procend. In 2010, he took a position with Thomas Cardella & Associates earning a salary of \$95,000 per year. He also continues to perform work for Procend on a part-time, as-needed basis, earning fifty dollars per hour.

The parties separated in August 2010. Holly filed a petition for dissolution of marriage on November 1, 2010. On September 27, 2011, the parties signed a stipulation that set forth the values of each asset and debt and to whom each should be assigned. With the exception of a \$700 difference in the value of Holly's Jeep (Holly valued the Jeep at \$6120 and Robert valued it at \$6820), the parties were in agreement on the value of their property. The parties provided the court with a copy of the stipulation the following day, when trial began.

On October 5, 2011, the district court entered the decree dissolving the parties' marriage. Although the court accepted "the general distribution plan

proposed by the parties” in their stipulation, it found equity required Holly’s IPERS benefits and Robert’s 401(k) be divided, finding that:

Although the parties stipulated the value of the IPERS pension was \$37,048, that valuation is based on the refundable portion which the petitioner could claim by withdrawing from IPERS. The Court finds that such a valuation approach grossly understates the value of the petitioner’s pension, particularly when the evidence indicates that the petitioner will remain in IPERS-covered employment until retirement. Therefore, the court determines that the petitioner’s IPERS pension shall be divided by a qualified domestic relations order (QDRO) under the formula discussed in *Sullins* with the respondent enjoying a 100% survivor benefit.

To equalize the division of property, the court determined Holly should be awarded \$36,516.50 of Robert’s 401(k). The court determined Holly was not entitled to reimbursement or rehabilitative spousal support and rejected an award of traditional spousal support, finding that while Robert’s income is “substantially greater,” he is also responsible for approximately eighty percent of the marital debt and “seems more inclined toward the reasonable continued support of the adult children of the parties.”¹ Holly’s attorney-fee request was denied.

II. Scope and Standard of Review.

We review dissolution cases de novo. *In re Marriage of Okland*, 699 N.W.2d 260, 263 (Iowa 2005). We examine the entire record and adjudicate the rights of the parties anew on the issues that are properly preserved. *In re Marriage of Jones*, 653 N.W.2d 589, 592 (Iowa 2002). However, we accord the trial court considerable latitude in making an award and will disturb its ruling only where there has been a failure to do equity. *Okland*, 699 N.W.2d at 263. We

¹ Although adult children are not legally entitled to support, Holly does not contest this portion of the court’s ruling in her request for spousal support.

give weight to the trial court's fact findings, especially when considering the credibility of witnesses, although we are not bound by them. *In re Marriage of Duggan*, 659 N.W.2d 556, 559 (Iowa 2003).

III. Spousal Support.

Holly first contends the district court erred in failing to award her spousal support. She argues she is entitled to an award of traditional spousal support because Robert earns double her salary, which allows him to pay his debts faster, provides him with discretionary income, and adds more funds to his retirement account and Social Security. She requests a spousal support award of \$2916 per month (\$35,000 per year) until she begins receiving Social Security benefits.

There is no absolute right to spousal support. *In re Marriage of Spiegel*, 553 N.W.2d 309, 319 (Iowa 1996) (superseded by statute on other grounds as recognized by *In re Marriage of Shanks*, 758 N.W.2d 506, 510-11 (Iowa 2008)). Rather, whether it is awarded depends on the circumstances of each particular case. *Id.* Iowa Code section 598.21A(1) sets forth the criteria for determining spousal support. This includes the length of the marriage, the age and physical and emotional health of the parties, the property distribution, the earning capacity of each party, and any other factors the court may determine to be relevant. Iowa Code § 598.21A(1) (2009).

We consider the property distribution and spousal support provisions of a decree together to determine their sufficiency. *In re Marriage of Hazen*, 778 N.W.2d 55, 59 (Iowa Ct. App. 2009). Spousal support is justified when the

distribution of the marital assets does not equalize the inequities and economic disadvantages suffered in marriage by the party seeking the support, and there is a need for support. *Id.* While the property distribution is designed to sort out property interests acquired in the past, spousal support is made in contemplation of the parties' future earnings and is modifiable. *Id.* at 59-60.

An award of traditional spousal support is payable for life or until the dependent is capable of self-support. *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997). The purpose of traditional spousal support is "to provide the receiving spouse with support comparable to what he or she would receive if the marriage continued." *Id.* "Traditional alimony analysis may be used in long-term marriages 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).

We agree with the district court that a traditional spousal support award is not appropriate here. The parties were married twenty years and both are relatively young and in good health. Holly has a master's degree and earns approximately \$50,000 per year. On the record, we find she is capable of supporting herself.

IV. Property Division.

Holly next contends the district court erred in awarding Robert one-hundred percent of her IPERS survivor benefit. She also contends the court erred in disregarding the property distribution stipulation entered by the parties.

Iowa is an equitable division state. *In re Marriage of Hazen*, 778 N.W.2d 55, 59 (Iowa Ct. App. 2009). Equitable division does not necessarily mean equal division of each asset, although an equal division of assets accumulated during the marriage is frequently considered fair. *Id.* The issue the court must consider in each case is what is fair and equitable under the circumstances. *Id.* “The partners in the marriage are entitled to a just and equitable share of the property accumulated through their joint efforts.” *Id.*

In distributing the property, we consider the criteria set forth in Iowa Code section 598.21(5). One of these factors is “[a]ny written agreement made by the parties concerning property distribution.” Iowa Code § 598.21(5)(k). While a settlement agreement in a dissolution of marriage case is a contract between the parties, it only becomes a final contract when accepted and approved by the court. *In re Marriage of Hansen*, 465 N.W.2d 906, 908 (Iowa Ct. App. 1990). The court is not bound by the parties’ agreement as to how their property should be distributed. *In re Marriage of Huffman*, 453 N.W.2d 246, 249 (Iowa Ct. App. 1990). The court must determine “whether the provisions upon which the parties have agreed constitute an appropriate and legally approved method of disposing of the contested issues.” *In re Marriage of Morris*, 810 N.W.2d 880, 886 (Iowa 2012). If the stipulation is unfair or contrary to law, the court has the authority to reject it. *Id.*

Although the parties’ stipulation valued Holly’s IPERS based on the refundable value—nearly half the value determined by the district court—the record shows Robert’s 401(k) is roughly equal in value to the court’s \$78,140

valuation of the IPERS account. Considering the parties' nearly equal position in retirement funds at the time of dissolution and the parties' wishes regarding property distribution, we find it equitable to award each party their individual retirement fund in its entirety. We affirm the dissolution decree to provide Holly shall receive her IPERS account in its entirety (including any survivor benefit) and Robert shall receive his 401(k) account in its entirety. We affirm the property distribution in all other respects.

V. Attorney Fees.

Holly contends the district court abused its discretion in declining an award of her trial attorney fees.

We review the district court's award or denial of trial attorney fees for an abuse of discretion. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). Whether attorney fees should be awarded depends on the parties' respective abilities to pay. *Sullins*, 715 N.W.2d at 255. In addition, the fees must be fair and reasonable. *In re Marriage of Guyer*, 522 N.W.2d 818, 822 (Iowa 1994). An award of trial attorney fees rests 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 Romanelli*, 570 N.W.2d 761, 765 (Iowa 1997).

The district court declined to award Holly her trial attorney fees, finding "the respective incomes of the parties, the property division herein under which the respondent is responsible for the overwhelming majority of the debt service, and the outcome of contested issues herein" militated against such an award.

We find Holly has failed to show the district court abused its discretion in so finding.

Robert requests an award of his appellate attorney fees. An award of appellate attorney fees is not a matter of right but rests within our discretion. *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa Ct. App. 1997). We consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the district court's decision on appeal. *In re Marriage of Maher*, 596 N.W.2d 561, 568 (Iowa 1999). Given Robert's superior earning ability, we decline to award any appellate attorney fees.

Costs of appeal are assessed equally to each party.

AFFIRMED AS MODIFIED.