

**IN THE COURT OF APPEALS OF IOWA**

No. 6-989 / 06-0814  
Filed January 31, 2007

**IN RE THE MARRIAGE OF JAYNE TYLER THIELEN AND ROGER THIELEN**

**Upon the Petition of  
JAYNE TYLER THIELEN,**  
Petitioner-Appellant,

**And Concerning  
ROGER THIELEN,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Cass County, Jeffrey Larson,  
Judge.

Jayne Thielen appeals from the economic provisions of the decree  
dissolving her marriage to Roger Thielen. **AFFIRMED AS MODIFIED.**

Becky S. Knutson of Davis, Brown, Koehn, Shors & Roberts, P.C., Des  
Moines for appellant.

C. R. Hannan of Hannan & Driesmeier, P.L.C., Council Bluffs, for  
appellee.

Heard by Mahan, P.J., and Vaitheswaran and Eisenhauer, JJ.

**EISENHAUER, J.**

Jayne Thielen appeals from the economic provisions of the decree dissolving her marriage to Roger Thielen. She contends the district court erred in dividing the parties' assets and debts. She also contends the court erred in awarding Roger spousal support. We affirm as modified.

***I. Background Facts and Proceedings.*** The parties were married in 1976 and separated in March 2005. At the time of dissolution, Roger was forty-nine years old and Jayne was fifty-three. Their children are adults.

Jayne is a teacher, earning approximately \$41,000.00 per year. She is also a director of Atlantic Bottling Company, a family business, and earns \$2500 per quarter in director's fees and \$1000 per quarterly meeting. Jayne also owns 114,000 shares of stock in Atlantic Bottling Company. This stock was gifted to her by her parents and the district court did not consider it a divisible asset. Jayne receives \$2800 quarterly from her brother for stock shares she sold him in 1994. These payments will continue until 2009. Jayne does not receive stock dividend payments as dividends earned by the corporation are reinvested in the company.

When the parties married, Roger was employed at Atlantic Bottling Company. By 1989, Roger was earning \$40,000.00 per year. Roger then left the corporation to start a business, Atlantic Supply. The business was closed at the time of trial. At the time of trial, Roger was living in Phoenix, Arizona and working as an office supply salesperson. He earns approximately \$26,000.00 per year, but the district court found that amount could increase by \$100.00 to

\$150.00 per month from additional commissions. The court further found, “Roger appears to be under-employed and is capable of earning more income.”

Jayne filed a petition for dissolution in March 2005. On February 10, 2006, the district court entered its decree dissolving the marriage. The court divided the parties’ assets and debts equally. Jayne was awarded the marital home, which the court found had a net value of \$53,997.00, and Roger was awarded his vehicle, which the court found had a net value of \$4235.00. To equalize the property distribution, the court ordered Jayne pay Roger \$24,900.00. The court also ordered Jayne to pay Roger alimony in the amount of \$1000.00 per month for four years.

**II. Scope and Standard of Review.** Appeal of economic provisions of a divorce decree is de novo. *In re Marriage of Campbell*, 623 N.W.2d 585, 586 (Iowa Ct. App. 2001). This standard requires us to examine the entire record and adjudicate anew rights on the issues properly presented. *Id.* We recognize the value in listening to and observing the parties and witnesses. See Iowa R. App. P. 6.14(6)(g). Consequently, we give weight to the findings of the trial court, although they are not binding. *Campbell*, 623 N.W.2d at 586.

**III. Property Division.** Jayne contends the district court erred in dividing the parties’ assets and debts. Assets and debts should be equitably, but not necessarily equally, divided under the circumstances after considering the criteria delineated in Iowa Code section 598.21(1) (2005). *In re Marriage of Vieth*, 591 N.W.2d 639, 640 (Iowa Ct. App. 1999). In so doing, we give strong deference to the trial court. *Id.* at 641 (citing *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996)).

Jayne's first argument is that the district court erred in ordering her to pay a \$9750.00 First National Bank credit card debt. Jayne testified she had no knowledge of the credit card and did not participate in procuring the debt. Roger testified to the best of his memory that he was the only one that charged anything to the credit card. The card was in Roger's name alone. Although the debt was most likely discharged in bankruptcy proceedings, we will modify the decree to require Roger to assume responsibility for the debt.

Jayne next contends that she loaned Roger \$43,421.59. At trial she produced an exhibit she alleges to be a promissory note signed by Roger and dated May 30, 2002. It states:

1. I owe Jayne \$25,000 from her part of the accident settlement that I said I would repay.
2. I owe Jayne \$25,000 for payment of Jill's car that I said I would repay.
3. I owe Jayne \$10,000 she paid for to cover employee salaries at ASC that I said I would repay in a week.
4. I owe Jayne \$12,000 for copy machines that she bought & I said I would repay.
5. I have told Jayne I do not want money from Atlantic Bottling.

The district court found:

Jayne presented a substantial amount of testimony concerning the debts incurred by the parties during their marriage. Jayne also testified as to Roger's bankruptcy petition filed in 2003. Particular attention was paid to the money spent by Roger relating to two failed businesses of Roger's. Jayne also presented testimony concerning a personal injury lawsuit that was filed by Roger and that he received a substantial jury verdict. As part of this verdict, \$25,000 was awarded to Jayne for loss of consortium. Jayne testified that she never saw any of that money and that Roger squandered it. Roger testified that all of that money went into one of his failed businesses. The Court finds that all of these debts, whether incurred by Roger or Jayne, were incurred during the course of the marriage and, as such, are considered by the Court to be a marital debt not attributable to one party or the other.

The jury verdict for Jayne's loss of consortium became a marital asset.

Giving due deference to the district court and considering the equities of the party, we agree with the district court's assessment that these debts are marital in nature and decline to disturb the court's division on appeal.

Jayne next contends the court failed to credit Jayne with the mortgage payments she made on the home since January 2005, or to reduce the home's value by the estimated six percent commission required to sell the home to equalize the property settlement. Because Jayne has paid the mortgage and other household costs since January 2005, she argues she should receive a \$3000.00 credit. We reject both arguments. It is the net worth at the time of trial which is relevant in determining property rights. *In re Marriage of Muelhaupt*, 439 N.W.2d 656, 661 (Iowa 1989). We likewise reject Jayne's argument that she is entitled to the \$11,200.00 she has been paid since the separation for the sale of her gifted stock.

Finally, Jayne contends she should be entitled to most, if not all, of her IPERS retirement funds, estimated to be approximately \$125,930.00. She argues Roger is unable to pay her for the debt she owes and awarding her the IPERS funds would reimburse her. She proposes Roger be awarded the remaining retirement assets of \$6661.64 from Equivest and \$25,238.00 from Mass Mutual. Such an award would be unequitable under the circumstances of this case. Jayne has a greater earning capacity than Roger, who has no retirement funds of his own. Additionally, Jayne has an unrealized interest in Atlantic Bottling Company. See *In re Marriage of Rhinehart*, 704 N.W.2d 677, 683 (Iowa 2005) (holding it is permissible to consider a party's future interest in

nonmarital assets when determining an equitable division of the parties' property). Equity dictates her IPERS retirement funds should be divided as set forth in the decree.

**IV. Alimony.** Jayne contends the district court erred in awarding Roger \$1000.00 per month in alimony for four years.

Alimony is not an absolute right. *In re Marriage of Dieger*, 584 N.W.2d 567, 570 (Iowa Ct. App. 1998). Instead, an award of alimony depends on the circumstances of each particular case. *Id.* When deciding to award alimony, the district court must consider the factors in Iowa Code section 598.21(3) (2005). Although our review of the district court's award of alimony is de novo, we give that court considerable latitude in making this determination based on the criteria in section 598.21(3). *In re Marriage of Spiegel*, 553 N.W.2d 309, 319 (Iowa 1996). We will disturb that determination only when there has been a failure to do equity. *Id.* The court also considers "(1) the earning capacity of each party, and (2) present standards of living and ability to pay balanced against the relative needs of the other." *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997) (citation omitted). Even though our review 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. *In re Marriage of Wahlert*, 400 N.W.2d 557, 560 (Iowa 1987).

We conclude the alimony award is equitable. Roger earns approximately half of what Jayne earns, not including her interest in Atlantic Bottling Company. Although the trial court found Roger is "underemployed," nothing supports a

finding this is intentional. The duration of the alimony is limited and the amount does not create a financial hardship for Jayne.

**V. Summary.** We modify the decree dissolving the parties' marriage to require Roger to assume responsibility for the First National Bank credit card debt in the amount of \$9750.00. We affirm in all other respects.

**AFFIRMED AS MODIFIED.**