

IN THE COURT OF APPEALS OF IOWA

No. 6-854 / 06-0974
Filed January 18, 2007

**IN RE THE MARRIAGE OF BRENDA SUE BRECKENRIDGE
AND JEFFREY RAY BRECKENRIDGE**

**Upon the Petition of
BRENDA SUE BRECKENRIDGE,**
Petitioner-Appellee,

**And Concerning
JEFFREY RAY BRECKENRIDGE,**
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Richard G. Blane II,
Judge.

The respondent appeals from the economic provisions of the district
court's decree dissolving his marriage. **AFFIRMED.**

Patrick H. Payton of Patrick H. Payton & Assoc., P.C., Des Moines, for
appellant.

Catherine K. Levine, Des Moines, and Barbara Romar, West Des Moines,
for appellee.

Considered by Huitink, P.J., Vogel, J., and Brown, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

VOGEL, J.

Jeffrey Breckenridge appeals from economic provisions of the district court's decree dissolving his marriage to Brenda. Jeffrey challenges the district court in valuation and division of certain property and the court's order of rehabilitative spousal support to Brenda. Upon our de novo review, we affirm.

At the time of trial, Jeffrey was forty-six years old and Brenda was forty-four years old, having been married in February 1979. The couple has two children who are both adults and not integral to the terms of the decree. Both parties are in good health, although Jeffrey takes medication for high blood pressure and gastrointestinal problems. Jeffrey has worked for Maytag for many years and holds a journeyman card as a skilled tool and die maker. Although Maytag is set to close its Newton plant in October 2007, Jeffrey feels obligated to continue working there until the closing because he holds a position as a union representative. Jeffrey also tends bar part-time at a local establishment. The district court found his annual gross salary at the time of trial was \$56,068.

Brenda has worked various jobs during the marriage, most recently at Maytag as an unskilled worker on the assembly line from 1997, until she was laid off in early 2005. As a result of the layoff, Brenda has taken the opportunity to pursue a college education for retraining purposes under the NAFTA/TAA¹ educational program. Based on the terms of the program, she is limited in the amount of money she is allowed to earn without losing the education benefits. Brenda expects to earn her associate's degree in 2007 and her bachelor's

¹ The North American Free Trade Agreement-Transitional Adjustment Assistance program was created especially to help workers who lose their jobs, or whose hours of work and wages are reduced, as a result of trade with Canada and Mexico.

degree in business in 2009. She has also received some unemployment compensation and was working part-time as a waitress to help pay for her living expenses. At the time of trial, the district court found her annual gross salary to be \$15,767.

Brenda and Jeffrey had agreed upon a division of most of their personal property when Brenda moved out of the marital home. Therefore, at trial they only disputed the division of some personal property including a china cabinet, a grandfather clock, and Jeffrey's extensive collection of guns and hunting items, which included numerous firearms, bows, ammunition, reloading equipment, cases, and scopes. Neither party had an appraisal of the collection, but Brenda offered an estimated worth of \$50,000. Jeffrey testified as to some individual values and a total worth of just over \$6200. Although he could not provide documentation or other evidence supporting his claim, Jeffrey alleged that some of the items were not subject to division as they belonged to either his son or his father, were purchased with funds from his parents, or were given to him as inheritance or gifts.

The value of Brenda's vehicle, a 1999 GMC Suburban, was also in dispute because of major engine problems encountered in January 2006. She testified the Suburban was no longer operable without approximately \$4100 of repair work and that the value in its current state is about \$700. Jeffrey's 1990 Suburban was valued at \$750, and he argued at trial that the 1999 Suburban was worth \$9,000-\$11,000 according to "bluebook" value at the time of separation; he believes Brenda should bear the loss of her vehicle because she

did not maintain it properly after the separation, causing the engine to fail, and the value to dramatically decline.

The district court entered its order dissolving the marriage in May 2006, dividing the joint property and debts, and ordering spousal support. The court allocated a value of \$10,000 to the various guns and associated items as divisible assets and excluded the remaining gun items identified as Jeffrey's separate property. Brenda was awarded rehabilitative spousal support of \$1200 per month through no later than December 2009. The court's order also made a formal allocation of the "household goods, furnishings, and personal property" in Brenda's possession and Jeffrey's possession to remain as currently held. Assessing a value of \$700 to Brenda's Suburban, the court awarded each the vehicle in his or her possession. Jeffrey appeals the property division and award of spousal support.

Scope of Review. We review the provisions of a dissolution decree de novo. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006).

Property Valuation and Division. Jeffrey contends on appeal that the district court erred by (1) making a division of the household contents when they had already been divided by the parties; (2) considering all of the guns joint property and/or overvaluing those items; (3) placing a \$700 value on Brenda's 1999 Suburban; and not making an equitable division of the pensions.² We defer

² In his two-paragraph argument on this issue, Jeffrey cites to case law and reiterates error by the district court in dividing the vehicles and household goods, stating "The district court should not have evaluated or divided these assets. The only property division the court should have made was regarding retirement assets—the Maytag pension, Brenda's Edward Jones IRA, and Brenda's Edward Jones Roth IRA." He does not make an argument how the court's division of the pensions was erroneous or inequitable, and we deem this issue waived. See Iowa R. App. P. 6.14(1)(c).

to trial court valuations on property when they are accompanied by supporting credibility findings or corroborating evidence, see *In re Marriage of Vieth*, 591 N.W.2d 639, 640 (Iowa Ct. App. 1999), and are within the permissible range of the evidence presented at trial. *In re Marriage of Driscoll*, 563 N.W.2d 640, 643 (Iowa Ct. App. 1997).

Jeffrey first argues that the district court interfered with the division of the household goods he claims was informally agreed upon prior to trial. However, the parties did not have a written stipulation as to the division of personal property. Therefore, the district court was correct in allowing testimony regarding disputed items and valuations. We affirm on this issue.

Jeffrey also argues the district court erroneously included all of the guns in the division of property and overvalued the related property, as well. It is clear from the district court's discussion of the property that it did not include every gun-related item but excluded some as Jeffrey's separate property and placed a value of \$10,000 on the remaining items as divisible assets. Jeffrey alleges the value should be less than \$1200, while Brenda argued at trial that the total value of the gun items was \$50,000. Neither party submitted an expert's appraisal. Therefore, we conclude the court's valuation of \$10,000 for all of the divisible gun and hunting equipment was within the permissible range of the evidence presented at trial and do not disturb it on appeal.

Jeffrey's last argument as to property division claims the court undervalued Brenda's 1999 Suburban at \$700. He asserts the court should have valued it as of the time of separation because Brenda wasted marital assets by failing to properly maintain the vehicle. The date of trial is the appropriate date

for valuation of assets, unless the unique circumstances of a case make it practicable and equitable to value the assets at time of separation. See *In re Marriage of Campbell*, 623 N.W.2d 585, 588 (Iowa Ct. App. 2001). We conclude that the court was correct when it used the trial date to value Brenda's vehicle and affirm on this issue.

Spousal Support Award. Jeffrey's final issue on appeal concerns the award of \$1200 per month of rehabilitative spousal support to Brenda. He contends the court should not have made an award and/or that the award is excessive. Spousal support is a stipend to a spouse in lieu of the other spouse's legal obligation for support, is not an absolute right, and an award thereof depends upon the circumstances of a particular case. *In re Marriage of Spiegel*, 553 N.W.2d 309, 319 (Iowa 1996). Rehabilitative spousal support is "a way of supporting an economically dependent spouse through a limited period of re-education or retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting." *In re Marriage of Olson*, 705 N.W.2d 312, 316 (Iowa 2005) (quoting *In re Marriage of Francis*, 442 N.W.2d 59, 63-64 (Iowa 1989)). When making or denying a spousal support award, the trial court considers the factors set forth in Iowa Code section 598.21(3) (2005). Although our review of the trial court's award is de novo, we accord the trial court considerable latitude in making this determination and will disturb the ruling only when there has been a failure to do equity. *Olson*, 705 N.W.2d at 315. The factors relevant to ordering spousal support in this case include:

- (1) the length of the marriage;
- (2) the age and physical and emotional health of the parties;
- (3) the distribution of property;

- (4) the educational level of each party at the time of marriage and at the time the action is commenced;
- (5) the earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, responsibilities for children under either an award of custody or physical care, and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment;
- (6) the feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and the length of time necessary to achieve this goal;
- (7) the tax consequences to each party; and
- (8) other factors the court may determine to be relevant in an individual case.

Iowa Code §§ 598.21(3)(a)-(g), (j).

The district court ordered the \$1200 per month in spousal support to Brenda to continue

so long as she is attending college and so long as [Jeffrey] remains employed at Maytag. Brenda shall still be entitled to the rehabilitative alimony if attending college full time, but the amount shall be subject to modification upon Jeffrey's termination from Maytag. In no event shall the alimony be payable past December 2009, and will end earlier if Brenda graduates with her bachelor of arts degree.

The property division was nearly equal in this case, with the court ordering a cash payment by Brenda to Jeffrey to equalize the property division once the marital home is sold. The parties' marriage was long-term, over twenty-six years, and there is a great earning disparity of about \$40,000 while Brenda is still completing her education. When testifying at the trial, Jeffrey admitted that even if an award of \$1500 per month were made, he would still have income remaining after paying his necessary monthly expenses as listed on his affidavit of financial status. While circumstances are certain to change in the future with Jeffrey's imminent termination from Maytag in 2007, we cannot say the district court failed

to do equity in its award of rehabilitative spousal support in the amount of \$1200 per month under the parties' current situations. We therefore affirm the district court's award of spousal support to Brenda.

We award no appellate attorney fees; costs on appeal assessed to Jeffrey.

AFFIRMED.