**IN THE COURT OF APPEALS OF IOWA**

No. 6-782 / 05-2115
Filed March 14, 2007

**IN RE THE MARRIAGE OF ELIZABETH A. BRIDDLE AND DAVID J. BRIDDLE**

**Upon the Petition of**
**ELIZABETH A. BRIDDLE,**
Petitioner-Appellee,

**And Concerning**
**DAVID J. BRIDDLE,**
Respondent-Appellant.

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Appeal from the Iowa District Court for Polk County, Arthur Gamble (motion to enforce settlement) and Jerrold W. Jordan (dissolution), Judges.

Respondent-appellant appeals the economic provisions of the decree dissolving his marriage to petitioner-appellee, seeking, among other things, enforcement of a settlement agreement. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Patricia Shoff of Belin, Lamson, McCormick, Zumbach, Flynn, A P.C., Des Moines, for appellant.

Lawrence Marcucci, West Des Monies, for appellee.

Heard by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

**SACKETT, C.J.**

David J. Briddle appeals, challenging the economic provisions of the decree dissolving his marriage to Elizabeth A. Briddle. David first contends that a settlement agreement reached by the parties be enforced. He contends that if the agreement is not enforced then the decree should be modified as (1) the property provisions are punitive and based on erroneous valuation, (2) the child support is excessive, and (3) the attorney fee award is not equitable. The settlement agreement should be enforced. We affirm in part, reverse in part, and remand.

## I. SCOPE OF REVIEW

We review de novo a refusal to enforce a settlement agreement in dissolution. *In re Marriage of Jones*, 653 N.W.2d 589, 592 (Iowa 2002), *In re Marriage of Zeliadt*, 390 N.W.2d 117, 118 (Iowa 1986). In *Jones*, the court determined it had de novo review where a party contended the court of appeals had no legal right to repudiate a stipulation in dissolution. *Jones*, 653 N.W.2d at 592. The economic provisions of a divorce decree are also reviewed de novo. Iowa R. App. P. 6.4.

In a de novo review we examine the entire record and adjudicate anew the issues properly presented on appeal. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1982). 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*); *In re Marriage of Grady-Woods*, 577 N.W.2d 851, 852 (Iowa Ct. App. 1998). We approach this issue from a gender-neutral position avoiding sexual stereotypes. *In re Marriage of Pratt*, 489 N.W.2d 56, 58

(Iowa Ct. App. 1992); *see also In re Marriage of Bethke*, 484 N.W.2d 604, 608 (Iowa Ct. App. 1992).

## II. BACKGROUND FACTS AND PROCEEDINGS

The parties were married in September of 2002. They are the parents of three children born in 1995, 1997, and 1999. At the time of the marriage David, who has a high school education, was employed by and owned minority interests in two closely-held corporations. By the time of the dissolution he had minority interests in nine closely-held corporations. The corporations owned antique malls and/or provided the advertising and management services for the malls. David received an annual salary of $72,800 from Fun & Action, Inc., one of the corporations. In addition he received varying taxable distributions up to $183,887 in 2003 from those of the other corporations which were taxed as S corporations.[1]

Elizabeth had been a real estate agent prior to the birth of the parties' second child and at the time of trial had completed training and was employed as a cardiac sonographer at an annual salary of $46,000. During the marriage the parties acquired certain real estate interests and David continued to acquire interests in the closely-held corporations.

Elizabeth filed her petition for dissolution on October 10, 2002. Following the filing Elizabeth sought discovery most particularly aimed at obtaining financial information about David's interests in the various corporations. The discovery

[1] On the parties' joint tax return for 2002 David showed non-passive income from various of the corporations of $92,594 and non-passive losses and expense deductions of $26,900, for a net taxable distribution from the corporations of $65,694. On the parties' 2003 joint return David showed non-passive income from the corporations of $183,887 and non-passive losses of $2932 and expense deductions of $46,094 for a net taxable distribution of $134,219.

requests were denied by the corporations and the district court refused to grant Elizabeth's requests for production, but did order David to seek an order to obtain the records as a minority shareholder and make them available to Elizabeth. The discovery process was confrontational and tried the patience of more than one district court judge.

A trial date was ultimately set for Monday, February 7, 2005. On Saturday, February 5, 2005, two days before the scheduled trial date, the parties and their attorneys met with attorney Steve Lytle, who acted as a mediator, at 8 a.m. and concluded negotiations and reached a settlement at 7 p.m. that day. On February 8, 2005, Lytle provided attorneys for both parties[2] a writing setting forth in detail what his notes reflected to be the mediated settlement reached on Saturday, February 5, 2005. In closing Lytle wrote, "If either of you believe I have misstated the essentials of the agreement reached on Saturday, please contact me immediately."

On February 9, 2005, David's attorney faxed to Elizabeth's attorney a draft of a decree of dissolution of the marriage together with supporting documents prepared pursuant to the parties' mediation agreement. He asked that Elizabeth's attorney get back to him as soon as possible with any additions, corrections, or suggested changes.

There was no communication from Elizabeth's attorney to either Lytle or David's attorney. Consequently, on February 23, 2005, David filed a motion to enforce the settlement agreement. Elizabeth filed no written resistance. Finally, on March 7, 2005, two days before the scheduled March 9 hearing, Elizabeth's

[2] David's attorney at that time did not represent him on appeal.

attorney sent a letter to David's attorney contending that David had made a material misrepresentation in that Elizabeth was unaware until her attorney received the draft decree from David's attorney that in addition to an annual income of $72,800 David received income of another $100,000 to $150,000 a year. Elizabeth's attorney also listed seven items that Elizabeth wanted, noting, "I know there are some substantive changes here. However, this is [sic] may be the only way to save the settlement."

A hearing on the motion was held. Lytle was called as a witness. He was qualified as an expert in family law. He testified he believed the parties reached an agreement as to the essential issues unresolved. He further testified that at 7 p.m. on Saturday he went over each issue with the parties and their attorneys that they had agreed to and said he would have the agreement written up and sent to each attorney by Tuesday, which he in fact did.

At the hearing on the motion to enforce the settlement David contended Elizabeth knew he received additional income. Elizabeth contended she had negotiated alimony and child support based on the lower figure. The district court accepted Elizabeth's version and denied the motion to enforce the settlement. The district court found that David had failed to disclose his actual income to Elizabeth before and during mediation and that David did not give a clear statement under oath as to his income.

David contends that neither of the grounds the district court relied on in its refusal to enforce is tenable. He contends that Elizabeth was aware of his additional income. He points to a filing on temporary support where he stated he had additional income from one of the companies. He also advances that prior

joint tax returns showed taxable distributions from S corporations. He further argues the distributions vary from year to year making it impossible to predict an accurate figure of his annual income.

The matter ultimately went to trial and after a five-day hearing the district court requested the parties to prepare proposed decrees which each did. The court adopted Elizabeth's decree including all findings therein with several minor word changes and a reduction of alimony from $2000 a month for three years to $1000 a month for the same period. David filed an Iowa Rule of Civil Procedure 1.904(2) motion setting forth some twenty-one areas in the decree where he contended the district court applied the incorrect law and/or made provisions that were grossly unfair to him. The district court denied the motion in its entirety and this appeal followed.[3]

**A. Settlement Agreement**

David contends the district court should have ordered the settlement agreement be enforced. The settlement, among other things, was to have resulted in David paying child support of $2200 a month through high school or age nineteen, a property settlement for Elizabeth of $425,000 paid without interest over a ten-year period. Alimony was computed at five percent on the unpaid balance of the property settlement, which initially would be $1770 a month. David was to receive the parties' homestead and Elizabeth a rental property. Elizabeth was to keep ownership of an interest in development land near Kansas City, Missouri. David was to receive the interests he had in eight

[3] David contends that in the decree the district court, among other things, incorrectly applied the law, incorrectly valued the property, and failed to do equity. While we would agree with several of his assertions, because of our holding we need not address them.

corporations. David also agreed to pay nearly $62,000 in attorney and expert fees that Elizabeth had incurred to that date.

Elizabeth contends the district court was correct in rejecting the settlement because David first disclosed his total income in the February 9, 2005 proposed decree.

The February 9, 2005 proposed decree prepared by David's attorney included a statement that David's annual base salary was $72,800 and that David received distribution from the various corporations of which he is a minority shareholder in the range of $100,000 to $150,000 a year. Elizabeth contends this was the first time she learned that David received distributions in addition to his salary. The district court accepted her contention.

The law favors settlement of controversies. A settlement agreement is essentially contractual in nature. *Wright v. Scott*, 410 N.W.2d 247, 249 (Iowa 1987). The typical settlement resolves uncertain claims and defenses, and the settlement obviates the necessity of further legal proceedings between the settling parties. *Id.* Voluntary settlements of legal disputes should be encouraged, with the terms of settlements not inordinately scrutinized. *Id.* Settlement agreements are by their very nature the voluntary resolution of uncertain claims and defenses. *Id.*

District courts have authority to enforce settlement agreements. *Strong v. Rothamel*, 523 N.W.2d 597, 600 (Iowa Ct. App. 1994); *Starlin v. State*, 450 N.W.2d 257, 258 (Iowa Ct. App. 1989). This authority is ordinarily exercised two ways. If the important facts are not in dispute, courts may summarily enforce the

agreement on motion by one of the parties. *See Wiltgen v. Hartford Accident & Indem. Co.*, 634 F.2d 398, 400 (8th Cir. 1980).

> Courts should . . . support agreements which have for their object amicable settlement of doubtful rights by parties . . . . [S]uch agreements are binding without regard to which party gets the best of the bargain or whether all of the gain is in fact on one side and all of the sacrifice on the other.

*Wright*, 410 N.W.2d at 250. If the material facts surrounding the settlement are disputed, the issue must be resolved by the finder of fact. *See Wiltgen*, 634 F.2d at 400.

The factual question here is not whether there was a settlement, but whether in negotiating the settlement David fraudulently misrepresented his income and income potential to Elizabeth. On our de novo review we find he did not. The parties were each represented by attorneys experienced in the family law area. At the time of the settlement the parties were ready for trial and extensive discovery had preceded settlement negotiations. The figures as to other income were presented to Elizabeth by David in the proposed decree showing at that time he had no intention of hiding his additional income. Elizabeth was aware that David had minority interests in various corporations. Elizabeth filed joint tax returns with David for at least three years where distributions from the various corporations were included in the couple's reportable income. Elizabeth was aware that David had income in addition to his salary from filings made with reference to child support.

We are convinced Elizabeth was aware that David had and could continue to have annual distributions in the amount suggested in the proposed decree from S corporations in addition to his annual salary. Furthermore, the evidence

shows the distributions varied and David could not specifically state what they would be on an annual basis. From our review of the record we are convinced that the settlement was fair and equitable to the parties and their children.

We reverse the district court's refusal to enforce the settlement. We affirm the dissolution of the marriage but vacate the balance of the decree entered by the district court and remand for the entry of a decree complying with the terms of the settlement agreement. Appellate costs are taxed to Elizabeth. We award no appellate attorney fees.

**AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**