

IN THE COURT OF APPEALS OF IOWA

No. 8-622 / 08-0124
Filed August 27, 2008

**IN RE THE MARRIAGE OF JANET B. HAMAN
AND WILLIAM G. HAMAN**

**Upon the Petition of
JANET B. HAMAN,**
Petitioner-Appellant/Cross-Appellee,

**And Concerning
WILLIAM G. HAMAN,**
Respondent-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Story County, William J. Pattinson,
Judge.

Janet Haman appeals from a decision of the district court which declined
to grant her permanent alimony and William Haman cross appeals from the
district court's award of attorney fees.

William T. Talbot of Newbrough Law Firm, L.L.P., Ames, for appellant.

Brian J. Humke and Steven H. Lytle of Nyemaster, Goode, West, Hansell
& O'Brien, Des Moines, for appellee.

Considered by Sackett, C.J., and Miller and Potterfield, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings**

Janet Haman and William Haman were married on August 14, 1982. William has been employed by The Iowa Energy Center since 1995. He works as a project manager and is an engineer by profession. William's salary is \$87,400 per year plus an additional \$658 per month which can be used to offset medical insurance premiums. William contributes \$1292 per month into a TIAA-CREF account, which at the time of trial had a balance of \$431,400. William has been diagnosed with a severe to moderate heart murmur, which will require surgery. The prognoses for a full recovery and for continued employment are both good.

Janet has been employed by the Ames Community School District since 1996. At the time of trial, she worked five and one-half hours per day as an educational assistant and earned a net income of \$659 per month. Janet had previously worked seven hours per day, but chose to decrease the length of her workday due to health problems. She does not work during the summer months when school is not in session. Janet has always received positive evaluations at work and believes that her job is secure. Janet's employer has been willing to accommodate Janet with respect to her health problems because of her good performance.

Janet has been receiving medical treatment for the past ten years, at first due to fatigue and constant headaches. Her condition has worsened with time. A physician at the Mayo clinic has diagnosed Janet with postural tachycardia syndrome (POTS). Janet testified that her health has deteriorated to the point

that she cannot stand for any length of time without getting lightheaded due to what Janet's treating physician describes as a pooling of fluid in the lower extremities. Janet states that she has considerable difficulty driving a car and cannot sit for extended periods unless her legs are elevated. Janet testified that her current health condition severely limits her vocational opportunities. A vocational specialist testified that there would be a number of job opportunities for someone with Janet's skills and health concerns.

Janet's monthly expenses total \$2282. She participates in the IPERS retirement program and the present value of her account as of the date of trial was \$47,142. Upon the death of Janet's father in November 2004, Janet inherited a one-half interest in a trust (the Bliss Trust) that he had established. She is a co-trustee of the Bliss Trust with her brother, Thomas Bliss. Janet also inherited three IRA's, a one-half interest in a Bank of America checking account, and a one-half interest in her parents' former home in Sedona, Arizona.

Janet filed a petition for dissolution on June 28, 2005, asking that her marriage with William be dissolved. She also requested temporary and permanent spousal support. After a contested hearing on Janet's application for temporary spousal support, William was ordered to pay Janet temporary support in the amount of \$750 per month.

The trial was initially scheduled for February 16, 2006, but was continued at least three times due to William's assertions that Janet was refusing to produce needed documents. William filed three motions to compel discovery during 2006. William alleged that Janet was not providing a full and complete response to his requests for production of documents relating to the Bliss Trust.

The first motion to compel was granted on April 25, 2006, and Janet was directed to allow discovery of information regarding the Bliss Trust. The second motion to compel was granted on July 20, 2006, and Janet was directed to provide certain information regarding the Bliss Trust and to pay \$500 of William's attorney fees. The third motion to compel was filed on October 19, 2006, and was essentially reserved for consideration at trial. Ultimately, the dissolution of marriage trial took place on April 17 and 18, 2007.

The district court filed comprehensive findings of fact, conclusions of law, and judgment entry on December 24, 2007. In making its decision, the district court ruled that a proper sanction for Janet's failure to provide documents was to use the numbers projected by William as the basis for its findings as to the value of the Bliss Trust. The district court denied Janet's claim for traditional, permanent, spousal support and instead awarded her rehabilitative or transitional alimony in the sum of \$1000 per month for twelve months. Janet was also assessed \$1460 of William's attorney fees.

Janet appeals, arguing that the district court erred by failing to grant her permanent alimony. William cross-appeals the district court's award of attorney fees, claiming he is entitled to a greater award of district court attorney fees and requesting that his appellate attorney fees be paid by Janet.

II. Standard of Review

We review this equity action de novo. Iowa R. App. P. 6.4. While our review is de novo, we give the district court considerable latitude in making its determination and will "disturb that determination only when there has been a failure to do equity." *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005).

We give weight to the district court's findings of fact, especially regarding witness credibility, but are not bound by them. *Id.* at 539.

III. Spousal Support

Janet argues that she should be granted traditional alimony because her employment income is not sufficient to pay for her day-to-day necessities. When deciding whether to award alimony, the district court must consider the following factors: the length of the marriage; the age and physical and emotional health of the parties; the property distribution; the educational level of the parties; the respective earning capacity of the parties; the feasibility of the party seeking maintenance to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage; the tax consequences; any mutual agreement made by the parties concerning financial or service contributions; the provisions of any antenuptial agreement; and any other factor the court considers relevant. Iowa Code § 598.21A (2005). Importantly, inherited and gifted property in addition to marital assets can be considered in making an alimony award. *In re Marriage of Moffatt*, 279 N.W.2d 15, 20 (Iowa 1979); *In re Marriage of Voss*, 396 N.W.2d 801, 804 (Iowa App. 1986).

We cannot find that the district court's denial of traditional alimony was inequitable. On the day of the parties' separation, Janet emptied several joint checking accounts and cashed CDs, depositing the funds into her own account. Janet has her own TIAA-CREF account and an IPERS account. In addition, Janet will receive approximately \$120,000 from the sale of the parties' home in Huxley and will keep her vehicle and jewelry. William agreed to transfer roughly \$52,000 to Janet from his TIAA-CREF account. The district court's finding that

Janet will have approximately \$430,000 in assets, roughly \$210,000 of which are liquid or near liquid, is within the permissible range of the evidence. This sum of money could generate steady income for Janet.

We further agree with the district court that Janet's medical condition strengthens her case for permanent alimony. However, expert testimony indicated there are many vocational options for Janet. She has performed well at her current job, received positive work performance reviews, and seems to be a reliable and hardworking employee. Janet is capable of seeking employment during the summer months to supplement her income.

The length of the parties' marriage also is a factor supporting Janet's claim for traditional alimony. However, Janet will leave the marriage with substantial assets. William presented several detailed spreadsheets to demonstrate that Janet's inheritance provided sufficient income to meet Janet's monthly expenses. These spreadsheets show that Janet will have ample funds to meet her expenses and to live comfortably through retirement. The evidence submitted at trial supports the figures that William used in his spreadsheets. The only disputed figure is the value of Janet's inheritance.

The most decisive factor in this case is Janet's substantial inherited property. The parties' estimations of the value of Janet's inherited property vary greatly. Janet's refusal to provide necessary documents or comply with the orders to compel made it impossible for the district court to determine the exact value of the Bliss Trust. The district court opted to use William's higher figures as a sanction for Janet's failure to provide discovery. William created a spreadsheet showing the balance of each account as well as significant transfers

that had been made from each account. We agree with the district court's sanction and use William's figures in determining the amount of inheritance received by Janet. William's asserted values of the Bliss Trust and the house in Sedona are within the permissible range of the evidence.¹ Using these figures, Janet leaves the marriage with a net worth of \$905,555, twice William's net worth. Accordingly, we find that Janet leaves the marriage with sufficient assets, including substantial liquid assets, to satisfy her monthly bills. We agree with the district court's finding that permanent spousal support would be inequitable.

IV. ATTORNEY FEES

William argues that he should be awarded a greater amount of his trial court attorney fees in addition to appellate attorney fees. An award of attorney fees is not a matter of right, but rests within the court's sound discretion. *In re Marriage of Wood*, 567 N.W.2d 680, 684 (Iowa Ct. App. 1997). In deciding whether attorney fees should be awarded, the court considers the needs of the party making the request, the ability of the other party to pay and whether the party making the request is obligated to defend the trial court's decision on appeal. *In re Marriage of Gaer*, 476 N.W.2d 324, 330 (Iowa 1991). William requests that we increase the award to \$10,000. Based on the parties' respective incomes, we decline to increase the award. Janet's current income could not support such an award against her without requiring her to dip into her assets. While we recognize that a portion of William's attorney fees may have

¹ Janet argues that there is no income potential from the house in Sedona because she owns only a one-half interest in the house and that her brother, who owns the other half, will not agree to sell the house. However, the district court found that Arizona provides legal means for one owner to compel a partition of the property that is jointly owned with another. Janet could sell her interest in the property to her brother.

been incurred as a result of Janet's failure to provide documents, we affirm the district court's assessment of \$1460 attorney fees against Janet and decline to award appellate attorney fees.

AFFIRMED.