IN THE COURT OF APPEALS OF IOWA

No. 7-146 / 96-639

000233

IN RE THE MARRIAGE OF DOUGLAS JOHN HOWARD AND JULIE MARIE HOWARD

Upon the Petition of
DOUGLAS JOHN HOWARD,

Appellant,

And Concerning
JULIE MARIE HOWARD,

Appellee.

FILED
JUN 26 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Pottawattamie County, Charles Smith III, Judge.

Douglas Howard appeals the parties' dissolution of marriage decree. **AFFIRMED.**

Kellie Rae Taylor, Council Bluffs, for appellant.

Scott J. Coziahr, Council Bluffs, for appellee.

Considered by Habhab, C.J., and Cady and Vogel, JJ.

VOGEL, J.

Appellant Douglas Howard appeals the property division provisions of a dissolution decree and its failure to award him alimony. We affirm.

Douglas and Appellee Julie Howard were married on February 13, 1993. Since 1990, Julie has been employed as a legal secretary at a law firm in Omaha, Nebraska. She earns $47,300 annually. Douglas switched careers during the marriage from an independent contractor in concrete work to an electrician. He has completed two of four years of education and training and currently earns $8 per hour. When he completes the remaining two years, he will earn $14 per hour as a journeyman electrician.

Douglas and Julie have one child, Jonathan, who is two and one-half years old. The trial court awarded joint legal custody to Douglas and Julie, with physical custody with Julie. The court determined Douglas had gross annual income of $18,376 and ordered him to pay child support of $248.86 per month.

The court awarded each party all personal property acquired before the marriage. Of property acquired during the marriage, the court awarded Douglas his tools and other property valued at $7,957. To this amount, the court added $1,350, which represented the funds he withdrew from the joint checking account and the fee paid to drill the safety deposit box when he refused to provide the key. The court gave Douglas a lien against the homestead in the amount of $12,123, for a total property award of $21,430.

The court awarded Julie personal property worth $5,600, the amount of her Keogh plan vested during the marriage, and the equity in the homestead, for a total amount of $33,553. Subtracting the $12,123 lien on the homestead shows Julie's property award to be $21,430, the same amount awarded to Douglas. The court ordered neither party pay alimony to the other.

I. Scope of Review

Our review of this case is de novo. *In re Marriage of Shivers*, 557 N.W.2d 532, 534 (Iowa App. 1996) (citing Iowa R. App. P. 4). We must examine the entire record and adjudicate anew the equity between the parties. *Id.* We must look primarily to the particular circumstances of this case, which makes prior cases of little precedential value. *In re Marriage of Kunkel*, 555 N.W.2d 250, 253 (Iowa App. 1996). The trial court's findings of fact are entitled to weight, but they are not binding upon us. *Id.* (citing Iowa R. App. P. 14(f)(7)).

II. Property Distribution

Partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Hass*, 538 N.W.2d 889, 892 (Iowa App. 1995). Such an accumulation should be distributed fairly and equitably under the circumstances, rather than equally or according to a percentage distribution. *In re Marriage of Hardy*, 539 N.W.2d 729, 731 (Iowa App. 1995). We are guided by the factors codified in Iowa Code section 598.21(1) (1995). *In re Marriage of Miller*, 552 N.W.2d 460, 463 (Iowa App. 1996).

We hold the trial court's property division is fair and equitable. The trial court's valuation of the real estate and personal property is well within the permissible range of evidence and we will not disturb it on appeal. *Hass*, 538 N.W.2d at 892. This was a short marriage of two and one-half years, and any premarital relationship or cohabitation is irrelevant to the property division. *In re Marriage of Spiegel*, 553 N.W.2d 309, 320 (Iowa 1996) (citing *In re Marriage of Greenwald*, 454 N.W.2d 34, 42-43 (Wis. App. 1990)).[1] Because Douglas had been in prison, the only property he brought to the marriage was a bicycle. Douglas did make improvements to the family home, however, and helped Julie reduce some of her debt. The court rightly awarded Julie the homestead, as she was awarded physical custody of Jonathan. Out of total marital property of $42,860, Douglas received exactly half of this amount.

III. Alimony

Douglas requested, and was denied, rehabilitative alimony to help him complete his education and training for his new vocation. Alimony is not an absolute right, but depends on the circumstances of each case. *In re Marriage of Erickson*, 553 N.W.2d 905, 907 (Iowa App. 1996). Rehabilitative alimony assists an

---

[1]Although *Spiegel* ruled on cohabitation in the context of alimony, it cited with approval *Greenwald*, which ruled on the issue in the context of property distribution and maintenance. Moreover, *Spiegel* reasoned the premarital relationship of the parties to a dissolution was not listed in Iowa Code § 598.21(3), the provision providing for alimony. Similarly, premarital relationship is not listed in Iowa Code § 598.21(1), the provision providing for property division.

economically dependent spouse in becoming self-sufficient through a limited period of re-education and retraining following a divorce. *Id.* Rehabilitative alimony creates an incentive and opportunity for a spouse to become self-supporting. *Id.*

We hold alimony is not appropriate in this case. This marriage was of short duration. Both parties are young, in good health, and have regular employment. Douglas is more than half way through his re-education and his income will almost double when his education is complete.

IV. Appellate Attorney Fees

Julie requests attorney fees. We have discretion to award reasonable and fair attorney fees based on the abilities of the parties to pay. *In re Marriage of Guyer,* 522 N.W.2d 818, 822 (Iowa 1994). We also consider the needs of the party requesting fees and whether that party was obligated to defend the district court's decision on appeal. *In re Marriage of Krone,* 530 N.W.2d 468, 472 (Iowa App. 1995). Douglas appealed the economic provisions of the decree even though he received exactly half of the marital property. We order Douglas to contribute $1,000 toward Julie's appellate attorney fees. Costs on appeal are assessed to Douglas. Having considered all the issues presented for review, we affirm the district court's decree.

AFFIRMED.