

IN THE COURT OF APPEALS OF IOWA

No. 7-637 / 06-1528
Filed November 15, 2007

**IN RE THE MARRIAGE OF BARBARA ALLEN RAYMOND
AND JACK EUGENE RAYMOND**

**Upon the Petition of
BARBARA ELLEN RAYMOND,**
Petitioner-Appellant/Cross-Appellee,

**And Concerning
JACK EUGENE RAYMOND,**
Respondent-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Van Buren County, James Blomgren, Judge.

Barbara Raymond appeals and Jack Raymond cross-appeals the district court's ruling in their dissolution proceeding. **AFFIRMED AS MODIFIED ON APPEAL; AFFIRMED ON CROSS-APPEAL.**

Alexander Rhoads of Babich,Goldman, Cashatt & Renzo, P.C., Des Moines, for appellant.

Jeffrey Logan and Patrick Curran of Curran Law Office, Ottumwa, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MAHAN, P.J.

Barbara Raymond appeals the district court's ruling in her dissolution proceeding. She claims the district court erred in (1) determining the marital property and equitably dividing it; (2) taking into consideration the parties' daughter's one-third interest in their marital home and distributing only two-thirds to the parties; (3) failing to award to her sufficient alimony to equalize the parties' income; (4) failing to order Jack to pay his portion of the property settlement immediately and failing to secure her interest with a U.C.C. security lien against Jack's shares in the business corporation; and (5) failing to require Jack to pay her trial attorney fees. She also requests appellate attorney fees. Jack Raymond cross-appeals. He argues the district court (1) failed to properly attribute to him his premarital assets and (2) erred in awarding Barbara alimony. We affirm as modified on appeal and affirm on cross-appeal

I. Background Facts and Proceedings

Jack and Barbara were married in September 1978 in Fairfield, Iowa. At the time of trial Jack was sixty-two years old, and Barbara was sixty-six years old. Jack continues to reside in the marital home in Stockport, Iowa. Barbara currently resides in Ankeny, Iowa. All of the parties' children are adults. Barbara has two children from a prior marriage. Jack adopted one of her children. Barbara and Jack also had one child together.

During their twenty-eight year marriage, Jack and Barbara owned and operated Raymond Funeral Home in Fairfield, Iowa. Jack began working in the business in 1954. His father and uncle owned equal one-half shares in the

business. Jack attended mortuary school and graduated in 1965. He began working in the business as a licensed embalmer in 1966. In 1977, before the parties were married, Jack purchased his uncle's share of the funeral home business on contract for \$50,000. At the time of the marriage, there was \$39,533 remaining in principal on the contract. In 1980 the business was incorporated and effective January 1, 1992, the corporation's election to be treated as an "S" corporation was approved.

In 1987 Jack entered into a buy/sell agreement with his father. At that time Jack and his father agreed the value of one-half of the business was \$200,000. To fund the buy/sell agreement, Jack and his father purchased life insurance policies on each other. When his father died in February 1997, Jack became the owner of all the shares and the holder of a promissory note in the face amount of \$200,000 from the life insurance policy, which the corporation used to buy back Jack's father's shares. The corporation still owes \$65,377 on the note. In 1998 fifty percent of the corporation's shares were transferred to Barbara.

Barbara worked as a teacher at Pekin Community Schools prior to the marriage. At the time of the marriage she owned a home in Fairfield. She and Jack never lived in the home. It was sold, and the proceeds were combined with the parties' marital assets. Barbara continued to work at the school until 1986 when she began working as an accountant for an accounting firm. She also kept the books for the funeral home. In 1990 Barbara began working full-time for the funeral home. Her duties included managing the books, cleaning up before and

after funerals, arranging flowers, and greeting people as they attended funerals. Because she wasn't licensed, Barbara was not able to embalm, dress bodies, or sell caskets. Barbara was not paid for any of her work until she began working full-time for the funeral home. She was then paid approximately \$1000 per month. The parties agree the value of the funeral home business is \$634,000 and the value of their newly built Stockport residence is \$290,000. Neither asset is encumbered by any debt.

The Stockport residence is owned by Jack, Barbara, and their daughter Janae as joint tenants. Janae has not contributed to the acquisition or costs of the property in any way. Her one-third interest was a gift from her parents as part of their estate plan. In addition to the marital home in Stockport, the couple owns an Ankeny residence with a value of \$202,500. The Ankeny home is secured by two mortgages worth its entire value. Barbara drives a Buick Park Avenue worth \$4000. It appears the vehicle Jack drives is owned by the funeral home corporation.

The couple's investments at Edward Jones include an SEP account, which was worth \$366,251.48 on April 28, 2006. Before the marriage, Jack purchased ten shares of Hillenbrand Industry stock, which he later transferred into the parties' joint Edward Jones account. Although the dividends paid from the Hillenbrand stock were reinvested to purchase additional shares, no additional Hillenbrand stock has ever been purchased with marital funds. The Hillenbrand stock now makes up \$16,897 of the SEP account. Both parties received inheritances during the marriage. Jack inherited approximately

\$107,000 from his mother in 1998 and \$42,000 from his aunt in 2002. Barbara inherited \$48,306 from her mother during the marriage. In addition, in 1987 Barbara cashed out her IPERS retirement account of \$11,000 and contributed it to the marital assets.

The district court initially ordered that Jack should receive the funeral home, two-thirds of the Stockport residence, the SEP account, the promissory note from the corporation, and bank stock and accounts for a total value of \$1,275,084. Barbara received the Ankeny home, the portion of the Edward Jones account that made up her IRA, bank stock worth \$11,475, bank accounts, and the Buick Park Avenue for a total value of \$189,562. The district court found that all of the parties' assets had been treated as marital property and therefore should be divided equally with the exception that only forty percent of the value of the funeral home was distributed to Barbara since the opportunity to obtain the funeral home first came through the efforts of Jack and his family. The district court, therefore, required an equalization payment to be paid from Jack to Barbara in the amount of \$542,761,¹ decreased by \$63,400 to account for its award of only forty percent of the funeral home to Barbara. Thus, the final equalization payment owed to Barbara was \$479,361. The district court also ordered Jack to pay Barbara alimony until her death or remarriage in the amount of \$400 per month increasing to \$1000 per month once the property distribution has been paid in full. Barbara was also to receive \$17,015 in cash immediately as her distributive share of the profits of the business.

¹ Jack was awarded property worth \$1,085,522 more than the property awarded to Barbara, thus the equalization payment equals one-half of the excess.

Jack filed a motion to enlarge, arguing that Barbara's IRA account was worth less than what the district court found and that the Hillenbrand stock should be set off to him as his separate property. The district court modified its conclusions by requiring \$106,918 of Jack's SEP account to be paid to Barbara through a qualified domestic relations order. It then adjusted the equalization payment to \$380,892, with \$130,892 to be paid by September 1, 2006, and the remaining \$250,000 to be paid over ten years at the annual interest rate of seven percent commencing October 1, 2006, with monthly payments of \$2902.72. The court refused to make any adjustment with regard to the Hillenbrand stock. The parties appeal multiple issues.

II. Standard of Review

Dissolutions of marriage are tried in equity. *In re Marriage of Knickerbocker*, 601 N.W.2d 48, 50 (Iowa 1999). We therefore make a de novo review of the district court's decision. Iowa R. App. P. 6.4. We examine the entire record and adjudicate anew the rights of the parties on the issues properly presented. *In re Marriage of Beecher*, 582 N.W.2d 510, 512-13 (Iowa 1998). We give weight to the factual findings of the district court, especially to the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 6.14(6)(g).

III. Merits

Following a careful review of the record, we conclude the district court's decree to be fair and equitable to the parties. We modify only that portion of the decree concerning the equalization payment. The decree is modified to make the equalization payment due and payable in full in the event of Jack's death

prior to the payment schedule set forth in the decree. We deny Barbara's request for appellate attorney fees. The costs of this action are to be split equally between the parties.

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