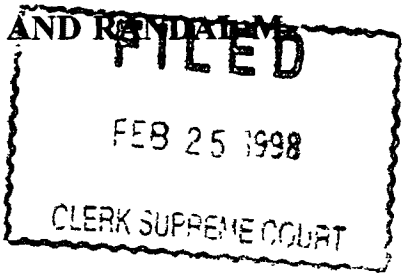
IN THE COURT OF APPEALS OF IOWA

000245

No. 7-764 / 97-354

IN RE THE MARRIAGE OF SHELLEY S. NEUMANN AND RANDAL M. NEUMANN



Upon the Petition of
SHELLEY S. NEUMANN,
Appellee,

And Concerning
RANDAL M. NEUMANN,
Appellant.

Appeal from the Iowa District Court for Linn County, William L. Thomas, Judge.

The respondent, Randal Neumann, appeals the economic provisions of the dissolution decree. **AFFIRMED AS MODIFIED.**

John H. Ehrhart of Fisher, Ehrhart, McCright & Turner, Cedar Rapids, for appellant.

Gary L. Robinson of Klinger, Robinson, McCuskey & Ford, L.L.P., Cedar Rapids, for appellee.

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

VOGEL, J.

Randal Neumann, ("Randy"), appeals the economic provisions of the dissolution decree. He contends the district court erred in (1) awarding permanent alimony, (2) allowing Shelley Neumann to sell the marital home at her discretion, and (3) considering inherited monies as marital property. Shelley seeks appellate attorney fees.

Background facts. Shelley and Randy were married in April 1972. They have one child, Nicole, born December 15, 1972. With the exception of a part-time pharmacy job when Nicole entered second grade, Shelley did not work outside the home until Nicole reached majority. Since that time, she has held a few part-time jobs, and was essentially a homemaker for the past twenty-four and one-half years. Randy worked for Ward Paper Mill from 1973 to 1994. In October 1994, Randy began working as a millwright and laborer at Cedar River Paper Company in Cedar Rapids. The marriage was dissolved in January 1997.

Scope of review. In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of the witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7); *In re Marriage of Vrban*, 359 N.W.2d 420, 423 (Iowa 1984).

*I. **Alimony award.*** The trial court awarded Shelley permanent alimony and ordered Randy to pay her $1250 per month. The court justified the award upon Shelley's lower earning capacity, her contribution to the marriage, her age, the length of the marriage, and current job prospects. Randy argues, in part, Shelley should be awarded, at most, three years of rehabilitative alimony of $500 per month.

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); *In re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989). Alimony is not an absolute right; an award depends on the circumstances of each particular case. *In re Marriage of Welchel*, 476 N.W.2d 104, 110 (Iowa App. 1991). 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). The discretionary award of alimony is made after considering the factors listed in Iowa Code section 598.21(3) (1995).

In determining the appropriateness of alimony, the court must consider (1) the earning capacity of each party, and (2) the present standards of living and ability to pay balanced against the relative need of the other. *In re Marriage of Estlund*, 344 N.W.2d 276, 281 (Iowa App. 1983). Self-sufficiency is the goal of rehabilitative alimony. *In re Marriage of Erickson*, 553 N.W.2d 905, 907 (Iowa App. 1996) (citing *In re Marriage of Francis*, 442 N.W.2d 59, 64 (Iowa 1989). In awarding rehabilitative alimony, an economically dependent spouse is supported during a limited period of re-education and retraining after a divorce, creating an incentive and

opportunity for that spouse to become self-supporting. *Erickson*, 553 N.W.2d at 907; *Francis*, 442 N.W.2d at 63.

At the time of trial, both parties were forty-three years old. Shelley was working approximately twenty hours per week at Vista Optical, earning $6.75 per hour. Randy was still employed at Cedar River Paper, earning a base salary of $41,329.60, plus bonuses and overtime pay. Shelley has roughly twenty years left before retirement. She is in good health and should be accorded the opportunity to cultivate new skills in an effort to make her self-sufficient. There is nothing in the record which indicates Shelley is not capable, through re-education or retraining, to become self-sufficient. To burden Randy with permanent alimony under these facts serves no greater purpose than to keep Shelley economically dependent on a former spouse. We thus modify the alimony award and grant Shelley rehabilitative alimony in the amount of $1250 per month for six years.

II. Property division. The parties to a marriage are entitled to a just and equitable share of the property accumulated during the marriage. *In re Marriage of Starcevic*, 522 N.W.2d 855, 857 (Iowa App. 1994). The equitable distribution of property should be made in consideration of the criteria codified under Iowa Code section 598.21. *Id.* at 857.

One factor the court considers in making an equitable division of property is what each party brought to the marriage. Premarital assets, unlike gifted and inherited

property,[1] are subject to division. *See* Iowa Code § 598.21(1)(b); *Brainard*, 523 N.W.2d at 616.

In 1991, Randy inherited $20,000 from his mother. He placed the money in a mutual fund, held jointly with Shelley. The court awarded the mutual fund to Randy but did not set it off as inherited property. We find, given the recent date which the money was inherited and that it was substantially segregated from the marital assets, it should have been set off to Randy. However, this does not require any dollar amount to shift from Shelly to Randy, as the equities are balanced with the modifications made with the alimony and lien provision on the home.

Shelley was awarded the marital home subject to a $17,500 lien in Randy's favor upon its sale, which sale was ordered by the court solely at Shelley's discretion. Randy complains the marital home should be sold immediately so that he can recover his equity and use or invest it as he sees fit. We find merit in Randy's position. To allow Shelley to have control over Randy's equity puts undue restraints on Randy's ability to control his own investment. To remedy this situation, we modify by ordering Shelley to pay to Randy, within thirty days of the final alimony payment, $17,500. No interest shall accrue on this lien, provided it is paid when due.

III. Appellate attorney fees. Shelley requests she be awarded appellate attorney fees. An award of attorney fees is not a matter of right, but rests within the

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[1] Gifted and inherited property is not subject to division unless a the court finds to not do so would be inequitable. Iowa Code § 598.21(2).

court's discretion. *In re Marriage of Gilliam*, 525 N.W.2d 436, 439 (Iowa App. 1994). We are to 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 obligated to defend the trial court's decision on appeal. *In re Marriage of Roberts*, 545 N.W.2d 340, 345 (Iowa App. 1996). We determine each party must pay their own appellate attorney fees. Costs are assessed to Shelley.

Having carefully considered all arguments before us on appeal, we affirm as modified.

AFFIRMED AS MODIFIED.