

**IN THE COURT OF APPEALS OF IOWA**

No. 9-557 / 09-0009  
Filed October 7, 2009

**IN RE THE MARRIAGE OF ANNE C. HUDSON  
AND SCOTT A. HUDSON**

**Upon the Petition of  
ANNE C. HUDSON,**  
Petitioner-Appellant,

**And Concerning  
SCOTT A. HUDSON,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

Anne Hudson appeals from the economic provisions of a dissolution decree. **AFFIRMED AS MODIFIED.**

John R. Walker, Jr. of Beecher, Field, Walker, Morris, Hoffman & Johnson, P.C., Waterloo, for appellant.

Cheryl L. Weber of Dutton, Braun, Staack, Hellman, P.L.C., Waterloo, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Mansfield, JJ.

**VAITHESWARAN, J.**

Anne Hudson appeals from the economic provisions of a dissolution decree.

***I. Background Facts and Proceedings.***

Scott and Anne Hudson married in 1985.<sup>1</sup> At the time of the marriage, Scott had a degree in mechanical engineering and Anne was working towards a degree in business administration. Because Scott's employment required him to move, Anne quit college for a period of time. She eventually returned to college and obtained a bachelor's and master's degree in business administration.

Scott relocated several times to pursue job opportunities. At his most recent job, he earned up to \$209,000 annually in wages and bonuses. Anne had various jobs during the marriage. Her highest earnings were \$23,500 annually.

In 2007, Anne petitioned for a dissolution of the marriage. The district court awarded Anne \$555,755 in assets and Scott \$573,687. The court explained the approximately \$18,000 difference in Scott's favor as follows:

Scott leaves this marriage with approximately \$18,000 in assets more than does Anne. Anne however at time of trial had approximately \$9000 in her Veridian Credit Union [account] against which a number of checks yet had to clear. Scott had only approximately \$671 in his Wells Fargo checking account. Offsetting the two, each leaves with approximately the same amount of assets.

The court also ordered Scott to pay Anne \$1000 per month in rehabilitative spousal support for two years and \$500 per month for an additional year. The court reasoned that Anne "should be able to return to the University of

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<sup>1</sup> The couple had three children, whose custody is not at issue.

Northern Iowa and refresh her MBA within a period of two years and within a third year obtain a job that will pay her above-average wages.” In setting the amount of spousal support, the court also considered “the rather substantial property and child support awards.”<sup>2</sup>

Both parties filed post-trial motions pursuant to Iowa Rule of Civil Procedure 1.904(2). The district court denied the relevant portions of the motions and Anne appealed. On appeal, she challenges the district court’s property division and spousal support awards.

## **II. Analysis.**

### **A. Property Division.**

Anne first takes issue with the \$18,000 differential in the property distribution. She concedes, as she must, “that the courts are not required to split the marital assets on a dollar for dollar basis.” See *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa Ct. App. 1991) (stating Iowa courts do not require an equal division or percentage distribution). She argues, however, that factual and mathematical errors in the district court’s reasoning render the award inequitable. See *id.* (stating the determining factor is what is fair and equitable in each particular circumstance).

We agree with Anne that certain fact findings underlying the property award are not supported by the record. For example, at the time of trial, Anne

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<sup>2</sup> The district court ordered both parents to pay child support based on the custody arrangement to which they agreed. Although the support order is not at issue on appeal, both parents allude to it in their discussions of the remaining economic provisions. We find it unnecessary to address the arguments that are based on these awards, except as noted in footnote 3.

had less money in her bank account than the court found and Scott had more money than the court found. However, these errors do not automatically require modification because our review is de novo and we are “obliged to examine the entire record and *adjudicate rights anew* on the issues properly presented.” *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998) (emphasis added); see also *Lessenger v. Lessenger*, 261 Iowa 1076, 1078, 156 N.W.2d 845, 846 (1968) (stating the court does not “reverse an equity case upon such complaints as these” but instead draws such conclusions from its review as it deems proper).

On our de novo review, we note that the factual errors cited by Anne resulted in \$2472.66 more in assets on her side of the ledger and \$3866 less on Scott’s side of the ledger. We are persuaded that these errors were insignificant in relation to the total asset value of more than a million dollars. See *In re Marriage of Johnson*, 455 N.W.2d 281, 283 (Iowa Ct. App. 1990) (characterizing a \$6500 differential in property awarded to parties as “slight” and “insubstantial” in light of the “large amounts of property involved” (nearly \$500,000) in the dissolution). Additionally, the differential in favor of Scott was minimized by Scott’s overpayment of close to \$7000 in temporary support.<sup>3</sup> We conclude the court’s marginally unequal property division was equitable.

#### **B. Spousal Support.**

“Rehabilitative spousal support is ‘a way of supporting an economically dependent spouse through a limited period of re-education or retraining following

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<sup>3</sup> Scott’s temporary support obligations totaled \$3943.50 per month. Between September 1 and September 12, 2007, he paid Anne \$6923.96 directly. An additional \$4000 was garnished from Scott’s wages that month and deposited into Anne’s savings account. Thus, Scott paid Anne a total of \$10,923.96 in September 2007 rather than the obligatory \$3943.50.

divorce, thereby creating incentive and opportunity for that spouse to become self-supporting.” *In re Marriage of Becker*, 756 N.W.2d 822, 826 (Iowa 2008) (citation omitted). “The goal of rehabilitative spousal support is self-sufficiency and for that reason ‘such an award may be limited or extended depending on the realistic needs of the economically dependent spouse.’” *Id.* (citation omitted).

Anne does not dispute the district court’s characterization of her spousal support as “rehabilitative” but argues that the court’s award will only allow her to become self-sufficient at an entry-level position rather than at a level commensurate with her education and experience. We agree.

Anne was married to Scott for twenty-two years. During the marriage, she consigned her career to a back seat, allowing Scott to relocate and advance in his. While she held some positions that were consistent with her education, she did not hold any single job for more than five years. When she and Scott separated, she diligently sought employment in her field but was forced to settle for a part-time job as a bank-teller, which paid \$9.34 per hour. This job netted her monthly income of \$1106.69 relative to Scott’s net monthly income of \$7067.69, exclusive of annual bonuses. While there is no question that her earning potential was significantly higher, even the highest potential earnings figures in the record were about sixty percent less than Scott’s actual earnings. Additionally, the assumption that Anne would secure a more lucrative job in the near term was belied by the types of positions for which she applied and was rejected.

We conclude the spousal support award should be modified to \$1500 per month for a period of five years. We decline Anne’s request for a specific

provision that spousal support would continue “regardless of whether or not [she] remarries during this period.” Rather, we affirm the dissolution decree to the extent it makes no mention of terminating the obligation on her remarriage. This means that if a remarriage occurs, what happens to the spousal support award will be determined in accordance with the applicable Iowa precedents. See *In re Marriage of Smith*, 573 N.W.2d 924, 927 (Iowa 1998).

**III. Appellate Attorney Fees.**

Anne 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). As Anne partially prevailed, we order Scott to pay \$1000 toward her appellate attorney fees. Costs are taxed equally to each party.

**AFFIRMED AS MODIFIED.**