**IN THE COURT OF APPEALS OF IOWA**

No. 0-186 / 99-1276
Filed August 30, 2000

**IN RE THE MARRIAGE OF PAT E. BECKMAN AND GARY W. BECKMAN**

**Upon the Petition of**
**PAT E. BECKMAN,**
**Petitioner-Appellant,**

**And Concerning**
**GARY W. BECKMAN,**
**Respondent-Appellee.**

FILED
AUG 30 2000
CLERK SUPREME COURT

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Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge.

Pat Beckman appeals from the court's dissolution decree. She contends the court erred in (1) finding she was not entitled to alimony, (2) valuing and dividing the parties' assets, and (3) holding her responsible for one-half of Gary's income tax liability. **AFFIRMED AS MODIFIED.**

Kristine M. Fasano, Des Moines, for appellant.

Gary E. Beckman, Des Moines, pro se.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

**MILLER, J.**

Petitioner Pat Beckman appeals various economic provisions of the decree dissolving her marriage to Respondent Gary Beckman. Pat contends the court erred in1) failing to award her alimony, 2) valuing and dividing assets, and 3) making her partially liable for certain income tax debts. We affirm as modified.

**I. Scope of Review**

In this equity case our review is de novo. Iowa R. App. P. 4. We examine the entire record and adjudicate rights anew on the issues properly presented. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

**II. Background Facts**

At the time of trial, Pat was fifty-two years of age and had worked at an accounting firm for the past seven years as a bookkeeper, earning $16,000 per year. Since age eighteen she has suffered from Crohn's Disease, which causes stomach pains and inhibits her body from absorbing nutrition. Because of the disease she takes eighteen pills per day, costing her about $75.00 per month in co-pay. Her medical condition has not inhibited her ability to work, and it does not appear it will in the future.

Gary was fifty-five years of age at the time of trial. He does not have a high school diploma or GED, having completed only the eleventh grade. He is in good health. For most of his life, he worked as a truck driver, at one point owning his own company. He currently works as a contract truck driver, earning approximately $42,000 per year.

The parties began a dating relationship in 1973, though both were married to other people at the time. Later in 1973 Pat's first marriage was dissolved. She was awarded a home subject to a $5,000.00 lien in favor of her former husband. Gary thereafter lived intermittently with Pat, with his wife Judy, and at his place of employment, until 1975 when he began living full-time with Pat. Gary's first marriage was dissolved in 1979. The parties were married in April 1982. Both parties had children from their previous marriages, but have no children from this marriage. Additional facts as relevant to the issues will be discussed below.

**III. Property Division**

**A. Standards of Review**

Iowa is an equitable distribution state, which means the partners in a marriage to be dissolved are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Robison*, 542 N.W.2d 4, 5 (Iowa App. 1995). Iowa courts do not require an equal division or percentage distribution. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). The determining factor is what is fair and equitable in each particular circumstance. *Id.* When distributing property we take into consideration the criteria codified in Iowa Code section 598.21(1). *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983).

Adjudicating property rights in a dissolution action inextricably involves a division between the parties of both their marital assets and liabilities. *In re Marriage of Johnson*, 299 N.W.2d 466, 467 (Iowa 1980). "The allocation of marital debts between the parties is as integral a part of the property division as

is the apportionment of marital assets." *Id.* The allocation of marital debts therefore inheres in the property division. *Id.*; *In re Marriage of Siglin*, 555 N.W.2d 846, 849 (Iowa App. 1996).

We consider property division and spousal support together in evaluating their individual sufficiency. *Russell*, 473 N.W.2d at 246. For convenience we address Pat's claims in somewhat different order than presented in her brief.

**B. Facts**

As a result of the parties' cohabitation in the mid to late 1970's, Pat was ordered to pay the $5,000.00 lien she owed her first husband. The mortgage balance on the home at that time was some $10,000.00 to $12,000.00. The house was valued for the purposes of property taxes at $35,000.00 to $36,000.00, leaving about $18,000.00 to $21,000.00 in equity, after the $5,000.00 lien. In order to pay the lien the parties took out a second mortgage loan on the house in an amount between $10,000.00 and $13,000.00. In order to obtain the mortgage, Gary's name was placed on the deed, though it does not appear he paid any consideration at the time. After paying the $5,000.00 lien, the parties used the remainder of the mortgage to build a large garage.

The parties did not do well financially during their courtship and marriage. From 1974 until 1987 Pat worked at Stone Container, and by 1987 was making $9.60 per hour. In about 1982 Gary lost a good-paying job with Target Ready Mix when it closed. He worked on cars at home in the garage until 1985, then rented space in West Des Moines. Gary had a hard time collecting his accounts receivable. In 1986, he started a corporation to run a dump truck business. He again had a hard time collecting the money owed to him. At the beginning of this

business Pat did the bookwork in the evenings, until quitting her job in October 1987 to help Gary full-time in the dump truck business. She then worked in that business until going to work for the accounting firm in 1992.

**C. Merits**

**1. Division of Pre-Marital Assets**

Pat brought to the parties' cohabitation and marriage a home with some equity. She also brought a very limited accumulation in a retirement fund from her employment at Stone Container. She began working at Stone Container in 1974, and quit in October 1987 to work for Gary's dump truck business. Upon quitting Stone Container she received about $13,000.00 from her retirement fund. Most of this money went to the dump truck business.[1]

Gary brought into the marriage a truck worth about $4,600.00 and tools worth several thousand dollars. The trial court rejected awarding either party an offset for assets brought into the marriage, reasoning that neither "party diverted income or assets for non-martial purposes....[e]ach party contributed their income and efforts toward the marriage....[t]here is no reason why all of the martial assets and debts should not be divided equally."

What we stated in a previous case has particular applicability to this issue:

> Property which a party brings into the marriage is a factor to consider in making an equitable division. Iowa Code § 598.21(1)(b). In some instances, this factor may justify a full credit, but does not require it. Antenuptial agreements are available to preserve premarital assets. *See* Iowa Code § 598.21(1)(l). A premarital asset is not otherwise set aside like gifted and inherited property. Instead, it is a factor to consider, together with all the other circumstances, in making an overall division. Its impact on the ultimate distribution will vary with the particular circumstance of

[1] Pat contends this was a loan, while Gary considered it a contribution towards "their" business. Pat worked full time at the dump truck business from 1987 to 1992.

> each case. Furthermore, in considering accumulations to premarital assets, we do not limit our focus to the parties' direct contributions to the increase. Instead, we broadly consider the contributions of each party to the overall marriage, as well as all other factors. Iowa Code § 598.21(1). Financial matters make up but a portion of a marriage, and must not be emphasized over the other contributions made to a marriage in determining an equitable distribution.

*In re Marriage of Miller*, 552 N.W.2d 460, 465 (Iowa App. 1996). The length of the marriage is an important factor in determining whether to and to what extent property brought into a marriage should be divided, and the shorter the marriage the less inclined we are to divide such property. *See, e.g., In re Marriage of Lattig*, 318 N.W.2d 811, 815-16 (Iowa App. 1982).

This was a seventeen-year marriage, preceded by a dating relationship going back another nine years. Gary had lived in the home for about twenty-five years. Both parties contributed to the mortgage payments and upkeep on the home. Gary contributed to the present equity in the home by working on construction of the garage and doing other maintenance and improvement projects. Under such circumstances it would be inappropriate to set aside to Pat any relatively small difference between the amounts of property the parties brought to the marriage.

**2. Valuation of the Marital Home**

The trial court found the current market value of the home, before some needed maintenance and completion of small improvement projects Gary agreed to finish, to be $89,000, with a mortgage balance of $41,000.00, leaving $48,000.00 in net equity. The court then deducted $8,000.00 for estimated closing costs of sale, including real estate commission and taxes, leaving $40,000.00 to be divided.

Pat contends the trial court should have valued the home as if the contemplated maintenance, repairs and improvements had been completed, making the home worth $96,000.00. The values of assets are determined as of the date of trial. *See Locke v. Locke*, 246 N.W.2d 246, 252 (Iowa 1976); *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa App. 1998). The work had not been done as of the date of trial, and although Gary stated he would do the work there was no guarantee he would in fact do so. Use of the value of the home as of the date of trial was correct.

**3. Award of the Home-Deduction of Sale Costs**

As noted in the trial court's ruling, both parties agree the home should be sold. The trial court awarded the home to Gary, subject to a lien in the amount of $20,000.00, in Pat's favor, to be paid on or before November 1, 1999 (about four and one-half months after the decree). In determining the amount of the lien the trial court took into account estimated sale-related costs of $8,000.00. The trial court did not expressly order the home sold.

Pat contends the trial court should have ordered the home sold instead of awarding it to Gary subject to the lien in her favor. In the alternative she contends that in determining equity in the home and the amount of her lien the trial court should not have subtracted costs associated with selling it.

Consequences of sale should not be considered unless a sale is pending, contemplated or ordered. *See, e.g., In re Marriage of Friedman*, 466 N.W.2d 689, 691 (Iowa 1991) (dealing with income tax consequences). In this case the parties clearly contemplated the home would be sold. It appears the trial court did also, for it found, "Both parties agree that the home should be sold." The very

fact the trial court deducted estimated sale-related expenses is further evidence it contemplated sale. It appears most likely the trial court awarded the home to Gary and allowed him some four and one-half months to pay the lien in Pat's favor in order that he would have the time and opportunity to complete the contemplated improvements and repairs if he chose to do so and would receive the benefit of any such efforts.

We agree with Pat's contention the trial court should have ordered the home sold or should not have considered sale-related expenses. It may well be the absence of a specific order for sale was a matter of oversight. We conclude the decree should be modified to order the home sold (if Gary has not already done so).

**4. Responsibility for Tax Liens**

Pat contends Gary should have been assigned sole responsibility for certain tax liabilities.

As a result of an inability and failure to collect accounts receivable in Gary's dump truck business, the parties' did not pay income taxes (and perhaps payroll taxes) and Gary fell behind on child support payments he was obligated to make. It also appears likely Gary did not wish to file income tax returns because any refund would be intercepted and applied to his child support arrearage. In 1995 the IRS threatened to foreclose a tax lien on the parties' home. At that time Gary and Pat owed only about $2,000.00 on the existing mortgage. They obtained approximately $39,000.00 through a refinancing. Most of the $39,000.00 went toward satisfying the IRS lien and Gary's child support arrearage. The remainder went to pay off credit cards used in Gary's business.

After the tax liens were satisfied the IRS assessed an additional tax liability (apparently for other years). Gary purportedly learned for the first time at trial that the State of Iowa also claimed a tax lien of approximately $5,600.00. As of the date of trial the federal and Iowa liabilities totaled approximately $15,000.00. As far as the federal and state tax authorities are concerned, Gary is the only person liable for those tax debts. The trial court found the tax liabilities arose out of a "failed trucking business which the parties operated during the marriage. While Gary was the one who initiated the business, Pat also worked full time at the operation for a time as well." After rejecting Pat's argument that Gary should be solely responsible for the tax liens because they are in his name alone and he started the trucking business, the trial court concluded, "There is no reason why all the marital assets and debts should not be divided equally." The trial court in fact divided the parties' assets and debts approximately equally.

As noted above, allocation of debts is not viewed in isolation, but rather is an integral part of property division. *Johnson*, 299 N.W.2d at 467. We agree that an approximately equal division of assets and liabilities was equitable and reject Pat's contention that Gary should have been assigned sole responsibility for the tax debts.

**IV. "Alimony"**

**A. Standards of Review**

"Alimony is an allowance to the spouse in lieu of the legal obligation for support." *In re Marriage of Sjulin*, 431 N.W.2d 773, 775 (Iowa 1988). Any form of spousal support is discretionary with the court. *In re Marriage of Ask*, 551

N.W.2d 643, 645 (Iowa 1996). Spousal support is not an absolute right; an award depends on the circumstances of each particular case. *In re Marriage of Dieger*, 584 N.W.2d 567, 570 (Iowa App. 1998). The discretionary award of spousal support is made after considering the factors listed in Iowa Code section 598.21(3). *Id.* We consider the division of property in determining spousal support. *In re Marriage of Bell*, 576 N.W.2d 618, 622 (Iowa App. 1998).

When determining the appropriateness of spousal support, a court must consider, among other things, the parties' present standards of living and ability to pay balanced against their relative needs. *In re Marriage of Williams*, 449 N.W.2d 878, 883 (Iowa App. 1989). In marriages of long duration where the earning disparity between the parties is great, both spousal support and nearly equal property division may be appropriate. *In re Marriage of Weinberger*, 507 N.W.2d 733, 735 (Iowa App. 1993).

**B. Merits**

Pat requested spousal support in her petition. In testimony at trial she requested "a modest amount of alimony on a temporary basis, say for three years." She contends the trial court should have awarded her spousal support. For the reasons that follow we agree.

In its ruling the trial court stated, "There is no reason why all of the marital assets and debts should not be divided equally." The record indicates the trial court in fact divided assets and debts about equally. In denying spousal support the trial court stated it had made an adjustment to the property division "in lieu of alimony." It stated the adjustment was that Gary would be responsible for all costs of repair to the home in order to have it sold. However, the evidence

shows that most of any needed materials and supplies had been purchased before trial. Further, the trial court valued the home at "current market value," that is without considering the amount by which any subsequent improvements or repairs would increase the value of the home. Because the home was awarded to Gary and Pat's equity in it was fixed at $20,000.00, any increase in value from improvements or repairs will go to Gary. The "adjustment" described by the trial court thus cannot justify a denial of spousal support if spousal support is otherwise appropriate.

Factors for the court's consideration in determining whether an award of spousal support is appropriate, and, if so, the amount and duration of an award, are set forth in Iowa Code section 598.21(3). The parties were married seventeen years, after they had cohabited intermittently for two years and then cohabited full-time for seven years. Their cohabitation and marriage thus covers a period of twenty-six years. Both are in their early to mid-50s, with approximately ten remaining years of employment before reaching normal retirement age. Pat suffers from Crohn's disease, and has out-of-pocket expenses of $75.00 per month for necessary medications. Gary's income, and apparently his earning capacity, is more than two and one-half times greater than Pat's. Pat will thus not be able to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.

Based on the foregoing facts we conclude Pat's request to the trial court for a modest amount of spousal support for three years was reasonable and appropriate and should have been granted. We conclude the trial court's decree

should be modified to require Gary to pay Pat $300.00 per month spousal support for a period of three years.

**V. Disposition**

The trial court's ruling is modified to require that Gary sell the parties' home within three months of the date procedendo issues (if he has not already done so), and to require Gary to pay Pat spousal support of $300.00 per month for three years, beginning in the month procedendo issues. The trial court's ruling is in all other respects affirmed.

Costs on appeal are taxed one-half to Pat and one-half to Gary.

**AFFIRMED AS MODIFIED.**