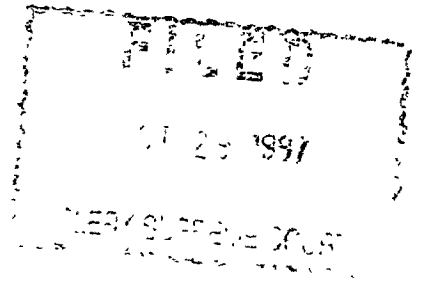


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IN THE COURT OF APPEALS OF IOWA

No. 7-346 / 96-0958

Filed 10/29/97



**IN RE THE MARRIAGE OF CAROL J. BARNHART
and LOREN G. BARNHART**

Upon the Petition of
CAROL J. BARNHART,
Appellee,

And Concerning
LOREN G. BARNHART,
Appellant.

Appeal from the Iowa District Court for Linn County, August F. Honsell,
Judge.

Loren Barnhart appeals from economic provisions of the parties' dissolution
decree. **AFFIRMED.**

Richard L. Boresi of King, Smith & Boresi, Cedar Rapids, for appellant.

Franklin R. York of Ackley, Kopecky & Kingery, Cedar Rapids, for appellee.

Considered by Sackett, P.J., and Streit and Vogel, JJ.

STREIT, J.

On appeal, respondent, Loren G. Barnhart, challenges the equity of the trial court's division of the parties' assets. Loren asserts petitioner, Carol J. Barnhart, was improperly awarded alimony, homestead, and cemetery lots, and the court erred in assessing his U.S. savings bonds at their face value. After de novo review, we affirm.

I. Scope of Review.

Review of an equitable action is de novo. Iowa R. App. P. 4; *In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa App. 1995). The appellate court is not bound by the district court's findings of fact, but does give deference to them because of the court's opportunity to view the demeanor of the witnesses firsthand. *Id.*; *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992).

II. Background Facts and Proceedings.

Carol and Loren Barnhart were married on August 1, 1959. Carol is fifty-five; Loren is fifty-six. They have been separated since October 30, 1994. Since the separation Carol has lived at the family residence in Marion, Iowa. The parties agree the residence has a market value of \$70,000 to \$80,000. Carol was awarded the family residence by the trial court's decree filed April 30, 1995.

During the marriage the couple acquired assets in addition to the house. Of those assets, cemetery lots, valued at \$500, and U.S. Savings Bonds, valued at \$8,050,

are in dispute. The trial court awarded the cemetery lots to Carol and the bonds to Loren.

After examining the factors set forth in Iowa Code section 598.21(3), the trial court awarded Carol alimony in the amount of \$250 per month for ten years in addition to her property distribution. In awarding alimony, the court considered, among other factors, the parties' gross incomes, earning capacity, and past employment history. In 1995, Carol's income was \$29,048 compared to Loren's income of \$38,892. Throughout the marriage Carol had primary responsibility for household duties and raising the couples' children. She held part-time jobs while she was a homemaker. Loren has been a general machine operator at Cedarapids, Inc. for thirty years.

III. Alimony.

Loren contends Carol is not entitled to alimony.

Alimony is not a right, rather, an award depends upon the circumstances of each case. *In re Marriage of Miller*, 532 N.W.2d at 162. It is sometimes used to remedy the inequities in a marriage and to compensate a spouse who leaves the marriage at a financial disadvantage. *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993); *In re Marriage of Earsa*, 480 N.W.2d 84, 86 (Iowa App. 1991). Appellate courts have affirmed awards of alimony in combination with a substantially equal property distribution following marriages of long duration. *See In re Marriage of Hitchcock*, 309 N.W.2d 432, 438 (Iowa 1981). 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).

The discretionary award of alimony is made after considering the factors listed in Iowa Code section 598.21(3).¹ See *In re Marriage of Hayne*, 334 N.W.2d 347, 350 (Iowa App. 1983). In addition to the statutory factors, the court considers the parties' present standard of living and balances the former spouse's ability to pay alimony against the other's needs to receive alimony. See *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa App. 1991).

Carol and Loren were married over thirty-five years. During the marriage, Carol had primary responsibility for raising the children and for the household duties. She worked part time in addition to her family duties, but did not enter the workforce full time until 1976. As a full-time employee, Carol earns less now than she would if she would have concentrated her energies on her career. Part of Loren's success as an employee is attributable to Carol's efforts in caring for the family and home. Carol will encounter new expenses after the divorce.² We find these new expenses relevant

¹ Among those factors are the length of the marriage; the property brought to the marriage by each party; the contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services; the age and physical and emotional health of the parties; the contribution by one party to the education or increased earning power of the other; and the earning capacity of each party. The court may also consider "other factors the court . . . determine[s] . . . relevant in an individual case." Iowa Code Section 598.21(3)(1997).

² Under Iowa Code section 598.21(3) a court may consider "other factors the court . . . determine[s] . . . relevant in an individual case."

to our determination. Because she can no longer obtain health insurance through Loren's employer, she has to purchase her own. Carol also has to pay for eyeglasses and dental work previously paid for by Loren's insurance.

After de novo review, we find the trial court correctly awarded Carol alimony. Carol needs alimony during the transition from a \$70,000 per year household to a \$30,000 per year household. Her need will dissipate as Carol adjusts to her new life. Although both parties will have to adjust to living with less, it will be easier for Loren whose salary exceeds Carol's by about \$9000. Loren has the ability to pay Carol alimony during this period in the parties' lives.

IV. Homestead & Cemetery Lots.

Loren contends the court improperly awarded Carol the family home and the cemetery plots.

Partners to a marriage are entitled to a just and equitable share of property accumulated through their joint efforts. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). Iowa courts do not require an equal division or percentage distribution, rather, the determining factor is what is equitable in each circumstance. *Id.* The trial court has discretion to divide the assets in an equitable manner. *In re Marriage of Hass*, 538 N.W.2d 889, 892 (Iowa App. 1995). When making the distribution, a court should consider the factors set out in Iowa Code section

598.21(1) (1997).³ *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983).

After review of the statutory factors, we affirm as equitable the trial court's award of the homestead to Carol. Although the division of assets appears equal in monetary value, the character of the assets is different. Loren has a larger pension than Carol, a considerable money market account, and other future interests Carol does not have. Because of the character of Loren's assets and his larger earnings, he is in a better financial position than Carol to establish a new residence. Loren has already lived at another residence for over a year. Carol has no where to live other than the family home.

Loren asserts he should be awarded the home because it was his continuous employment that allowed the parties to pay off the mortgage in comparison with Carol's "sporadic employment." The record shows Carol, although not employed full time outside the home, worked full time raising her children, maintaining a household, and holding down a part-time job. Carol's contribution to the marriage will not be devalued. Loren asserts Carol should not have the house because she gained control of the family home by kicking Loren out of the house. His brief

³ Among those factors are: the length of the marriage; the property brought to the marriage by each party; the contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services; the age and physical and emotional health of the parties; the earning capacity of each part; the amount and duration of an order granting support payment; other economic circumstances of each party, including pension benefits and future interest; and other factors the court may determine to be relevant in an individual case.

attempts to insert fault by claiming this was “less than honorable. . . .” We will not saunter down such a path. The award of the home to Carol was warranted.

In regard to the cemetery lots, neither party presented compelling arguments as to why he or she should be awarded the lots. The award of the lots to Carol will not be changed on appeal.

V. The Value of U.S. Savings Bonds.

Loren contends the trial court improperly assessed the value of U.S. savings bonds at their face value. The bonds were awarded to Loren. He requests the appellate court take judicial notice that U.S. savings bonds are purchased for one-half their face value and take from twelve to eighteen years to mature.

The court could take judicial notice of the value of U.S. savings bonds bought in a certain year. A court can take judicial notice of facts when they are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Iowa R. Civ. P. 201(b) (West 1997). The value of U.S. savings bonds is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.⁴

This court will not take judicial notice of the value of the U.S. savings bonds in this case, however. Loren’s asserts on appeal the trial court valued the U.S. savings

⁴ One can ascertain the value of U.S. savings bonds by referencing the *Tables of Redemption Values for United States Savings Bonds*, (series EE or series E). The reference tables are published by the U.S. Department of Treasury and copies of the tables can be accessed at The Iowa State Law Library.

bonds incorrectly. However, the trial court merely assigned the value to the bonds that Loren testified the bonds were worth in his sworn financial affidavit.⁵ Loren presented no evidence to the trial court the value of the bonds were different than his affidavit as reflected by redemption tables. He did not ask the trial court to take judicial notice of the value of the bonds based on the redemption tables. The fundamental rule is that error not preserved is waived. *See State v. Heacock*, 521 N.W.2d 707 (Iowa 1994). Further, he did not refer to the redemption tables in his appellate brief, provide this court with copies of the redemption tables to calculate the value of the bonds, or suggest the assigned value the bonds should have. He merely asked this court to take judicial notice of an assumption that it is commonly known that U.S. savings bonds are purchased for less than their face value. Taking notice of this fact would not help determine the actual value of the bonds in this case. Although value of U.S. savings bonds of a certain year are factual matters a court could take judicial notice of by looking to a redemption table, Loren did not make the showing needed for judicial notice of the value of the bonds in this case.

In light of the evidence on the record, the trial court's assessment of the bonds at face value will not be modified.

⁵ In Loren's February 15, 1996 affidavit Loren testified the bonds were worth a market value and net value of \$8,000.

VI. Attorney Fees.

Carol contends Loren should pay for the attorney fees she spent defending the trial court's judgment on appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Kern*, 408 N.W.2d 387, 390 (Iowa App. 1987). In deciding to award attorney fees on appeal, the court considers "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 Starcevic*, 522 N.W.2d 855, 857 (Iowa App. 1994). In light of the income differences, Carol's success on appeal, and her defending the trial court's decision on appeal, attorney fees of \$750 shall be paid by Loren to Carol.

AFFIRMED.