IN THE COURT OF APPEALS OF IOWA

No. 6-470 / 95-1624

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IN RE THE MARRIAGE OF DEANNA J. COUNTRYMAN and CALVIN E. COUNTRYMAN

Upon the Petition of
DEANNA J. COUNTRYMAN,

Petitioner-Appellant,

And Concerning
CALVIN E. COUNTRYMAN,

Respondent-Appellee.

FILED
MAY 29 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Fremont County, Keith E. Burgett, Judge.

Petitioner appeals and respondent cross-appeals from provisions of the parties dissolution decree. **AFFIRMED AS MODIFIED.**

Michael J. Murphy of Rodenburg Law Offices P.C., Council Bluffs, for appellant.

James C. Steffes of Steffes, Kenyon & Nielsen, Creston, for appellee.

Considered by Habhab, C.J., and Sackett and Cady, JJ.

HABHAB, C.J.

Deanna and Calvin Countryman's thirty-two-year marriage was dissolved in August 1995. In the parties' dissolution decree, the district court concluded several assets had to be sold to arrive at a valuation for an equitable distribution. Although the parties ultimately stipulated to the value of the homestead, the district court included it in the items to be sold. In arriving at this conclusion, the district court stated, in part:

> The most vexatious problem in this case is the extent of the accumulated marital property and its value. This case exemplifies a typical bitter dissolution of marriage where the parties either hide the assets or distort the value of property they believe the other party will receive. The opportunity for the court to make a fair and equitable division of marital assets quickly diminishes. For example, the homestead was given a net value of $113,000 by the respondent and $87,411 by the petitioner. Fortunately, during the trial, it was stipulated that the value to be used for the homestead was $87,999. . . . The list of diversities could be extended and goes on and on. Consequently, the court concludes that several marital assets must be sold in order to arrive at a valuation with the proceeds being divided as provided in this decree.

The court ordered the sale of the homestead and farm, farm machinery, all of the equipment and inventory associated with "Gene's Specialties," and a gun collection. The court divided the remaining property and debt of the parties and ordered Calvin to pay Deanna $250 per month in alimony to continue until she remarries, cohabits, or dies.

Deanna appeals and Calvin cross-appeals. Deanna contends the district court erred in failing to value the above-referenced assets and in ordering their sale at

auction. She asserts she should have been awarded the homestead and acreage and a one-half interest in Calvin's pension plans. Deanna also claims the district court failed to award her adequate alimony because the court failed to consider Calvin's earning capacity. Calvin contends the court erred in awarding Deanna alimony.

As this is an equity action, our review is de novo. Iowa R. App. P. 4. We give weight to the findings of fact made by the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7). We have a duty to examine the evidence anew, disconnected, ultimately, from the trial court's findings. *See In re Marriage of Siglin*, 555 N.W.2d 846, 849 (Iowa App. 1992).

*I. **Disposition of Property.*** It is a fundamental principle that parties to a marriage are entitled at the time of a divorce to a just and equitable share of the property accumulated from their joint efforts. *In re Marriage of Wiedemann*, 402 N.W.2d 744, 747 (Iowa 1987). Although an equitable award is not required to be equal, substantially equal property awards are generally appropriate in marriages of long duration. *Siglin*, 555 N.W.2d at 849. What constitutes a just and equitable award depends on the particular circumstances of each case, after consideration of all the recognized criteria. *In re Marriage of Hanson*, 475 N.W.2d 660, 662 (Iowa App. 1991); *see* Iowa Code § 598.21(1) (1995). The division of marital debts inheres in the property division. *In re Marriage of Johnson*, 299 N.W.2d 466, 467 (Iowa 1980).

We consider the factors set forth in Iowa Code section 598.21(1) when fashioning an equitable division of property.

Deanna argues the district court's failure to value the property resulted in an inequitable distribution of the property and alimony award. She requests the homestead and a one-half interest in Calvin's pension plans.

We recognize the onerous task before the district court in the valuation of property when confronted with conflicting values by the parties. However, the record reflects the parties have stipulated to the value of the homestead. It was valued at $87,999 but is encumbered by a mortgage.

With the stipulated value of the homestead in mind, we modify the trial court's decree as follows: If Deanna desires to purchase Calvin's undivided one-half interest in the homestead, she must file with the Clerk of the Fremont County District Court within thirty days after procedendo issues her written election to so purchase. If she elects to purchase Calvin's undivided one-half interest in the homestead, she shall pay to him within sixty days from the date she filed her election a sum of money equal to fifty percent of the equities the parties have in that property as of the date of the filing of the trial court's dissolution decree. The equity, for the purpose of this opinion, shall be the difference between $87,999 and the balance due on the mortgage on the date the dissolution decree was filed. In addition to that payment, Deanna shall also reimburse Calvin for all mortgage payments he made on the mortgage debt after the filing of the trial court's dissolution decree. If Deanna fails to timely file the written

election or if she fails to timely pay to Calvin the aforementioned sums, the property shall be sold at auction as previously directed by the trial court.

We affirm the remainder of the decree. We order the parties to auction off the following assets within sixty days, pursuant to the terms of the decree: the farm; farm machinery; all equipment and inventory associated with "Gene's Specialties;" and the gun collection. The proceeds shall be divided as provided by the decree. Finally, we find the remaining distribution of the parties' marital assets to be equitable, and as such we deny Deanna's request for a one-half interest in Calvin's pension plans.

II. Alimony. Alimony is a stipend to a spouse in lieu of the other spouse's legal obligation for support. *In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa App. 1995). "The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3)." *In re Marriage of Stark*, 542 N.W.2d 260, 263 (Iowa App. 1995); *see In re Marriage of Hayne*, 334 N.W.2d 347, 350 (Iowa App. 1983). The distribution of property is a factor we are to consider. Iowa Code § 598.21(3)(c) (1995). The ability of one spouse to pay alimony must be balanced against the needs of the other spouse. *Stark*, 542 N.W.2d at 262. Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *Miller*, 532 N.W.2d at 162.

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[1] We note in Exhibit 17 Calvin proposes the "homestead . . . [be sold] at public auction within 60 days from the date of the decree."

The trial court made the following findings regarding Calvin's income:

> Following leaving the Highway Patrol, [Calvin] engaged in numerous activities including bartending, working as a security guard and, most recently, ran a specialty shop which included selling printed shirts and advertising materials, which business was operated from the basement of the family home. He suggests he has limitations which physically preclude him from doing much work, but there was no medical evidence presented that supported this testimony. His disability income is approximately $1036 per month which will continue until his death; and upon retiring at age 62, it is estimated that he will receive in excess of $300 per month social security.

In reviewing the trial court's award of alimony, we note although disability payments are not ordinarily included in valuing assets for equitable distribution purposes, we do consider them in alimony and support matters. *See In re Marriage of Miller*, 524 N.W.2d 442, 444 (Iowa App. 1994). In *Miller*, we stated:

> Franklin's disability payments, however, should not be included. In Iowa, veteran's disability payments are not to be considered marital property. *In re Marriage of Howell*, 434 N.W.2d 629, 632 (Iowa 1989). In *Howell*, the court found there to be a difference between a military pension and veteran's disability benefits. "A disability payment to a retired service member injured in the line of duty cannot be considered compensation for past services rendered." *Id.* at 632. The court found military disability payments could be considered in alimony and support matters, but could not be considered marital property. *Id.*
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> Although military disability payments are not involved in this case, the analysis of *Howell* still applies. We find Franklin's disability payments should be treated in the same manner as veteran's disability payments. Such payments will not be considered marital property, but will be considered in the equitable granting of alimony or support.

Miller, 524 N.W.2d at 444.

In our de novo review of the record and after consideration of the factors listed in Iowa Code section 598.21(3), we find the trial court's award of alimony to be equitable. However, we modify the award to provide that alimony will cease on Deanna's receipt of social security retirement benefits as well as upon her remarriage, death, or cohabitation.

AFFIRMED AS MODIFIED.

Cady, J., concurs; Sackett, J., concurs in part and dissents in part.

SACKETT, J. (concurring in part; dissenting in part)

I would affirm the trial court.