

IN THE COURT OF APPEALS OF IOWA

No. 5-018 / 94-0009

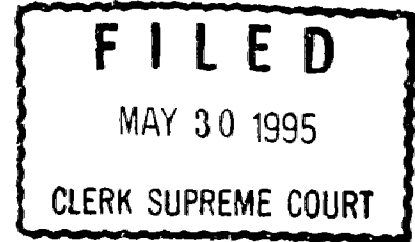
**IN RE THE MARRIAGE OF RENA ARLENE
LYNCH AND CHARLES EDWARD LYNCH**

Upon the Petition of
RENA ARLENE LYNCH,

Petitioner-Appellant/Cross-Appellee,

And Concerning
CHARLES EDWARD LYNCH,

Respondent-Appellee/Cross-Appellant.



Appeal from the Iowa District Court for Wapello County, James D. Jenkins,
Judge.

Rena Lynch appeals the parties decree of dissolution of marriage.

AFFIRMED.

Michael C. Vinyard of Vinyard & Curran, Ottumwa, for appellant.

Richard J. Gaumer of Webber, Gaumer, Emanuel & Daily, P.C., Ottumwa, for
appellee.

Considered by Donielson, C.J., and Hayden and Sackett, JJ.

SACKETT, J.

Petitioner-appellant Rena Arlene Lynch appeals and respondent-appellee Charles Edward Lynch cross-appeals from a decree dissolving their marriage. Rena and Charles were married January 9, 1982. The decree of dissolution was entered December 6, 1993. Rena contends certain statements of the trial court showed bias and the property division made by the trial court was not equitable. She requests appellate attorney fees. Charles, on cross-appeal, contends the trial court abused its discretion in failing to reopen the case to allow testimony concerning assets he owned prior to the marriage. He also contends the scope of review in appeals challenging the property provisions in a dissolution decree should be changed from de novo to a review for an abuse of discretion. We affirm.

Charles was born in 1931, and Rena in 1932. This was a second marriage for Rena and a third marriage for Charles. Prior to the marriage, Rena and Charles executed a premarital agreement. The agreement did not address divorce but, basically, provided they were aware of the property each owned and agreed neither should acquire any rights in the property of the other. Rena has an eighth grade education. Charles has graduated from high school. Rena and Charles both had assets at the time of their marriage. They currently have no debt.

Rena worked prior to the marriage doing domestic work. She has not worked outside the home since the marriage. Rena's health is good. She was eligible for social security benefits based on Charles's earnings when she reached the age of sixty-two in April 1994.

Charles was employed by John Morrell for twenty-five years. When it closed, he worked for John Deere for seventeen years. Charles is currently retired and receives social security retirement of about \$800 a month and about \$500 a month in other retirement benefits.

During six years of the marriage, Charles was laid off at John Deere, but received some unemployment benefits. The trial court found during that period Charles supported the family by using his savings and, while the amount used was not calculated, the trial court determined it to be substantial.

The trial court found that during the marriage Rena took care of the home and Charles provided the support. He found Charles's assets increased through inflation and not because of the efforts of either Rena or Charles. The court went on to find Rena's ability to support herself has not been diminished by her marriage. He considered the age of the parties at the time of the marriage and the fact there were no children and this was a late-in-life marriage and then determined Rena and Charles should be restored, as nearly as possible, to the financial position they enjoyed prior to their marriage. The trial court made the following allocation of assets:

Rena was awarded:

515 Adeline Rd. property	\$ 25,000.00
20-acre timber tract in Lee County	\$ 3,000.00
Deere Credit Union savings account	\$ 2,057.00
Deere Credit Union checking account	\$ 100.00
her IRA	\$ 2,100.00
note from her daughter Vicki (NOTE: Vicki is Charles's daughter)	\$ 5,000.00
personal effects that cannot be valued on this record	\$ <u>0</u>
TOTAL	\$ 37,257.00

Charles was awarded:

144 N. Ransom property	\$ 28,000.00
Rt. 4 property (contract between Charles and his daughter)	\$ 20,000.00
1990 Ford 1/2 ton pickup	\$ 12,225.00
1977 Chevy Impala	\$ 4,000.00
1984 Harley Davidson	\$ 6,780.00
Deere riding mower	\$ 1,100.00
Dolls pre-marriage	\$ 30,000.00
Dolls (purchased after marriage)	\$ 10,065.00
Deere Credit Union checking account	\$ 475.90
Deere Credit Union savings account	\$ 2,057.00
State Bond 0204611-3	\$ 14,192.82
State Bond 5802519-7	\$ 40,896.30
State Bond 4801312-0	\$ 18,330.16
State Bond 5801846-7	\$ 66,169.06
505B IRA	\$ 18,341.00
105 IRA (2)	\$ 37,367.00
coin collection	\$ 3,200.00
gun collection	\$ 5,000.00
Deere IRA	\$ 10,143.05
personal effects that cannot be valued on this record	\$ <u>0</u>
TOTAL	\$328,342.29

The trial court rejected Rena's claim for alimony finding Charles paid Rena \$500 a month temporary alimony for a total of \$6500 while she remained in the family home and this discharged Charles's obligation for any alimony.

Rena first contends the trial court exhibited bias and prejudice by characterizing this marriage as a "misadventure in matrimony". Her complaint appears to be, in doing so, he followed *Behrle v. Behrle*, 228 N.W.2d 25 (Iowa 1975), where the court called an eleven-month marriage of a young childless couple a misadventure in matrimony and awarded no alimony.

Any marriage that results in dissolution, no matter its length, can, in fact, be characterized as a "misadventure in matrimony". We look to the case law and statutory dictates in our review of the alimony claim. An award of alimony is made after considering those factors listed in Iowa Code section 598.21(3). See *In re Marriage of Hayne*, 334 N.W.2d 347, 350 (Iowa App. 1983). We do not find the trial judge exhibited bias in characterizing the marriage as a misadventure in matrimony.

Rena also advances the judge reached a bizarre conclusion in commenting that the ten years between seventeen and twenty-seven is longer in a person's life than the ten years between fifty-one and sixty-one.

This was a marriage entered later in life. Rena and Charles entered into a premarital agreement that, while not addressing the issue of a dissolution, clearly set out their intentions to preserve their own individual assets and not make claim against the assets of the other. They each had children when married. They did not have

children in the marriage. They both entered the marriage with assets accumulated in other marriages. These are factors which can be weighed with the others in assessing the equity of the division made by the trial court. This is a different situation than marriages undertaken earlier in life when one spouse or the other may have made substantial career sacrifices to assume parenting responsibilities. We interpret the trial judge's remarks as assessing these factors. We do not find them to show bias.

Rena next contends the property division is not equitable. From a number of disorganized and difficult to read exhibits, we have determined Charles had the following assets before marriage:

125 N. Ransom property	\$ 19,500.00
Missouri property	\$ 7,000.00
1962 Chevrolet pickup	\$ 350.00
1977 Chevrolet Impala	\$ 4,000.00
1978 Harley Davidson motorcycle	\$ 6,000.00
Deere Credit Union - checking	\$ 690.35
Deere Credit Union - savings	\$ 2,001.66
State Bond and Mortgage Co.	
Account No. 5801312	\$ 10,887.67
Account No. 0376202	\$ 31,979.86
South Ottumwa Savings Bank	\$ 26,600.00
Lentner note	\$ 26,600.00
Dolls and collectibles	\$ 30,000.00
Household goods	\$ 9,000.00
Guns	\$ <u>3,000.00</u>

TOTAL	\$177,609.54
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LIABILITIES

South Ottumwa Savings Bank	<u>\$-26,600.00</u>
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TOTAL	\$151,009.54
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and Rena had the following assets before marriage:

20 acres of timberland	\$ 3,000.00
515 Adeline Rd. property	\$ 25,000.00
1948 International V-8 pickup	\$ 200.00
19' Amana refrigerator - no value cited	
rototiller - this stayed at Rena's	
515 Adeline Rd. property	
3 pickup loads of canned fruit and	
vegetables - no value cited	\$ <u>0</u>
 TOTAL	 \$ 28,200.00

Neither brief has given us much help in sorting out the financial assets of this marriage and the result of the division the trial court made.

Charles challenges the scope of review applied by appellate courts in Iowa. Charles's brief advances the continued use of a *de novo* review encourages litigants to appeal decrees perceived unsatisfactory because it is likely they will be amended by the appellate court in some manner so as to give a different result and make the appellant feel successful.

Charles contends the decision of the trial court should be sustained unless a clear abuse of discretion¹ can be shown and this will result in the appellate court

¹ Charles's brief states: However, this court should change the standard of review from review *de novo* to one requiring the appellant to show an abuse of discretion by the Trial Court. The continued use of a *de novo* standard of review in property division cases encourages litigants to appeal because the appellate courts have repeatedly modified property division decisions so that a litigant will feel that the perceived unsatisfactory Trial Court decision will likely be amended by the appellate court in some manner so as to give a different result and thereby make the appellant feel successful. If the Trial Court judge makes a decision, then the judge's decision should be sustained unless a clear abuse of discretion can be shown. In so doing the appellate court will be less likely to substitute its decision for that

being less likely to substitute its decision for that of the trial judge when either the trial court decision or the appellate court decision would meet the enunciated standard in *Locke v. Locke*, 246 N.W.2d 246 (Iowa 1976), which is fair and just. Charles also advances the change in standard of review would give the appellate courts an opportunity to issue opinions which would provide guidance to trial courts and attorneys to predict when an acceptable result might be rather than have the review of the decision on a case-by-case basis on each case's peculiar facts. The standard of review is de novo in dissolution cases. Iowa R. App. P. 4.

We do assure Charles it has never been this court's purpose to amend a property division in a manner to give a different result just to make the appellant feel successful. Furthermore, while Charles may suggest there should not be a review of each case on its particular facts, he ignores the fact each marital situation is factually different and each must be reviewed on its own facts. See *In re Marriage of Urban*, 359 N.W.2d 420, 423 (Iowa 1984).

Charles also contends he should have been able to introduce, after the trial, a statement that provided further information on the value of his premarital assets.

of the trial judge when either the Trial Court decision or the appellate court decision would meet the enunciated standard in *Locke v. Locke*, 246 N.W.2d 246, 251 (Iowa 1976), which is "Considering all the circumstances, the decision is fair and just." The change in the standard of review would bring Iowa in line with other nearby states which use the standard of review of "abuse of discretion." The change in the standard would also give the appellate courts an opportunity to issue opinions which would provide guidance to Trial Courts and attorneys to predict what an acceptable result might be rather than have the review of the decision on a case by case basis on each case's peculiar facts.

There is no basis to this argument. There was no foundation laid for a proposed exhibit. *See Thompson v. Bohlken*, 312 N.W.2d 501, 508 (Iowa 1981).

The focal issue is whether the trial court decree was equitable. We find it is and affirm.

Each party shall pay his or her own attorney fees and one-half the costs on appeal.

AFFIRMED.