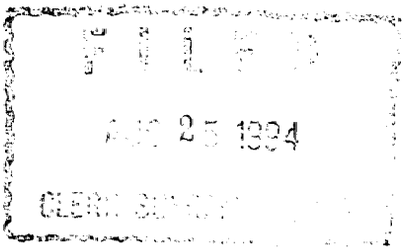
IN THE COURT OF APPEALS OF IOWA

No. 4-209 / 93-1138



IN RE THE MARRIAGE OF WILLARD J. PECK AND GRETCHEN A. PECK

Upon the Petition of
WILLARD J. PECK,

Petitioner-Appellee,

And Concerning
GRETCHEN A. PECK,

Respondent-Appellant.

Appeal from the Iowa District Court for Winnebago County, John S. Mackey, Judge.

Respondent appeals from various economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Leo J. Cassel and Don E. Courtney of Cassel, McMahon, Courtney & Stowater, Algona, for appellant.

Robert P. Cooper of Cooper, Cooper & Reding, Forest City, for appellee.

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

SACKETT, J.

The question in this appeal is whether the trial court equitably allocated the assets and considered the request for alimony in dissolving this long-term marriage of a farm family.

Petitioner-appellee Willard J. Peck and respondent-appellant Gretchen A. Peck were married in 1948. They had six children, two are deceased and the others have reached their majority. At the time of marriage, Willard and Gretchen had minimal education and little property. They have both had been hard working and conservative and, at the time of the dissolution, had accumulated about $800,000 in property. The majority of their assets being farm land, machinery, and livestock. Their property was accumulated through joint efforts, except for an inheritance Gretchen received of $11,000 in January 1974. The money Gretchen received was put in a family account and used for the farm operation.

The parties separated in October 1991. Willard and Gretchen filed a joint income tax return for 1992 and their income was from passive investments, save a $2319 gain from the sale of livestock from Willard.

The trial court allocated the real and personal property and denied Gretchen's request for alimony. Willard received net assets of $424,961 and Gretchen received assets with a net value of $359,997.

Gretchen has appealed contending the property division was not equitable, and she should have received alimony or spousal support. Gretchen requests attorney fees on appeal. We affirm as modified.

Gretchen contends she should have received a larger share of the property.

The parties have spent considerable time arguing about the disposition of assets during the separation period. Generally, the date for valuing assets is at the time of the dissolution decree and, absent a showing of fraud or unfairness in use of assets following a separation and before the dissolution decree is entered, assets will be valued as of the date of the dissolution decree. The parties received respective incomes which they used to continue their lifestyles. We find no fraud, or nondisclosure and use the date of the dissolution decree to value the assets. See In re Marriage of Voss, 396 N.W.2d 801, 803 (Iowa App. 1986).

The partners in the 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). We do not require an equal division or percentage distribution. Id. Rather, the determining factor is what is fair and equitable in each circumstance. Id. The distribution of the property should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1991). In re Marriage of Estlund, 344 N.W.2d

276, 280 (Iowa App. 1983). We consider property division and alimony together in evaluating their individual sufficiency. In re Marriage of Dahl, 418 N.W.2d 358, 359 (Iowa App. 1987); In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984).

This is a situation where a nearly equal property division is equitable. We modify to provide Willard pay Gretchen a property settlement of $30,000 to be paid in annual installments of $10,000; the first installment due six months from the date of this decision. Interest shall accrue on unpaid balances from the date of the decree at the rate of five percent per annum. In all other respects, we affirm the property division.

Gretchen contends she should be awarded alimony. Willard was born September 10, 1929, and Gretchen was born September 7, 1931. At the time of the dissolution, Willard was drawing social security of $570 monthly. Gretchen, at age sixty-two, could draw social security on Willard's account in the amount of $220 monthly or, at age sixty-five, Gretchen could draw social security on Willard's account in the amount of $360 monthly.

Spousal support or alimony may be granted in a dissolution of marriage decree. Iowa Code § 598.21(3). A purpose of spousal support or alimony is to rectify the inequities of a marriage, and to compensate a spouse who leaves the marriage at a disadvantage. In re Marriage of

Earsa, 480 N.W.2d 84, 86 (Iowa App. 1991). We consider the property division and alimony together in evaluating their individual sufficiency. See Griffin, 356 N.W.2d at 608.

Alimony is not an absolute right, but must be assessed under the facts of each particular case. See In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). This has been a long-term marriage. Willard farmed and Gretchen assumed more responsibility for the children of the marriage than did Willard. The length of the marriage is a factor we consider in assessing alimony. See In re Marriage of Bethke, 484 N.W.2d 604, 608-09 (Iowa App. 1992). Willard has made more FICA payments. Willard will receive more social security than will Gretchen. We look to contributions made to retirement benefits in assessing the equities of a decision on the issue of alimony. See In re Marriage of Schissel, 292 N.W.2d 421, 427 (Iowa 1980); In re Marriage of Miller, 475 N.W.2d 675, 677 (Iowa App. 1991); In re Marriage of Williams, 421 N.W.2d 160, 167 (Iowa App. 1988); Voss, 396 N.W.2d at 803. Both parties are of retirement age and earnings are not a factor. They both will utilize income from their property. These are factors we consider. See Earsa, 480 N.W.2d at 86.

We must approach this issue from a gender-neutral position avoiding sexual stereotypes. See Orr v. Orr, 440 U.S. 268, 278-79, 99 S. Ct. 1102, 1111, 59 L. Ed. 2d 306, 318-19 (1979); In re Marriage of Schissel, 292 N.W.2d 421, 427 (Iowa 1980); Locke v. Locke, 263 N.W.2d 694, 696 (Iowa 1978); Bethke, 404 N.W.2d at 608.

We affirm the denial of alimony.

Gretchen requests attorney fees on appeal. She has received substantial property and has the ability to pay her own attorney fees. We award no attorney fees. Costs on appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.