IN THE COURT OF APPEALS OF IOWA

No. 6-364 / 05-0571
Filed January 31, 2007

IN RE THE MARRIAGE OF CONSTANCE ANN PATTERSON AND DALLAS EUGENE PATTERSON

Upon the Petition of
CONSTANCE ANN PATTERSON,
Petitioner-Appellee/Cross-Appellant,

And Concerning
DALLAS EUGENE PATTERSON,
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Polk County, Carla T. Schemmel, Judge.

Dallas Patterson appeals, and Constance Patterson cross-appeals, challenging various economic provisions of the decree dissolving their marriage. **AFFIRMED AS MODIFIED ON APPEAL; AFFIRMED ON CROSS-APPEAL.**

James J. Beery, Star, Idaho, and Thomas D. McMillen, West Des Moines, for appellant.

Pamela A. Vandel, Des Moines, for appellee.

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

MILLER, J.

Dallas Patterson appeals, and Constance (Connie) Patterson cross-appeals, from various economic provisions of the decree dissolving their marriage. Dallas claims the district court erred in (1) valuing certain assets and dividing assets, (2) not placing an asset value on degrees and licenses earned by Connie during the marriage, (3) awarding Connie alimony, (4) not considering income tax consequences of the court's asset division, (5) dividing property attributable to gifts and inheritances he received, and (6) ordering him to pay support for the parties' twenty-two-year-old son. Connie claims the court erred in (1) not awarding her an equitable share of the parties' property, (2) awarding her an inadequate amount of alimony, (3) not requiring Dallas to provide medical support for the parties' twenty-two-year-old son, and (4) not awarding her trial attorney fees. Connie requests an award of appellate attorney fees. We affirm as modified on Dallas's appeal, affirm on Connie's cross-appeal, and deny Connie's request for appellate attorney fees.

I. BACKGROUND FACTS

The parties were married on June 15, 1974, when each was twenty years of age and a sophomore at the University of Northern Iowa. Dallas quit school after the first semester of that year. The parties moved to the Des Moines area after Connie had completed her sophomore year. They then attended Drake University. Dallas quit school after another year, having attended college for a total of less than three years, and has not acquired a college degree.

Dallas's father gave him an initial $5,000, plus an additional $10,000 over the following year, to assist Dallas in starting an insurance agency. Connie

continued her school and graduated magna cum laude from Drake with an elementary education degree in 1976. In 1977 Dallas inherited $10,000 from his mother, which the parties used as the majority of a down payment on their first home. After receiving her degree from Drake, Connie taught school until 1979 when Heather, the first of the parties' two children, was born. Grant, their second, was born in November 1981.

From 1979 until 1987 Connie did not work outside the home. She then took three additional classes at Drake, received a "reading endorsement," and began doing substitute teaching.

In 1985 Dallas sold his insurance agency to Home Plan Savings & Loan and worked for Home Loan as a vice-president for its insurance operations from 1985 to 1989. In 1989 he bought the insurance agency part of Home Plan. In subsequent years he purchased three more insurance agencies. Dallas sold the insurance business in 1999, using $235,000 of the net sale proceeds to purchase a one-half interest in a real estate development project and the remainder of the proceeds for stock market investment. The real estate development project has at various places in the record been referred to as the "Hubbell" project, "Altoona," "Hubbell Patterson," and "Country Cove." We will refer to the project as "Country Cove." Since October 1999 Dallas has been employed as a vice-president of Community State Bank, serving as its business development officer. His annual salary is $96,000.

The parties' son, Grant, was diagnosed at age twelve as having a brain tumor. He had two surgeries, in 1994 when he was twelve and in 1995 just before he was fourteen. As a result he has right-side weaknesses, disabilities,

and lessened mobility. Grant has little use of his right hand, wears a brace on his right lower leg because his foot drags, may have to use a cane, experiences pain with prolonged physical activity, and tires with physical exertion. Following his surgeries he has had some difficulties learning. He testified to some difficulty with speech, but his trial testimony shows little evidence of such difficulty.

Despite early struggles following his surgeries Grant's academic performance thereafter improved. He graduated from high school with a cumulative grade point average of 3.318. Grant was student body president of Johnston high school. He achieved a ninety-second percentile composite score on a college entrance examination, taken during his junior year in high school.

Connie was substitute teaching when Grant was diagnosed as having a brain tumor. She thereafter continued teaching part-time while spending large amounts of time caring for Grant and assisting in his rehabilitation. During the course of Grant's surgeries and rehabilitation Connie began taking classes toward a nursing degree at Des Moines Area Community College and Mercy School of Nursing. She received her nursing degree, magna cum laude, from Mercy in 1999. At some point Connie also acquired an Iowa realtor's license. She has sold real estate in Iowa. The trial court found Connie had earned commissions of $25,000 in 2001 and $21,000 in 2002. Connie has worked as a nurse in Iowa for a few months, at a starting salary of $36,000 per year.

Grant began his college studies at California State University at Long Beach in August 2000. He lived in a dormitory, with a roommate who helped with certain physical tasks that Grant found difficult or impossible. At the start of the 2003-2004 school year Grant lived by himself for about three months. Although

Connie accurately testified that Grant "really is a bright person" he does have some difficulty processing information, participates in disabled student services, and is considered a full-time student although he is limited to taking nine credit hours per semester. After spending four years in college Grant had acquired the credits to be classified as a junior. It appears he may require an additional three to four years to earn a bachelor's degree. Grant is majoring in Spanish. He hopes to eventually teach Spanish or own and operate his own business.

At the time of the August 2004 dissolution trial Grant was working part-time for the summer in retail clothing sales, earning eight dollars and fifty cents per hour. He had at earlier times worked in two other retail clothing stores. Grant receives $601 per month in Supplemental Security Income from the Social Security Administration.

In about November 2001 Dallas was uncertain whether he would continue working at the Community State Bank and considered moving to California. The parties sold their family home, the third home they had owned, and bought a home in Carlsbad, California. However, Dallas remained employed at the bank.

Connie moved to the parties' new California home in August 2002. She acquired a California realtor's license, but had no success selling despite six months' efforts. Connie decided to get back into nursing. She took six weeks of classes, did sixty hours of clinical work in a hospital, and in May 2003 acquired a nursing license in California. She filed her petition for dissolution of marriage in October 2003. In November 2003 Grant moved into the parties' California home. At the time of the mid-August 2004 trial Connie had secured employment at a hospital in LaJolla, California, starting in September 2004. She would be paid

$29.50 per hours for nights, $25.50 per hour for other shifts, and would receive substantial fringe benefits. She would initially work on the night shift, thus earning at a rate of $61,360 per year plus benefits. Other facts, relevant to the issues presented, will be set forth in our discussion of the district court's decision and the numerous issues presented on appeal.

II. THE DISTRICT COURT DECISION

Certain portions of the district court's decision are relevant to the issues presented. The court awarded each party certain tangible personal property, subject to any debts or encumbrances, awarded each party their bank accounts, and made each responsible for certain credit card debts. These assets and debts are relatively small in the overall scheme of the parties' property and are not involved in the issues presented on appeal.

The district court awarded Connie and Dallas each certain additional assets at net values the court placed on them. The court's values totaled $272,015.26 for Connie and $253,923.31 for Dallas. It then ordered that Connie receive forty percent, and Dallas sixty percent, of anticipated future revenues from the Country Cove project, with each party to be responsible for the tax liability arising from distributions to that party.

The district court awarded Connie "traditional alimony in the amount of $1,500 per month until she or Dallas dies, until Dallas reaches the age of sixty-five, or until Connie remarries, whichever occurs sooner."

The district court ordered that each party provide Grant directly with monthly support payments of $360 until Grant obtains his undergraduate degree, for so long as Grant continued to be registered for at least two full semesters per

year maintaining at least nine credit hours per semester and Grant provided Dallas with a written monthly report covering his classes, activities, work, and future plans. The court further provided that, if Grant and Connie so agreed, she could meet her monthly financial obligation to Grant by continuing to provide him with room and board.

Finally, the district court ordered that each party be responsible for their own attorney fees.

III. SCOPE AND STANDARDS OF REVIEW

In this equity case our review is de novo. Iowa R. App. P. 6.4. 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). We give weight to the fact-findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(*g*). This is 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).

IV. MERITS

A. Asset Values

Included in the assets awarded to Dallas as part of the $253,923.31 previously referred to are a “Johnston Lot” at $72,530, a “Clover Ridge” property at $42,000, a “Quick & Reilly” stock account at $51,257.43, and a “Kane Co.” retirement account at $18,244.01. Dallas claims the district court erred in finding these values.

The "Johnston Lot" is assessed at $72,530 by the county assessor. Dallas believes it to have a market value of $50,000, and testified it is subject to a $7,800 debt. The Iowa Department of Natural Resources will not allow this residential lot, which has not had a home built on it, to have a septic system. The lot has no frontage on a city street and a tract purchased by Dallas to provide the frontage required for a building permit remains encumbered by the prior owner's mortgage. The parties owe $7,800 of a $15,600 debt to a potential purchaser for work done on the lot. It would cost about $10,000 to hook up to a contemplated but not yet constructed city sewer extension. Connie agrees the lot's value does not approach $72,000. We find the district court overvalued the "Johnston Lot" and that its fair market value is approximately $60,000, subject to a debt of $7,800, a net value of $52,200.

The "Clover Ridge" property is a time share purchased by the parties long ago for $7,000 and never used. Neither party lists it as an asset, neither party places a value on it, and neither party wants it. Dallas claims it has no value, and Connie does not disagree. We find it has no value.

In ruling on Dallas's Iowa Rule of Civil Procedure 1.904 motion, the district court found that the parties agreed the Quick & Reilly account should be valued at $31,982.01 rather than $51,257.43. We therefore find its value to be the agreed-to $31,982.01.

Somewhat similarly, in ruling on Dallas's rule 1.904 motion the district court found that Dallas asserted, and Connie did not disagree, that the Kane Co. retirement account should be valued at $11,735.80 rather than the $18,244.01 used by the court. We thus find its value to be $11,735.80.

B. Degrees and Licenses

Dallas claims the district court erred in not placing an asset value on the degrees and licenses Connie earned during the marriage. Although the future earning capacity flowing from an advanced degree or professional license is a factor to be considered in property division and a request for alimony, the degree or license is not an asset for property division purposes. *In re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989). We therefore reject this assignment of error.

C. Income Tax Consequences

Dallas claims the district court erred in not considering the income tax consequences of the asset division. He complains that Connie will not have to pay income tax on any future sale of a major asset awarded to her, the parties' California residence, and he will have to pay capital gains tax of fifteen percent on any sale of the "Johnston Lot." He also notes that the parties' shares of gross distributions from the Country Cove project will be subject to and reduced by income taxes, although he does not state or argue how this fact suggests error by the trial court.

Iowa Code section 598.21(1)(j) (2003) provides that in dividing property the court is to consider the tax consequences to each party. However, in *In re Marriage of Friedman*, 466 N.W.2d 689, 691 (Iowa 1991) our supreme court rejected the trial court's reduction of the value of certain corporate stock to take into consideration capital gains taxes and costs of selling the stock, noting there was no evidence a sale was pending or contemplated and that the trial court had not ordered a sale. In making a property division we have taken into

consideration the tax consequences a party is expected to face in satisfying a property distribution. *See, e.g., In re Marriage of Miller*, 552 N.W.2d 460, 465 (Iowa Ct. App. 1996). We also have held that where payment of a lump sum of cash to a spouse will in all probability require the liquidation of capital assets, the income tax consequences of such a sale should be considered by the trial court in assessing the equities of the property and spousal support award. *In re Marriage of Hogeland*, 448 N.W.2d 678, 680-81 (Iowa Ct. Ap. 1989).

The key to these and other cases is that where sale of an asset is ordered, necessary, or otherwise relatively certain, consideration of tax consequences is appropriate, and where sale will not occur or is rather doubtful, consideration of tax consequences in inappropriate. In this case no sale or liquidation of the California residence or the "Johnston Lot" has been ordered, is necessary to effectuate property division, or is relatively certain to occur within the reasonably foreseeable future. We conclude the district court did not act inequitably or otherwise err in not considering income tax consequences of a speculative and uncertain sale of the "Johnston Lot," or any lack of such consequences upon a speculative and uncertain sale of the California residence.

The district court's decree does in fact consider the income tax consequences of the distributions from the Country Cove project, and makes each party responsible for the income taxes attributable to that party's share of such distributions. We find nothing inequitable or erroneous in this action by the court.

D. Gifts and Inheritances

In addition to the previously noted $15,000 in gifts from his father and $10,000 inheritance from his mother, between 1990 and 1999 inclusive Dallas inherited an additional $299,000 from an uncle, a great aunt, his father, and two sets of grandparents. Dallas claims the trial court erred by dividing property attributable to his gifts and inheritances rather than setting aside to him the $324,000 of gifts and inheritances and then dividing remaining property approximately equally.

Property inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to property division except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage. Iowa Code § 598.21(2). The requirement to set aside to a party the property which has thus been inherited or received as a gift is not absolute, and division may nevertheless occur to avoid injustice. *In re Marriage of Thomas*, 319 N.W.2d 209, 211 (Iowa 1982). Contributions by a party to the care, preservation or improvement of inherited property is a factor which bears on a claim that inherited property should be divided, and the length of the marriage and the length of time the property was held after it was devised or given may indirectly bear on the question, for their effect on this and other relevant factors. *Id.*

Where the parties' inheritances were in cash, and were then invested in assets which appreciated in value, the Iowa Supreme Court stated that decisions on how to use the property during the marriage, including inherited property, bear most of the characteristics of a family decision; stated that barring special

circumstances the resulting appreciation or loss may be characterized as marital property; and did not disturb the trial court's decision which set off the parties' inherited property to them based on its values at the time of inheritance. *In re Marriage of White*, 537 N.W.2d 744, 746 (Iowa 1995).

Here, Dallas's gifts and inheritances were in cash. Connie was unable to say what Dallas had done with all of his inheritances, but did testify some were used for home improvements, a new Corvette, boats, and other purchases. Dallas testified he used the inheritances for the family to live on and pay personal expenses, while using income generated within the insurance agencies to pay off debt incurred to purchase them. He later used $235,000 from the sale of the insurance agencies for the parties' investment in the Country Cove project.

Here, the decision to use Dallas's inheritances to live on, pay family expenses, and purchase such things as vehicles and boats, bears all the characteristics of family decisions. None of Dallas's gifts or inheritances remain separate, intact, or identifiable, and none of the parties' present assets are directly traceable to them. Rather, some uncertain portion of the parties' present assets is indirectly attributable to Dallas's gifts and inheritances.

The parties separated in 2002. In 2002 and 2003 Dallas received distributions totalling $337,500 from the Country Cove project. This amount, even as reduced by necessary income taxes, does not appear to be reflected in the parties' disclosed assets. The district court found that the $337,500 should be considered at least partially as reimbursement for Dallas's family inheritances. We agree with the court and conclude that this reimbursement adequately

compensates Dallas for his gifts and inheritances and, after considering the other property awards, results in an equitable property division.

E. Property Division

Dallas claims the district court's property division is inequitable, in part but not in whole as the result of the court overvaluing the Johnston Lot, Clover Ridge property, Quick & Reilly account, and Kane Co. retirement account. Connie claims the court erred in not awarding her an equitable share of the parties' property. More specifically, she argues the court erred in (1) awarding her less retirement funds, $23,652, than it awarded Dallas, $69,196.53, (2) not awarding her at least fifty percent of the remaining distributions from the Country Cove project, (3) failing to distribute an interest bearing escrow account containing the balance of funds from a court-authorized pre-trial stock sale, (4) failing to hold Dallas responsible for at least $40,000 of the debt encumbering the California residence, and (5) failing to award her a larger portion of the parties' property to offset tax consequences she will incur as a result of the property division and alimony awarded.

The partners to a marriage are entitled to a just share of the property accumulated through their joint efforts. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa Ct. App. 1991). Iowa courts do not require an equal or percentage division. *Id.* The determining factor is what is fair and equitable in each circumstance. *Id.*

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). Accordingly, the term "property division" incorporates both division of assets and assignment of responsibility for debts.

We have earlier addressed and need not further discuss Dallas's complaints regarding the values of certain assets. Connie's third complaint, concerning a purported interest-bearing escrow account has some merit. While the case was pending in the trial court Dallas sought and secured a June 29, 2004 order allowing him to sell stock worth approximately $100,000 and distribute the proceeds by retaining $30,000, paying Connie $30,000, and placing the balance in an interest-bearing escrow account to be distributed as later ordered in the dissolution decree. Dallas testified at trial that he sold $64,000 of such stock from the Quick & Reilly account, retained $32,000, paid $32,000 to Connie, and did not sell additional stock as authorized by the court. However, exhibits presented by Dallas with his rule 1.904 motion show that in July and early August 2004 he sold stock from the Quick & Reilly account netting $86,909.94, or $22,909.94 more than he acknowledged in his testimony. This $22,909.94 was apparently not placed in an escrow account and Dallas has not otherwise accounted for it. We conclude that, as argued by Connie, it should be considered in the property division.

Connie's first, second, and fourth complaints implicate particular assets or debts. She and Dallas also appear to complain of the overall property division. We must, as the trial court must, consider the overall property division rather than

any particular item or items in isolation. *See, e.g., In re Marriage of Pittman*, 346 N.W.2d 33, 37 (Iowa 1984) ("In considering the overall property division . . . we conclude the property division was equitable."). We therefore focus on whether the overall property division is equitable.

The evidence at trial shows it is anticipated the Country Code project will in all likelihood provide $709,000 of additional distributions to Dallas and Connie within two years. The district court's award of sixty percent to Dallas and forty percent to Connie will thus amount to gross distributions of $425,400 and $283,600 to Dallas and Connie respectively. The evidence at trial estimates the income tax consequences to each at twenty-five percent, resulting in net distributions of $319,050 and $212,700 to Dallas and Connie respectively.

The district court awarded Dallas certain assets it valued at $253,923.31, an amount that our modifications reduce by a total of $88,113.63, resulting in an award of $165,809.68. This amount, plus the $319,050 from the Country Cove project results in a total net award to Dallas of $484,859.68.[1] The court awarded Connie certain assets with a value of $272,015.26. This amount plus the $212,700 from the Country Cove project results in a total net award to Connie of $484,715.28.[2] Even after considering the $22,909.94 from stock sales that Dallas has not accounted for, we find the court's overall property division to be equitable. We also conclude that Connie's fifth complaint, concerning income tax consequences, is without merit as both the trial court and this court have considered income tax consequences where appropriate.

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[1] This figure is in addition to an award of bank accounts, substantial furniture and furnishings, and valuable inherited antiques.

[2] This figure is in addition to an award of bank accounts, substantial furniture and furnishings, valuable jewelry, and an automobile.

F. Alimony

Dallas claims the district court erred in awarding Connie alimony, and Connie claims the court erred in awarding her inadequate alimony. The three commonly recognized categories of alimony are summarized in *In re Marriage of O'Rourke*, 547 N.W.2d 864, 866-67 (Iowa Ct. App. 1996). We agree with the trial court's implicit determination that neither reimbursement nor rehabilitative alimony is appropriate, and therefore proceed to consider whether the trial court's award of "traditional" or "permanent" alimony is appropriate.

"Alimony is an allowance to the spouse in lieu of the legal obligation for support." *In re Marriage of Sjulin*, 431 N.W.2d 773, 775 (Iowa 1988). Spousal support is not an absolute right; an award depends on the circumstances of the particular case. *In re Marriage of Dieger*, 584 N.W.2d 567, 570 (Iowa Ct. App. 1998). The discretionary award of spousal support is made after considering the factors listed in Iowa Code section 598.21(3). *Id.* Property division is one of the many things to be considered when evaluating whether alimony should be awarded. Iowa Code § 598.21(3)(c); *In re Marriage of Trickey*, 589 N.W.2d 753, 756 (Iowa Ct. App. 1998).

Facts bearing on the factors listed in section 598.21(3) and relevant to the alimony issue have been set forth in preceding portions of this opinion and need not be repeated here. Some, such as the length of the marriage and Dallas's somewhat greater earning capacity might support an award of alimony. Others strongly suggest no alimony is necessary or appropriate. Connie is clearly capable of self-support at a reasonably high standard of living. She holds the numerous, previously-mentioned degrees, endorsement, and licenses, with all

but the first two years of her first degree acquired and paid for during the marriage. Connie is receiving a property award of almost one-half million dollars plus small bank accounts, substantial furniture and furnishings, a valuable collection of jewelry, and an automobile worth about $8,000 with no liens or encumbrances. She has employment, at a starting pay rate of $61,360 per year plus substantial fringe benefits. After considering all relevant factors we conclude the facts do not support an award of traditional alimony. We therefore modify the trial court's decree to eliminate the provision awarding alimony.

G. Support for Grant

Dallas claims the district court erred in ordering him to pay support for Grant. At or about the time Connie filed for divorce and Grant moved into the parties' California home Dallas, who had been financially supporting Grant, stopped doing so and in turn Grant ceased communication with Dallas and would not see him. Dallas argues Grant had alienated himself from Dallas,[3] citing *In re Marriage of Pendergast*, 565 N.W.2d 354 (Iowa Ct. App. 1997), and was an independent adult.

"A parent's legal obligation to support his or her children does not necessarily end when the child reaches the age of majority." *In re Marriage of Nelson*, 654 N.W.2d 551, 553 (Iowa 2002). Iowa law provides a parent's obligation to support a child "*may* include support for a child of any age who is dependent on the parties to the dissolution proceedings because of physical or mental disability." Iowa Code § 598.1(9) (emphasis added). The emphasized language allows the trial court, in its discretion, to order support when the

[3] In his brief Dallas acknowledges that subsequent to trial "Dallas and Grant have reconciled."

described circumstances are shown. "To determine whether a child is 'dependent,' we consider the child's ability to be gainfully employed and whether the child receives income or benefits from other sources." *Nelson*, 654 N.W.2d at 553.

At the time of trial Dallas had not seen Grant for nine and one-half months, but this was not surprising given the distance between their Iowa and California residences, Dallas's work, and Grant's college attendance. Although Grant was angry or disappointed with Dallas he had not disowned him, stated he still loved him, and expressed a willingness to restart communication and their relationship. This is not a case of a lengthy, bitter, serious, or permanent estrangement such as in *Pendergast*. Although Grant's actions are unseemly and arguably inappropriate, we conclude this is not a case in which he has acted in such a manner as to disallow support from Dallas if otherwise appropriate, particularly in view of the requirements imposed by the trial court in order for Grant to receive such support.

Grant does receive Supplemental Security Income, but of course receives it as a result of a determination by the Social Security Administration that he is disabled. He is gainfully employed, but only part-time, with substantial difficulty and some pain, and only when not in school, such as for the summer. When in school he is registered as a disabled student because of physical limitations and some learning limitations and is limited to taking nine credit hours per semester. We conclude the trial court did not err in finding Grant to be dependent by reason of disability, and affirm the trial court's order that the parties continue to provide the time-limited support it ordered.

H. Medical Support for Grant

Connie claims the district court erred in not requiring Dallas to provide medical support for Grant. She argues Dallas should be ordered to provide "full medical coverage" or reimburse her for any health insurance premiums she pays for Grant, until Grant is able to obtain health insurance at a nominal price through an employer or some agency.

Medical support for Grant is not included in either party's monetary amount of support, because the district court did not specifically order otherwise. Iowa Code § 598.1(9). The court in an exercise of its considerable discretion did order Dallas to pay $360 per month towards Grant's support. Further, although Connie was uncertain as to what medical insurance for Grant and herself would cost through her employment, she believed the cost would be $50.41 per two-week pay period. Under the circumstances shown we cannot find that the trial court abused its discretion or acted inequitably in not ordering Dallas to provide or contribute to medical support for Grant.

I. Trial Attorney Fees

Connie claims the district court abused its discretion by failing to award her reasonable attorney fees. An award of attorney fees lies 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). An award must be for a fair and reasonable amount, and based on the parties' respective abilities to pay. *In re Marriage of Coulter*, 502 N.W.2d 168, 172 (Iowa Ct. App. 1993). Connie received over one-half million net dollars worth of property, and was beginning employment paying $61,360 per year. The

trial court assessed the parties' abilities to pay, and denied Connie's request. Under the circumstances shown we find no abuse of discretion and affirm the court's decision.

J. Appellate Attorney Fees.

Connie requests an award of appellate attorney fees. Such an award rests in this court's discretion. *In re Marriage of Sullins*, 715 N.W.2d 242, 255 (Iowa 2006). The factors to be considered include the needs of the party requesting the award, the other party's ability to pay, and the relative merits of the appeal. *Id*. Upon consideration of the foregoing factors, we deny Connie's request.

V. CONCLUSION

We have considered all of the parties' numerous contentions, whether or not discussed in detail. We modify the values of certain assets awarded to Dallas. We find Dallas has not accounted for $22,909.94 in proceeds from sales of stock, that amount should be considered in the property division, but that the property division ordered by the trial court is nevertheless equitable. We modify the district court's decree to eliminate the provision awarding alimony to Connie. In all other respects we affirm the district court's decree.

Costs on appeal are taxed one-third to Dallas and two-thirds to Connie.

AFFIRMED AS MODIFIED ON APPEAL; AFFIRMED ON CROSS-APPEAL.