

IN THE COURT OF APPEALS OF IOWA

No. 08-186 / 07-1428

Filed April 9, 2008

IN RE THE MARRIAGE OF JONI S. WRIGHT AND ROBERT D. WRIGHT

**Upon the Petition of
JONI S. WRIGHT,**
Petitioner-Appellee,

**And Concerning
ROBERT D. WRIGHT,**
Respondent-Appellant.

Appeal from the Iowa District Court for Monona County, Michael S. Walsh,
Judge.

Husband appeals dissolution decree's property division and the denial of
his request for spousal support. **AFFIRMED AS MODIFIED.**

Julie A. Schumacher of Mundt, Franck & Schumacher, Denison, for
appellant.

G. Daniel Gildemeister of Gildemeister & Keane, L.L.P., Sioux City, for
appellee.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

EISENHAUER, J.

In this dissolution action, Robert Wright seeks a reduction of his equalization payment and appeals the denial of his request for spousal support. Robert also requests appellate attorney fees. We affirm the equalization payment as modified, affirm the denial of spousal support, and decline to award appellate attorney fees.

I. Background Facts and Proceedings.

Robert and Joni were married in 1981 and are the parents of two sons, Brady (fourteen) and Bradley (nineteen). In the July 2007 dissolution decree, the district court adopted the parties' pretrial stipulation of joint legal custody of Brady with physical care to Robert and flexible visitation to Joni.

At the time of trial, Joni was forty-four years old with a high school education. For twenty-six years she has worked at Valley Bank and Trust in Mapleton, Iowa, and is now the head bookkeeper. Joni has a gross yearly income of \$25,400 and a net monthly income of \$1482.

Robert was fifty-five years old at trial, has a college degree in accounting, and for twenty years has worked out of the family home as a self-employed bookkeeper and tax preparer. In 1986, Robert was diagnosed with muscular dystrophy and he now uses a wheelchair and a modified van. Because the family home has been modified to accommodate Robert and contains his work space, the parties stipulated Robert would receive the mortgage-free homestead.

During the marriage, Robert controlled the family finances. Joni's paycheck was automatically deposited into a joint account and Robert provided a

\$200 per week allowance to Joni. If Joni wanted to write a check, she needed Robert's approval.

Robert's financial accounts and self-employment income were disputed at trial. Robert admitted he intentionally did not disclose a balance of \$14,418 in March 2006 in a newly-opened bank account. Robert testified he prepared the family tax returns and reported less than half of his actual income from 2003 to 2005. For 2006, Robert's accounts showed deposits for half of his average business income and he testified he did not know what happened to the rest of his 2006 earnings. Additionally, Robert testified he had recently transferred marital assets into his sons' Roth IRAs, educational IRAs, and education I-bonds without any discussion with Joni. Robert reported a Roth IRA had a zero balance instead of its actual balance of \$4096.

We adopt the district court's discussion concerning Robert's credibility, other deceitful financial actions, and average income:

Robert's credibility before this Court is suspect. . . . Robert has, in fact, or has attempted to hide assets. When a dissolution of marriage was most likely in the future, Robert loaned his nephew, Steve Ortner, \$20,000 in 2004 and had Ortner sign a note for the loan to be payable to Robert. Ortner paid \$2,000 back right away and still owes \$18,000 plus a year's interest on this loan. When Ortner paid interest on this note he paid it to Brady. Robert then in September of 2005 approached Ortner to loan him another \$20,000 with a note for the loan payable to Bradley. Robert told Ortner not to tell Joni about these transactions. Robert admits that in 2005 he wanted to keep Joni away from "my" money and checking account because of their difficulties in their marriage. Robert also attempted to disguise the transactions by not disclosing the true facts in the parties' check register. At this time Robert cashed in a joint CD owned by the parties and purchased a car for Bradley for around \$11,000 and hid the transaction from Joni. . . . Robert was obviously hiding marital assets from Joni.

. . . These funds (\$20,000 and \$18,000) were marital funds which Robert claims he was going to give to the parties' sons through the process of loaning money to Ortner. . . . He never filed

a gift tax return on the \$20,000 he “gifted” in 2005. . . . The Court finds that Robert’s assertions that these funds were to be gifts . . . is not credible and that it was an effort by Robert to hide this money or keep it away from Joni. Robert initiated the process of loaning money to Ortner by suggesting the loans . . . Ortner had never asked to borrow the money from Robert.

. . . The facts support Joni’s contention that Robert’s average income from his accounting business is at least \$44,147. In addition to his business income, Robert receives \$982 in social security disability benefits a month and receives a monthly sum of \$502 from social security for Brady’s benefit, all of which Robert uses to pay toward Robert’s and Brady’s monthly living expenses of \$2,058. The Court finds that Robert’s average net monthly income is approximately \$3,491.

The district court awarded Robert \$197,480.48 in net assets while Joni received \$128,628 in net assets. The court concluded an equitable division of the property after the lengthy marriage required Robert to pay a \$34,426 equalization payment to Joni. Joni was ordered to pay \$100 a month in child support but no spousal support. Robert appeals the property division and the denial of spousal support while seeking appellate attorney fees.

II. Scope and Standards of Review.

We review this equity action de novo. Iowa R. App. P 6.4. We have a duty to examine the entire record and “adjudicate anew rights on the issues properly presented.” *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the trial court’s fact findings, especially regarding witness credibility, but they are not binding. Iowa R. App. P. 6.14(6)(g). The trial court’s determination of credibility is given weight because it 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).

III. Merits.

A. Property Division.

Robert and Joni agree the district court inadvertently twice reduced Joni's 401(k) account for deferred taxes. When this error is corrected, the parties agree and we conclude the equalization payment owed by Robert to Joni is reduced to \$27,906.

Robert argues the district court's property division is inequitable and his equalization payment should be further reduced because the court allocated \$9522 in debt to Joni for her attorney fees while making no corresponding entry for Robert's attorney fees. However, Robert testified at trial he eliminated a marital asset by cashing in a CD to pay his attorney before trial.

In allocating the parties' assets and debts, Iowa law does not require an equal division or percentage distribution; rather, the decisive factor is what is fair and equitable in each particular case. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa Ct. App. 1991). In determining what division would be equitable, courts are guided by the criteria set forth in Iowa Code section 598.21(5) (Supp. 2005). After our de novo review, we conclude the court's treatment of Joni's attorney fee liability is equitable.

Robert next argues the equalization payment should be reduced by twenty-five percent because the district court did not give adequate consideration to his age, physical health, and future earning capacity under Iowa Code sections 598.21(5)(d) and (f). In our de novo review and under the circumstances of this

case, we conclude the equalization payment as modified to \$27,906 is equitable and decline to reduce it further.

B. Spousal Support.

At trial, Robert requested \$100 per month spousal support “to be reviewed in event” his disability worsens and Joni requested no spousal support for either party. The district court did not award spousal support.¹ An award of spousal support is a discretionary award, dependent upon factors such as the length of the marriage, each party’s age, educational level, health, earning capacity, the ability of the spouse seeking support to be self-sufficient, and the relative need for support. Iowa Code § 598.21A.

Robert has a college degree in accounting and is continuing his twenty-year-old business while Joni has a high school education and has advanced as far as possible at the bank. Joni has net monthly income of \$1482 and Robert has net monthly income of \$3491. Joni is paying \$100 in monthly child support to Robert. We find under the circumstances presented in this case, including consideration of Robert’s muscular dystrophy, an award of spousal support to Robert is not equitable. We affirm the district court’s denial of Robert’s request.

C. Appellate Attorney Fees.

Robert requests an award of appellate attorney fees. Appellate attorney fees are discretionary. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). We consider the parties’ needs, ability to pay, and the relative merits of the appeal. *Id.* Robert has significantly more income than Joni and has not

¹ Robert’s argument the district court misstated his support request by noting, “Robert seeks alimony only if his disability worsens,” does not affect our resolution on appeal because our review is de novo.

prevailed on appeal. We decline to award appellate attorney fees. Costs are taxed to Robert.

AFFIRMED AS MODIFIED.