

IN THE COURT OF APPEALS OF IOWA

No. 6-350 / 05-1505
Filed June 28, 2006

**IN RE THE MARRIAGE OF DEBRA K. RICHARDSON
AND BRIAN K. RICHARDSON**

**Upon the Petition of
DEBRA K. RICHARDSON,**
Petitioner-Appellee,

**And Concerning
BRIAN K. RICHARDSON,**
Respondent-Appellant.

Appeal from the Iowa District Court for Cherokee County, John P. Duffy,
Judge.

Respondent appeals from the child support, spousal support, and property
division provisions of the decree dissolving the parties' marriage. **AFFIRMED AS
MODIFIED.**

Jay E. Denne and Colby M. Lessmann of Munger, Reinschmidt & Denne,
L.L.P., Sioux City, for appellant.

Michael R. Bovee of Montgomery, Barry & Bovee, Spencer, for appellee.

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

ZIMMER, J.

Brian Richardson appeals from the August 2005 decree dissolving his nearly twenty-seven-year marriage to Debra Richardson. Brian asserts the district court erred in calculating the parties' incomes for the purpose of setting his child support obligation for the parties' two daughters. He further asserts the court's inaccurate assessment of the parties' incomes led it to erroneously award Debra \$500 per month in spousal support for ten years. Finally, Brian contends the property division, which favored Debra, was inequitable.

Our review is de novo. Iowa R. App. P. 6.4. We give weight to the court's fact findings, especially in determining the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(g). Upon such review, we modify the property division made by the district court, but affirm the remainder of its decree.

Brian, a farmer, concedes the gross annual income figures used by the district court—\$51,190 for himself and \$14,350 for Debra—accurately reflect the parties' past actual incomes. He contends, however, that his future income will be significantly lower than in past years because he no longer has access to the land he farmed prior to the dissolution.¹ Although Brian has arranged to farm different land, he asserts this new arrangement will be less lucrative. Brian also contends that Debra, who works outside the home as a part-time church secretary and as a temporary U.S. Census Bureau employee once every four years, could earn at least \$20,000 per year if she obtained one full-time position or an additional part-time position.

¹ The land is owned by Debra's father, who has terminated Brian's lease.

The district court arrived at Brian's income figure by averaging his farm income for the five years preceding the dissolution trial. This is an appropriate and accepted practice when an individual, like Brian, is self-employed and has fluctuating income. See *In re Marriage of Cossel*, 487 N.W.2d 679, 681 (Iowa Ct. App. 1992). Moreover, we must determine a parent's current income from the most reliable evidence presented. See *In re Marriage of Powell*, 474 N.W.2d 531, 533 (Iowa 1991). Brian's estimates of his future income are not sufficiently certain or supported to form a basis for calculating his child support obligation. We believe the court used the most reliable evidence available in determining Brian's income.

We also reject Brian's contention that the district court erroneously limited Debra's income to her secretarial and U.S. Census Bureau positions. While we agree Debra is capable of working outside the home on a full-time basis, we believe the court's \$14,350 gross annual income figure acknowledges this fact.

In addition to working outside the home on a part-time basis, Debra was the primary caretaker of the parties' children and home. She also assisted Brian in the farm operation, including maintenance of books and records. In fact, Debra's past income was based, in part, on a salary paid by Brian. Debra's secretarial position, which requires her to work an average of twenty hours per week, pays slightly less than \$10,600 per year. When Debra's U.S. Census Bureau income is considered, this figure increases to just under \$11,200 per year. The \$14,350 gross income figure used by the district court clearly contemplates that Debra is capable of earning additional income. Given that Debra was forty-six years old at the time of trial, has a high school degree, and

limited work experience, we find no reason to disagree with the court's conclusions regarding her current yearly earning capacity.

Because we have no reason to disagree with the income figures used by the district court, we conclude the court did not err in setting Brian's child support obligation at \$934 per month for one child, to be reduced to \$608 per month when only one child is eligible for support. See Iowa Ct. Rs. 9.4, 9.5. We further conclude the court's income figures are accurate for the purpose of assessing Brian's challenge to the district court's award of spousal support.

We consider an award of spousal support in light of the property division, in order to determine the individual sufficiency of each. *In re Marriage of Earsa*, 480 N.W.2d 84, 85 (Iowa Ct. App. 1991). In a marriage of long duration, such as this one, an award of spousal support and a substantially equal property distribution may be appropriate, especially where there is a great disparity in earning capacity. *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993).

When we consider the factors relevant to making an award of spousal support, including the length of the marriage, each party's earning capacity and present standards of living, the ability to pay, and the relative need for support, see Iowa Code § 598.21(3) (2005), we find no reason to disagree with the court's spousal support award. Contrary to Brian's assertions, he does have a higher income and earning capacity than Debra, and is capable of making the support payments. Moreover, a review of Debra's monthly expenses indicates her earning capacity, even when considered in light of the property division, is simply inadequate to meet her needs. Accordingly, we affirm the district court's spousal support award.

In contrast, when we look to the property division, we conclude it requires some modification. The district court awarded Debra approximately \$57,500 more in net property than Brian. The court allocated Brian \$257,060.41 in assets and \$83,961.58 in debt to Farmers State Bank,² resulting in a net award of \$173,098.83. The court allocated Debra \$242,923.62 in assets, \$10,645.89 in debt to Farmers State Bank, and a \$1,693.65 debt to North Star Credit, resulting in a net award of \$230,584.08. However, the criteria set forth in Iowa Code section 598.21(1)—including the length of the marriage; the parties' respective earning capacities, educational and employment backgrounds, and contributions to the marriage; as well as the spousal support award—indicate that an approximately equal net property division was equitable in this case. See *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa Ct. App. 1991) (noting primary goal is to allocate assets and debts in fair and equitable manner).

The district court found the disparity in the net awards was equitable because Brian had refused to sell the grain to be divided between the parties in the spring of 2004, as Debra had urged. Noting grain prices had fallen significantly by the time of trial, the court treated the difference between the grain's current value, and what the grain would have sold for in the spring of 2004, as a reduction in the value of the parties' assets attributable to Brian.

We have consistently recognized that conduct of a spouse that results in the loss or disposal of property that would otherwise be subject to division in a dissolution of marriage action may be considered in making an equitable

² The court also assigned Brian a \$43,723.71 debt to Farmers State Bank. The court found this debt was for 2005 crop expenses and, noting that the income from these expenses would not be included in the dissolution decree, determined that this was a separate debt of Brian's. Brian does not challenge this determination on appeal.

distribution of the parties' property. *In re Marriage of Bell*, 576 N.W.2d 618, 624 (Iowa Ct. App. 1998), *abrogated on other grounds by In re Marriage of Wendell*, 581 N.W.2d 197, 200 (Iowa Ct. App. 1998). However, we find it inappropriate to apply this maxim under the particular circumstances of the present case. Brian testified he did not sell the grain because he believed the prices would continue to increase. While, in hindsight, this may have been a poor or misguided decision, it is not the kind of culpable conduct that should be considered in making an equitable property division. *Cf. In re Marriage of Goodwin*, 606 N.W.2d 315, 321 (Iowa 2000) (concluding property properly included in division where wife transferred title to but retained possession of vehicle, cashed in and disposed of proceeds of life insurance policy, and liquidated mutual fund); *Bell*, 576 N.W.2d at 624 (concluding disparity in division equitable where husband spent marital assets gambling).

We conclude equity requires an approximately equal division of the parties' assets and debts.³ The most equitable means of resolving the disparity in the net property division is to allocate Debra a greater share of the parties' debt. We accordingly modify the district court's decree to allocate the \$83,961.58 Farmers State Bank debt as follows: \$28,742.63 to Debra and \$55,218.95 to Brian. The remainder of the district court's decree is affirmed. Costs of this appeal are allocated equally between the parties.

AFFIRMED AS MODIFIED.

³ We reject Debra's assertion that the division was equitable because she will incur tax liability upon the sale of property awarded to her by the district court. While Debra points to evidence Brian would have sold the property if it were awarded to him, she points to no evidence demonstrating she would be required to do the same.