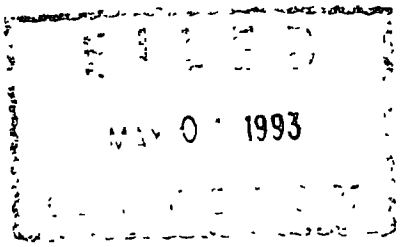
IN THE COURT OF APPEALS OF IOWA

No. 2-532 / 92-138



IN RE THE MARRIAGE OF JEANNETTE M. KEIST AND VERNON L. KEIST

Upon the Petition of

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JEANNETTE M. KEIST,

Appellee,

And Concerning

VERNON L. KEIST,

Appellant.

Appeal from the Iowa District Court for Scott County, David Sohr, Judge.

The husband appeals from the economic provisions of the district court's dissolution decree. **AFFIRMED.**

Harold J. Delange, II, Davenport, for appellant.

Robert E. Weinberg of Wells, McNally & Bowman, Davenport, for appellee.

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

HAYDEN, J. 900322

Jeannette and Vernon Keist were married in 1941. They have two adult children. The parties were divorced in 1965. Three years later, however, the district court set aside much of the decree based upon the creation of a new common law marriage between the parties.

Jeannette was born on August 27, 1922. She is in good health, but complains of some angina pain. Jeannette is retired and receives social security payments of $320 per month.

Vernon was born on November 29, 1919. In 1986, Vernon had cancer surgery, but his prognosis is favorable. Vernon is also retired. He receives social security payments, a John Hancock annuity and a pipe fitters pension for a total net monthly income of $1836.50.

On March 4, 1991, Jeannette filed a petition for dissolution of marriage. On November 8, 1991, the district court dissolved the marriage and ordered both parties be tenants in common of the jointly owned homestead. The court awarded Jeannette the right to live in the homestead for a period of one year from the date of the decree. Vernon was ordered to pay $250 per month alimony until Jeannette died or remarried. The court also distributed the remaining property and retirement benefits between the parties.

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On November 15, 1991, Vernon filed a motion to enlarge and amend. On December 26, 1991, the district court amended its decree, ordering Jeannette to pay for all repairs to the home that totaled less than $100 and the parties to equally bear the cost of repairs that totaled over $100. The amended decree also set out the procedure for the sale of a camper which is owned jointly by the parties.

Vernon appeals, contending the district court erred in awarding Jeannette alimony because the property division was sufficient for her support. He also claims the property division was inequitable.

Our review of this equity action is de novo. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992); Iowa R. App. P. 4.

I. Alimony. Alimony is not an absolute right; an award depends upon the circumstances of each particular case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). The discretionary award of alimony is made after considering the factors listed in Iowa Code section 598.21(3). See In re Marriage of Hayne, 334 N.W.2d 347, 350 (Iowa App. 1983).

One factor listed in section 598.21(3) is the length of the parties' marriage. The parties' were married for a total of fifty years. We also must consider the earning capacity of each party, present living standards, and ability to pay balanced against the relative needs of the

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other party. In re Marriage of Hitchcock, 309 N.W.2d 432, 436-37 (Iowa 1981). Both parties are retired. Jeannette has an income of only $320 per month. Her income is considerably less in comparison to Vernon's income.

We find the alimony awarded to Jeannette to be just and equitable. We affirm on this issue.

II. Property Distribution. The partners in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. In re Marriage of Russell, 473 N.W.2d 244, 246 (Iowa App. 1991). The determination as to what constitutes an equitable division of the parties' assets in a dissolution of marriage does not require application of a precise percentage. Id. The determining factor is what would constitute an equitable and just award under the circumstances. Id.; Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976). We must consider the alimony and property division together in evaluating their individual sufficiency. In re Marriage of Whelchel, 476 N.W.2d 104, 110 (Iowa App. 1991).

In the present case we find the property division set forth by the district court is equitable. The district court awarded Vernon's inherited property, which equaled $13,300, to him and then distributed the remaining assets to attain a fair and equitable result.

Property Distribution

Assets	Wife	Husband
Marital Home	$27,000	$27,000
Chevy Truck		4,500
GMC Van	5,000	
Camper	6,250	6,250
Prudential Life Insurance		1,920
Prudential Life Insurance		1,418
Aetna Life Insurance		1,750
National Service Insurance		100
Prudential Life Insurance	2,489	
American Income Life	595	
Prudential Insurance	1,901	
Royal Neighbors Insurance	1,463	
Norwest C.D. (joint)	7,707	7,707
	$52,405	50,645
Liabilities		
Younkers	(100)	
Uptown Bank		(3,400)
Appraisal Fees	(625)	(625)
TOTAL ASSETS	$51,680	$46,620

In addition to the assets set forth, the court also awarded to Vernon a lawn mower, chain saw, boat, boat motor, and boat trailer. Vernon has not shown the property division is inequitable to him. We affirm the district court on this issue.

III. Attorney Fees. Jeannette requests an award of attorney fees for this appeal. In determining whether appellate attorney fees should be awarded, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was required to defend the trial court's decision on appeal. In re Marriage of Imhoff, 461 N.W.2d 343, 345-46 (Iowa App. 1990). We deny Jeannette's request for attorney fees. Each party shall be responsible for his or her own attorney fees on appeal.

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We affirm the district court's decision in all respects. Costs of this appeal are taxed to Vernon.

AFFIRMED.