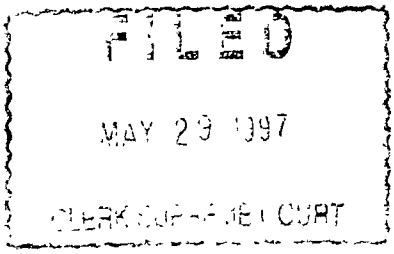
IN THE COURT OF APPEALS OF IOWA

No. 6-639 / 95-2234

000371



IN RE THE MARRIAGE OF GRACE ANN WIESE AND JOHN EDWARD WIESE

Upon the Petition of
GRACE ANN WIESE,
Petitioner-Appellee/Cross-Appellant,

And Concerning
JOHN EDWARD WIESE,
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Cedar County, James R. Havercamp, Judge.

On appeal from entry of dissolution decree, appellant argues the trial court miscalculated his income in setting his child support obligation and erred in awarding appellee excessive permanent alimony. **AFFIRMED.**

Bradley L. Norton of Norton & Norton, Lowden, for appellant.

Gerald F. Denning and R. Craig Oppel of Allbee, Allison & Denning, Wilton, for appellee.

Heard by Huitink, P.J., and Streit and Vogel, JJ.

HUITINK, P.J.

Respondent John E. Wiese appeals the child support and alimony provisions of the decree dissolving his marriage to the petitioner Grace A. Wiese. We affirm.

I. Background Facts and Proceedings.

John, age fifty-one, and Grace, age fifty, were married in September 1972. They are the parents of three children, Laura, age eighteen, Phillip, age fifteen, and Molly, age fourteen. During the marriage, the parties also raised ten foster children. The last foster child left home in March 1992.

Grace graduated from high school and attended a four-month medical assistant school. She was employed in that profession for ten years ending in 1977. Since November 1992, Grace has been employed at Wal-Mart part-time earning approximately $400 net income per month.

John graduated from high school and since then has farmed in addition to working in other vocations, including law enforcement. He has had training as an auctioneer, is a licensed real estate broker, and is also a licensed pilot. Throughout the marriage, John has been heavily involved in his family's farming operation known as the Liberty Farms Partnership. The record indicates he is not presently farming except for the time he devotes to his tree farm. John has not been steadily employed for the last five years. Instead, he has chosen to work at selected jobs commensurate with his various interests. In 1994, he worked as a heavy equipment operator. At the

time of the dissolution, he was employed at HWH Corporation full-time earning $7.50 an hour. The court estimated his net monthly income from HWH to be $1174. John asserts he was no longer employed there at the conclusion of the trial. Grace asserts there is no evidence to support this contention.

After the parties were married, they lived and farmed in Lowden, Iowa. In December 1980, the couple moved to a farm owned by John's uncle Arthur. The parties operated a truck farming business for six years in which they raised strawberries, sweet corn, and asparagus. In 1990, they purchased a farm called Diamond Acres. John developed this property into a tree farm.

During the marriage, the parties received gifts from John's family. Grace received two $5000 gifts from John's father Norman and inherited a 24.14 percent interest in the Liberty Farms partnership valued at $77,699. During the marriage, John also received a 24.14 percent interest in the Liberty Farms partnership valued at $77,699. In addition, John received life insurance and machinery valued at $21,914, a $99,741 gift from his grandfather Edward, a one-half interest in a Minnesota farm valued at $135,753 from his grandparents, a $10,000 gift, and personal property worth $9840 from his father. John also inherited, after taxes and funeral expenses, $316,991 from his father. Each of the couple's children received a 17.24 percent interest in the Liberty Farms Partnership. None of these assets have been commingled.

Grace receives approximately $6000 a year in net income from the Liberty Farms partnership. John is the general managing partner for the enterprise and earns $5000 per year in that capacity in addition to the $6000 in net income he receives from the partnership itself. He has managed the parties' marital and inherited assets very successfully with the exception of a $100,000 loss experienced in futures trading five years ago.

During the marriage, Grace was the primary caretaker for the children and took care of the household duties. She handled the bookkeeping for the truck farming operation as well as the family's investments. She also contributed by assisting in the planting, picking, packaging, and sale of the produce. Grace participated in planting and caring for the trees at Diamond Acres. She was responsible for the cleaning and maintenance of the parties' rental properties. In addition to caring for her own family, Grace helped take care of the elderly members of John's family.

In November 1994, Grace filed a petition for dissolution of marriage. Trial was held in June and August of 1995.

The trial court valued the parties' net assets at $1,091,292. The parties stipulated to the distribution of their IRA accounts, stock holdings, bank accounts, and insurance policies. Grace received $4000 worth of household goods while John was allocated goods valued at $3000. The trial court awarded Grace the following marital and gifted assets:

Marital residence at 1151 Cemetary Road
Contract purchaser's interest in Kahly storage property
Liberty Farms Partnership interest
1987 Ford Aerostar

Grace also received certain items of personal property including dolls, the Kubota tiller and tractor, a knitting machine, a Kuregurand, and a player piano. The court valued Grace's total property award at $257,738 with $79,006 identified as inherited property and $178,732 identified as marital property. The court determined her combined net monthly income from her employment and income-producing assets was $1291.

John received the following assets:

Liberty Farms Partnership interest
Diamond Acres tree farm
Atkinson Apartment buildings
Henson farm (traded for the ½ interest in the gifted Minnesota farm)
203 Lynn Street property
Grell's lot, Dixon, IA
Ferrel's lot, Eldridge, IA
309 Davenport Street, Dixon, IA
Seven vehicles, including a refridgerator truck

John was awared additional personal property including two Kuregurands, a coin and stamp collection, guns, a fishing boat, art prints, and Vietnam memorabilia. He was also awarded all of the farm machinery. The court valued John's property award at $833,554 with $661,938 identified as inherited or gifted property and $171,616 deemed marital property. His combined net monthly income from his

employment at HWH, his management salary at Liberty Farms, and his investment income was determined to be $5180.

The trial court ordered John to pay Grace $388 per week (or approximately $1681 per month) in child support. John was ordered to provide health insurance for the children and to pay two-thirds of any unreimbursed medical expenses. Grace was awarded $1000 per month permanent alimony for as long as the three children are dependent with the award increasing to $1250 when two children remain dependent, and finally, increasing to $2000 per month when no child remains dependent. This award terminates upon Grace's death or remarriage. Finally, the trial court ordered John to pay Grace $7500 in attorney fees.

John appeals challenging the trial court's calculation of his child support obligation. He also objects to the award of permanent alimony for Grace. Grace cross-appeals asserting she is either entitled to a portion of the inherited or gifted assets or an increase in alimony.

II. Standard of Review.

Our review of this equitable action is de novo. Iowa R. App. P. 4. *In re Marriage of Miller,* 532 N.W.2d 160, 162 (Iowa App. 1995). We are not bound by the district court's findings of fact, but we do give them deference because the district court had the opportunity to view, firsthand, the demeanor of the witnesses when testifying. *Id.; In re Marriage of Brown,* 487 N.W.2d 331, 332 (Iowa 1992).

III. Child Support.

John asserts that in determining his child support obligation, the trial court imputed an incorrect monthly income upon both parties. He takes issue with several values assigned by the court to his sources of investment and employment income. During oral argument, John challenged the court's persistent use of gross rather than net figures to ascertain his earnings. We will briefly summarize each argument on these issues before addressing his claims.

John claims the court neglected to impute a full-time earning capacity to Grace. He argues she is capable of updating her skills as a medical assistant and returning to work full-time. John also contends the district court incorrectly considered overtime earnings in his monthly income and failed to consider the fact that he was no longer employed by HWH at the time of trial. He emphasizes that he has not been steadily employed since he stopped farming but rather he has been occupied with the management of the parties' income-producing property.

John further disputes the assignment of $596 in rental income from two of his properties. He argues neither property produced income as one had been condemned and the other was his residence. John also contends the trial court failed to take into account the costs and expenses associated with maintaining his rental property.

John asserts the court improperly assigned $388 per month in income from a $77,579 cash award he maintains he did not receive. He emphasizes that out of this

amount he paid $7500 in attorney fees to Grace and $15,000 to fix up the 203 Lynn Street property. John calculates the correct cash amount to be $48,579 with a $242.90 monthly return. He also claims to have relied on these funds to cover his temporary support obligations and living expenses while the divorce was pending. John argues the cash award should be reduced accordingly before it is factored into his monthly income.

Finally, John contends the trial court failed to credit him for the health insurance premiums he pays for himself and the children ($443.10 per month). John reasons that even if the court otherwise properly calculated his income, his child support obligation should have been set at $1280.13 per month rather than $1668 per month as determined by the trial court.

We have reviewed the parties' respective financial affidavits, and we concur in the trial court's calculation of John's monthly income. We conclude the court's inclusion of employment wages represents John's earning potential and not his actual earnings at the time of trial. John has experience in many vocations and possesses a variety of skills. We therefore concur in the earning capacity assigned to him by the trial court. *See In re Marriage of Roberts,* 545 N.W.2d 340, 343 (Iowa App. 1996) (child support award may be based upon the party's earning capacity, as opposed to his or her actual earnings). We also note John is an astute investor capable of obtaining a substantial return on his assets valued at $833,554. The court considered

all of these factors in making a reasonable determination of John's net monthly income. *See In re Marriage of Powell,* 474 N.W.2d 531, 534 (Iowa 1991) (when income is subject to fluctuation, an average income over a reasonable period of time should be used). We affirm.

IV. Alimony.

John argues Grace's substantial property award including income-producing property, eliminates her need for alimony. He contends the income from her part-time employment, income-producing property, and child support provides her with sufficient funds ($4002.70) to meet her claimed monthly living expenses of $2560. He further argues she is capable of supplementing her income with full-time employment but instead chooses to remain underemployed. John claims that after deducting his child support and alimony obligations from his asserted net income of $3699.80 per month, he is left with only $1031.80 to meet his monthly living expenses of $2679.

Alimony is an allowance to the former spouse in lieu of a legal obligation to support that person. *See In re Marriage of Hitchcock*, 309 N.W.2d 432, 437 (Iowa 1981). When determining the appropriateness of alimony, the court must consider: "(1) the earning capacity of each party, and (2) present standards of living and ability to pay balanced against the relative needs of the other." *In re Marriage of Miller,* 524

N.W.2d 442, 445 (Iowa App. 1994); *In re Marriage of Estlund*, 344 N.W.2d 276, 281 (Iowa App. 1983) (citation omitted).

We consider alimony and property division together in assessing their individual sufficiency. They are neither made nor subject to evaluation in isolation from one another. *In re Marriage of McLaughlin,* 526 N.W.2d 342, 345 (Iowa App. 1994); *In re Marriage of Griffin,* 356 N.W.2d 606, 608 (Iowa App. 1984). An alimony award is justified when the distribution of the assets of the marriage does not equalize the inequities and economic disadvantages suffered in marriage by the party seeking the alimony who also has a need for support. *In re Marriage of Weiss,* 496 N.W.2d 785, 787 (Iowa App. 1992). The court should also consider the feasibility of the party seeking alimony becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. *In re Marriage of Debbler,* 459 N.W.2d 267, 270 (1990); Iowa Code § 598.21(3)(f).

An alimony award will differ in amount and duration according to the purpose it is designed to serve. *In re Marriage of Francis,* 442 N.W.2d 59, 62 (Iowa 1989). Rehabilitative alimony is awarded to support an economically dependent spouse through a limited period of retraining. *Id.* The duration of this type of award depends on the particular needs of the dependent spouse. *Id.* at 63. Traditional or permanent alimony in contrast is usually payable for life or for so long as the dependent spouse is incapable of self-support. *Id.* at 62. The purpose of a traditional or permanent

alimony award is to provide the receiving spouse with support comparable to that he or she would receive if the marriage continued.

Upon our de novo review of the record, we conclude the trial court's alimony award is equitable. First, the length of the marriage, twenty-three years, is consistent with the award of permanent alimony. The significant contributions Grace made to the household and family enterprises justify an award of permanent alimony. The record does not indicate Grace is capable of supporting herself at the standard of living she enjoyed during the marriage. She has not been employed full-time since 1977. There is no evidence that Grace's recertification as a medical assistant would result in an increase in earning capacity. We affirm the district court's alimony award.

V. Cross-Appeal - Property.

Grace argues she is entitled to an increased share of the inherited assets acquired during the marriage. She cites her close relationship with John's parents and uncle Arthur and her substantial efforts in increasing the value of the inherited assets as reasons supporting her request for an additional award of $72,500. She alternatively requests the alimony award be increased.

Generally, gifts or inheritances received by a party during the marriage are not subject to a property division unless the failure to do so would be inequitable to the other party. *In re Marriage of Steele,* 502 N.W.2d 18, 20 (Iowa App. 1993) (*citing*

In re Marriage of Oler, 451 N.W.2d 9, 10-11 (Iowa App. 1989)). Factors weighed in considering when inherited property should be divided include:

> (1) contributions of the parties toward the property, its care, preservation or improvements;
> (2) the existence of any independent close relationship between the donor or testator and the spouse of the one to whom the property was given or devised;
> (3) separate contributions by the parties to their economic welfare to whatever the extent those contributions preserve the property for either of them;
> (4) any special needs of either party;
> (5) any other matter which would render it plainly unfair to a spouse or child to have the property set aside for the exclusive enjoyment of the donee or devisee.

In re Marriage of Thomas, 319 N.W.2d 209, 211 (Iowa 1982).

The trial court made the following observations in setting aside the inherited property to John:

> Petitioner [Grace] made minimal contribution toward the care, preservation or improvement of respondent's inherited property and shows no special need which would render it unjust or unfair to herself or the children if the inherited property is set aside to respondent. The Court cannot conclude, under these circumstances, that a refusal to divide respondent's inherited property is inequitable to petitioner or to the children of the marriage, in applying the criteria mandated by the case law.

We decline to disturb the district court's property award. The substantial financial assets, the family home, and also the award of permanent alimony are sufficient compensation for Grace's claimed contributions. They are sufficient to meet her future economic needs. Furthermore, we note that the court awarded Grace

her gifted share of the Liberty Farms Partnership. This award accomodates Grace's relationship with her in-laws. Grace has not shown that a failure to divide John's inherited property was inequitable. We also affirm on this issue.

VI. Attorney Fees.

Grace has requested $4000 in appellate attorney fees. John asserts her request is excessive and the time spent on the case by her counsel is unreasonable. An award of attorney fees on appeal is not a matter of right, but rests within the court's discretion and the parties' financial position. *In re Marriage of Gilliam,* 525 N.W.2d 436, 439 (Iowa App. 1994). Although Grace has successfully defended the trial court's decision on appeal, she has not prevailed on her cross-appeal. We accordingly limit her award of appellate attorney fees to $1000.

AFFIRMED.