

**IN THE COURT OF APPEALS OF IOWA**

No. 8-269 / 07-0878  
Filed May 29, 2008

**IN RE THE MARRIAGE OF CRAIG T. CARPENTER  
AND PAMELA S. CARPENTER**

**Upon the Petition of  
CRAIG T. CARPENTER,**  
Petitioner-Appellant,

**And Concerning  
PAMELA S. CARPENTER,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Scott County, Marlita A. Greve,  
Judge.

Petitioner appeals from the district court's order dissolving his marriage to  
respondent. **AFFIRMED.**

Michael Koury of Bush, Motto, Creen, Koury & Halligan, P.L.C.,  
Davenport, for appellant.

Justine Teitle and Morton Teitle, Davenport, for appellee.

Considered by Vogel, P.J., and Zimmer and Eisenhauer, JJ.

**VOGEL, P.J.**

Craig Carpenter appeals from the economic provisions of the decree dissolving his marriage to Pamela Carpenter. Because we find those provisions to be equitable, we affirm.

**I. Background Facts and Proceedings**

Craig and Pamela were married in October 1985. At the time of the marriage, Craig had a bachelor's degree and Pamela had completed two years of college education. The marriage resulted in two children: Kerri, born in 1991, and Alex, born in 1995.

In 1991, Craig bought Stout's Distributing, a class "C" corporation with Craig as the sole shareholder. Stout's Distributing is a wholesale supplier of bingo equipment and paper to charitable organizations in Iowa and Illinois and has a pull-tab license that allows it to sell to fraternal organizations in Illinois. In 1992, Pamela began working for Stout's Distributing as a bookkeeper and was responsible for payroll, accounts receivable, and accounts payable. This position allowed her flexibility to care for the children. In 2000, Pamela ceased working for Stout's Distributing and remained unemployed until 2003. In 2003, Pamela obtained employment with Greenwood Cleaning Systems where she remains employed and is responsible for the business's payroll, accounts receivable, and accounts payable. Evidence at trial demonstrated that Craig's annual gross income was \$63,550 in 2006 while Pamela's was approximately \$33,000 but anticipated to increase to \$35,640 in 2007.

Pamela initially filed for divorce in May 2003, but dismissed the petition after the parties reconciled in March 2004. The reconciliation did not hold and

Craig filed this petition for dissolution in June 2005. On April 25, 2007, following a two-day trial, the district court entered a decree dissolving the parties' marriage. Among other things and pertinent to the issues raised on appeal, the district court divided the joint property and debt between the parties, ordered Craig to pay spousal support to Pamela in the amount of \$500 per month for five years, and awarded Pamela \$4000 in trial attorney's fees.

## **II. Scope of Review**

We review the provisions of a dissolution decree de novo. Iowa R. App. P. 6.4; *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). "Although we decide the issues raised on appeal anew, we give weight to the trial court's factual findings, especially with respect to the credibility of the witnesses." *Sullins*, 715 N.W.2d at 247 (quoting *In re Marriage of Witten*, 672 N.W.2d 768, 773 (Iowa 2003)). We review the district court's award of attorney's fees for abuse of discretion. *Id.*

## **III. Spousal Support**

Craig first contends the district court erred in awarding Pamela spousal support of \$500 per month for five years. An award of spousal support is not an absolute right, but instead depends on the circumstances of each particular case. *In re Marriage of Dieger*, 584 N.W.2d 567, 570 (Iowa Ct. App. 1998). When determining whether spousal support is appropriate, the court must consider the statutory factors enumerated in Iowa Code section 598.21(3) (2005). These factors include: (1) the length of the marriage, (2) the age, physical, and emotional health of the parties, (3) the property division, (4) the educational level of the parties at the time of the marriage and at the time the dissolution action is

commenced, (5) the earning capacity of the party seeking support, and (6) the feasibility of the party seeking support becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. Iowa Code § 598.21(3). The court also considers each party's earning capacity, and each party's present standard of living and ability to pay balanced against the relative needs of the other. *In re Marriage of Hitchcock*, 309 N.W.2d 432, 436-37 (Iowa 1981). "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." *In re Marriage of Spiegel*, 553 N.W.2d 309, 319 (Iowa 1996) (citations omitted).

Craig does not contest the award of spousal support in isolation, but in conjunction with the valuation of Stout's Distributing. He asserts that when awarding spousal support, the district court did not consider the debt of Stout's Distributing and hence erred in awarding the support. We disagree. Craig's business valuation expert discussed the fact that Stout's Distributing had over \$100,000 of debt. This debt is not a personal liability of Craig's, but a liability of the corporation. The district court considered the assets and debts of the corporation, and determined the net value of the corporation to be \$2000. Therefore, the district court did consider the corporation's debt, as it was reflected in arriving at the valuation of the corporation, prior to making the property distribution.

In addition, in supporting the award of spousal support, the district court noted that the marriage was one of a relatively long duration and a substantial disparity existed between Craig and Pamela's income, as well as the fact that

Craig has the ability to control his annual income as the sole shareholder of Stout's Distributing.<sup>1</sup> The district court also made the spousal support award in conjunction with the property distribution and considered the tax consequences to each party. We conclude that in light of the difference between the parties' earning capacity, and other factors considered by the district court, the award of spousal support was equitable.

#### **IV. Joint Marital Funds**

Craig next contends the district court erred by ordering him to reimburse Pamela for money he withdrew from their joint account. The district court found:

In May 2005, just days before he filed for this dissolution, Craig withdrew \$25,000 from joint accounts. The evidence at trial showed out of this \$25,000, he spent \$18,407.25 for attorney's fees and expert witness fees for this dissolution. The Court finds he shall reimburse Pamela for half of that \$18,400 expense which was spent entirely for his own benefit. Without this reimbursement to Pamela, she would in effect be paying for half of Craig's attorney's fees and costs in this matter, which would be unjust based on the parties' incomes.

Even though we normally value assets as of the date of the trial, Craig testified and also conceded on appeal that he used \$18,400 of the money he withdrew for his attorney's fees and costs for the present dissolution action. *See In re Marriage of Driscoll*, 563 N.W.2d 640, 642 (Iowa Ct. App. 1997) (stating that assets are generally valued as of the date of trial, unless it would be inequitable to do so). We agree with the district court that Pamela would be required to pay

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<sup>1</sup> In its rationale, the district court also stated that the spousal support was to "help support [Pamela] and the *children* at the standard of living to which *they* were accustomed during the marriage . . ." (emphasis added) In our review, we do not consider this factor because spousal support is not for the support of the children, as that is the function of child support. On appeal, Craig does not contest this finding. We conclude that other valid reasons support the district court's spousal support award.

for Craig's attorney fees and costs if he were not required to reimburse her for depleting this joint asset.

Craig also contends that the district court erred in finding Pamela did not dissipate marital assets for withdrawals she made from joint accounts in 2000 and 2003. However, Pamela explained that she withdrew those funds for living expenses for her and the two children. The district court had the opportunity to listen to the testimony and made a detailed credibility finding, accepting Pamela's explanation, which we affirm.

#### **V. Attorney Fees**

Craig argues that the district court erred in awarding Pamela \$4000 in trial attorney fees. An award of trial attorney fees rests in the sound discretion of the trial court and will not be disturbed on appeal in the absence of an abuse of discretion. *In re Marriage of Wessels*, 542 N.W.2d 486, 491 (Iowa 1995). Awards of attorney fees must be fair and reasonable and based on the parties' respective abilities to pay. *In re Marriage of Hansen*, 514 N.W.2d 109, 112 (Iowa Ct. App. 1994). Upon review of the record and consideration of the appropriate economic factors, we find no abuse of discretion in the award of trial attorney fees.

Pamela requests attorney fees on appeal. An award of appellate attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa Ct. App. 1997). We consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the district court's decision

on appeal. *In re Marriage of Maher*, 596 N.W.2d 561, 568 (Iowa 1999). We grant Pamela \$3000 in appellate attorney fees.

Having considered all arguments before us on appeal, we affirm the decision of the trial court. Costs on appeal assessed to Craig.

**AFFIRMED.**