

IN THE COURT OF APPEALS OF IOWA

No. 7-095 / 96-704

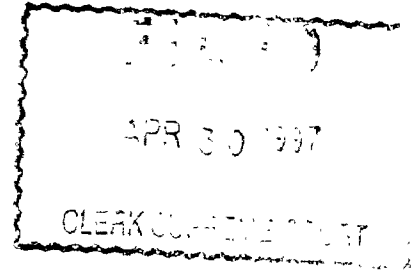
**IN RE THE MARRIAGE OF BETTY JO KAISAND
AND DENNIS LEE KAISAND**

Upon the Petition of
BETTY JO KAISAND,

Petitioner-Appellee/Cross-Appellant,

And Concerning
DENNIS LEE KAISAND,

Respondent-Appellant/Cross-Appellee.



Appeal from the Iowa District Court for Jasper County, James W. Brown,
Judge.

The respondent appeals, and petitioner cross-appeals, various economic
provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Lee M. Walker of Walker, Knopf & Billingsley, Newton, for appellant.

James W. Cleverley, Jr. of Johnson & Cleverley, Newton, for appellee.

Heard by Sackett, P.J., Cady and Vogel, JJ.

CADY, J.

Dennis and Betty Kaisand appeal from the economic provisions of their dissolution decree. The parties were married on March 17, 1979. They had no children during the marriage, though both have children from previous marriages. At the time of the trial Betty was forty-five years of age and Dennis was forty-six.

Betty entered the marriage with \$24,000 in debt and approximately \$5000 in assets. Dennis entered the marriage with approximately \$24,000 in assets, much of it farm machinery. He also had an option to purchase a farm from his parents.

During the marriage, the parties paid \$18,000 plus interest to Dennis' parents toward the purchase of a farm now occupied by Dennis. The money to pay for this purchase came from joint marital funds. In January 1990, Dennis' parents forgave the remaining \$45,000 debt owed on the farm. The parties operated this farm for all but two years of their seventeen-year marriage. Both parties contributed to the operation of the farm. Betty, in particular, cleaned the house, cooked, mowed the yard, participated farming operation decisions, and performed farm chores. The parties borrowed money for the operation of the farm, and both were financially obligated for the debts against it. They also commingled their funds into a joint checking account until the last six years of the marriage, at which time each opened separate accounts.

The parties separated in 1995. Betty moved off the farm and rented an apartment in town. In order to help finance her move, Betty cashed in an IRA with

a value of \$2834. Dennis sold cattle after the parties' separation at a value of \$7802.90 and retained the proceeds.

Betty obtained employment at Tri County Credit Union during the marriage and has worked there for ten years, earning \$1328.78 per month. Dennis has been employed at Maytag for twenty years, and earns a net monthly income of \$2480.67. Each party has a pension fund, with Betty's valued at \$18,413.22, and Dennis' valued at \$41,865.48.

Betty filed a petition for dissolution on September 6, 1995. The district court entered its decree awarding Dennis property valued at \$147,704, exclusive of the value of the farm, while Betty received property valued at \$45,523. At the time of trial the farm was valued at \$204,000 less approximately \$90,000 owed on the property. In order to even out the distribution, Dennis was ordered to pay Betty \$80,000, representing, in part, her equitable share in the 119 acre farm. Dennis was awarded seventy percent of the parties' tax return. Dennis was ordered to pay Betty \$200 per month in alimony for a period of eight years. He was also ordered to pay \$1000 toward Betty's attorney fees. Dennis filed a rule 179(b) motion. The district court modified the property award, ordering Dennis to pay Betty \$76,000 rather than \$80,000. The court further provided that alimony would terminate upon the death of either party during the eight-year period. Dennis has appealed, and Betty has cross-appealed.

Dennis argues the district court erred in awarding any alimony, since Betty came into the marriage with \$24,000 in debt and left with assets valued at \$121,523 and a new job. He requests, in the alternative, any alimony award be modified to end upon Betty's remarriage. He also maintains the district court erred in awarding Betty an interest in the family farm. Dennis claims his parents made a gift to him of this property prior to the marriage in the form of an option. He further maintains Betty did not contribute any funds to the farm operation or pay any related bills. Dennis lastly claims the court included various items of property as marital assets even though they were purchased prior to the marriage.

Betty contends the alimony award is insufficient. She further asserts the alimony should continue indefinitely until the death of either party.

I. Scope of Review

Our review is de novo. Iowa R. App. P. 4. We are required to examine the record made at trial and adjudicate anew the rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 449, 452 (Iowa 1981). We give weight to the fact findings of the district court, especially in determining the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. Property Division

Dennis contends the district court erred in awarding Betty an interest in the family farm and including the value of certain farm equipment he owned prior to the marriage in the marital assets. We affirm the trial court's property division.

The division of property in a dissolution of marriage is based on each partner's right to a just and equitable share of the property accumulated as a result of their joint efforts. *In re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989). What is just and equitable in each particular case is determined after careful consideration of our statutory criteria. *In re Marriage of Robison*, 542 N.W.2d 4, 5-6 (Iowa App. 1995). This criteria includes the length of the marriage, property brought into the marriage, contributions of each party to the marriage, physical and emotional health of the parties, earning capacity of each party, economic circumstances of each party, tax consequences to each party, written agreements concerning the distribution of the property, and any other relevant considerations. Iowa Code § 598.21(1) (1995).

Property which was inherited by or gifted to a party prior to or during the marriage is set aside to that party unless it would be inequitable to the other party or the children. Iowa Code § 598.21(2) (1995). Thus, this property is not included in the division process. *See* Iowa Code § 598.21(1).

Dennis entered the marriage with an option to purchase the farm. During the term of the marriage the parties contributed \$18,000 plus interest to the purchase of the farm. We acknowledge, however, Dennis received a gift from his parents during the marriage in the form of forgiveness of the remaining \$45,000 debt owed against the farm.

Although part of the total value of the farm was a gift to Dennis, we agree with the trial court it is equitable for Betty to receive a portion of the value of the farm.

Betty contributed significantly to the longevity of the farming operation. She maintained the home located on the farm, performed chores around the farm, and participated in management decisions. The parties put at least \$63,000 into the house and farm equipment during the marriage. Furthermore, Betty worked at a credit union for the last ten years of the marriage and contributed her income to the marriage.

Additionally, we reject Dennis' claim that the value of the farm equipment he brought into the marriage should not be considered in the property division. The property brought into the marriage by each party is only a factor to consider in determining an equitable property division. Iowa Code § 598.21(1)(b). Other factors to consider include the length of the marriage, the contributions of each party to the marriage, and the earning capacity of each party. Iowa Code § 598.21(a),(c),(f). We again note the length of the marriage and Betty's contributions to the marriage and farm operation. It would be inequitable not to include the value of this equipment in the property distribution. *See also In re Marriage of Weinberger*, 507 N.W.2d 733, 735 (Iowa App. 1993)(In marriages of long duration where the earning disparity between the parties is great nearly equal property division may be appropriate).

III. Alimony

Alimony is an allowance to a spouse in lieu of the legal obligation for support established by the marriage. *In re Marriage of Misol*, 445 N.W.2d 411, 413 (Iowa App. 1989). It is not an absolute right, but depends upon the circumstances of each particular case. *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976). Like

the division of property, we consider a variety of factors. Iowa Code § 598.21(3). The property division made pursuant to Iowa Code section 598.21(1) is a factor we consider. *See* Iowa Code § 598.21(3)(c).

This is a marriage of long duration, which the parties leave with disparate earning capacities. Betty contributed to the accumulation of the assets and the farm operation. The division of assets, although equitable, favor Dennis. Under these circumstances, alimony is appropriate. *See In re Marriage of Beattie*, ___ N.W.2d ___, ___ (Iowa 1997).

We agree with the district court's decision to award Betty alimony of \$200 each month for eight years. However, we modify the decree to additionally provide that it shall terminate upon remarriage by Betty.

IV. Attorney Fees

Betty requests \$3600 in appellate attorney fees. An award of attorney fees is not a matter of right, but rests with the court's discretion and the parties' financial position. *In re Marriage of Kern*, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to consider the needs of the party making the request, the ability of the party to pay, and whether the party making the request was obligated to defend itself on appeal. *In re Marriage of Castle*, 312 N.W.2d 147, 150 (Iowa App. 1981). We order Dennis to pay \$1800 towards Betty's appellate attorney fee obligation. Costs are assessed to Dennis.

AFFIRMED AS MODIFIED.