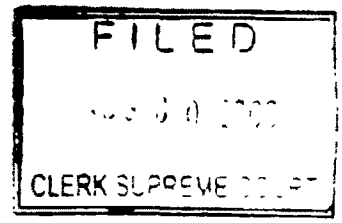
**IN THE COURT OF APPEALS OF IOWA**

No.0-280 / 99-1683
Filed August 30, 2000

**IN RE THE MARRIAGE OF HERSHELL PARKER, JR.
AND WILLASTINE L. PARKER**

**Upon the Petition of
HERSHELL PARKER, JR.,
Petitioner-Appellant,**

**And Concerning
WILLASTINE L. PARKER,
Respondent-Appellee.**




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Appeal from the Iowa District Court for Black Hawk County, Thomas N. Bower, Judge.

Petitioner appeals from the division of property and award of spousal support in the parties' dissolution decree. **AFFIRMED IN PART, AND MODIFIED IN PART.**

Timothy D. Ament of Gartelos, Wagner & Ament, Waterloo, for appellant.

Jeffrey Peterzalek of Gallagher, Langlas & Gallagher, Waterloo, for appellee.

Considered by Zimmer, P.J., Vaitheswaran J., and Hayden, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (1999).

**HAYDEN, S.J.**

The parties were married on February 14, 1978. Three children were born of this union: Johnny, born September 11, 1978; Rafeal, born December 20, 1981; and Ashley, born March 12, 1985. At the time of trial Hershell was forty-eight years old and Willastine was forty-two years old. The parties agreed upon joint legal custody of the children, with primary physical care and placement with Willastine. They agreed Hershell's child support payments would be governed by the Iowa Child Support Guidelines in the amount of $800 per month. The trial court approved these agreements.

Hershell has been employed as a laborer at John Deere and Company for twenty-three years. His 1999 income would be approximately $44,000. Willastine has been employed by the Waterloo School systems for seven years. She will earn $28,000 for the 1999-2000 school year.

The parties own their home at 1414 Schultz Street, Waterloo, Iowa valued at $67,720. The debt on this home is $29,500. The net value is $38,220. In addition the parties own two vacant lots. The one next to their home is valued at $2,000 and is clear of debt. The other vacant lot is valued at $4,500 and is debt free.

Willastine was awarded assets in the total value of $84,819.50. This award included the marital home of the parties, one-half of Hershell's John Deere pension, and all of her school pension. Willastine was ordered to pay debts in the total sum of $18,191. The net value of the assets she was awarded is $66,628.50.

Hershell was awarded property in the total sum of $67,182.50. Hershell was awarded the John Deere tax deferred savings plan in the total sum of $29,312. He also received one-half of the value of his John Deere pension $21,875.50. Among other things he was awarded the John Deere riding lawnmower of which the trial court had valued at $7,000. Hershell was ordered to pay debts in the sum of $7,470. His net property award was $59,712.50.

The trial court ordered Hershell to pay Willastine $400 per month in compensatory-permanent spousal support until she or Hershell dies or she remarries.

Hershell appeals. We affirm in part and modify in part.

## I. Scope of Review

Our review of this equity case is de novo. Iowa R. App. P. 4. In equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact-findings of the trial court, but is not bound by them. Iowa App. P. 14(f)(7).

## II. Division of Property

On April 4, 1990, Willastine signed an instrument effecting her interests in the John Deere deferred savings plan. This document is set forth as follows:

> SPOUSAL CONSENT. I hereby consent to the designation of the above named beneficiaries(s). In so consenting, I acknowledge that I waive all rights to the distribution of any of the assets in the accounts of the Plan(s) identified above, except to the specific extent which may be designated herein.

This document was admitted in the trial as petitioner's exhibit B.

Willastine testified at the trial it was Hershell's idea for her to sign exhibit B. She indicated it was supposed to go to Ashley in case something happened

to Hershell. If he passed away, it was put aside for her (Ashley's) college education. She further stated that Ashley would be the beneficiary and she understood when she signed it that it was just a change of beneficiary. She further testified that she was not waiving any future right in sharing in the benefit from exhibit B.

Hershell's position is, when Willastine signed exhibit B she waived all of her rights to his John Deere tax deferred saving plan, and it should not be considered marital property. The trial court included it to be a marital asset and to be distributed appropriately.

Black's Law Dictionary, Fourth Edition describes beneficiary in one of several ways as follows:

> One for whose benefit a trust is created: A person having the enjoyment of property of which a trustee, executor, etc., has legal possession;. One receiving benefit or advantage, or one who is in receipt of benefit, profits, or advantage. The person to whom a policy of insurance is payable.

As can be seen a beneficiary is not described as one who owns the trust or a policy of insurance, but one who receives the benefit and enjoyment of the property.

Hershell has not changed the ownership, control, or possession of his John Deere deferred savings plan. He merely effected a change of beneficiary to Ashley.

The trial court believed Willastine when she testified upon signing exhibit B she believed there was a change in beneficiary allowing her daughter to be the beneficiary so she could use the money for her college education. The trial court

waived. The trial court made it a marital asset for distribution. We agree with the trial court on this issue.

**III. Alimony**

The trial court awarded Willastine $400 per month compensatory-permanent spousal support (alimony) until she or Hershell dies or until she remarries.

Before the parties were married Willastine had completed one semester of college credits. After the parties were married she, in the course of seven years, obtained a bachelor's degree in education from the University of Northern Iowa. Hershell encouraged her to pursue higher learning and contributed financially toward her tuition, and collegiate costs. At the time of trial she still had $5,768 to pay upon her student loans. During the times Willastine was in school Hershell worked two shifts and took care of the children. Otherwise, Willastine took care of the household and children and Hershell took care of the out-door duties and maintained the premises.

The trial court granted Willastine alimony for the contributions she made to the marriage, including the economic value of her contribution to homemaking and child care services. The trial court observed, "it is unlikely she will ever earn as much income as Hershell."

Hershell contends Willastine is not entitled to alimony.

In reviewing this issue we consider, among other things, the parties' income potential. *In re Marriage of Stewart,* 356 N.W.2d 611, 613 (Iowa App. 1984). Education Willastine obtained during the marriage will enhance her future earnings and is a proper factor to consider in assessing the equity of the

economic provisions of a dissolution decree. *See In re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989).

The economic provisions of a dissolution decree are based on a number of factors, including the length of the marriage, the age and health of the parties, the parties' earning capacities, the levels of education, and the likelihood the party seeking alimony will be self-supporting at a standard of living comparable to the one enjoyed in the marriage. *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa App. 1998) (citations deleted).

The property division and alimony must be viewed together in evaluating their individual sufficiency. *In re Marriage of Helmle*, 514 N.W.2d 461, 464 (Iowa App. 1994). When determining the appropriateness of alimony, the court must consider: (1) the earning capacity of each party and (2) the present standard of living and ability to pay balanced against the relative needs of the other. *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa App. 1994).

We modify the trial court's award of spousal support by reducing the amount from $400 to $200 per month. These support payments shall terminate when Willastine reaches fifty-nine years of age, dies, remarries or upon Hershell's death, whichever occurs first.

Except as modified herein the trial court is affirmed in all other respects.

Willastine requests attorney fees on appeal. We determine each party shall pay their own attorney fees.

Costs on appeal are assessed one-half to Hershell and one-half to Willastine.

**AFFIRMED IN PART, AND MODIFIED IN PART.**