

FILED

OCT 28 1987

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA**IN RE THE MARRIAGE OF CAROL J. HADLEY AND JOHN J. HADLEY**

Upon the Petition of)

101**CAROL J. HADLEY,**)Petitioner-Appellee/
Cross-Appellant,)

Filed October 28, 1987

And Concerning)

JOHN J. HADLEY,)Respondent-Appellant/
Cross-Appellee.)7-392
86-1469

Appeal from the Iowa District Court for Polk County (No. 50-29565),
Gene L. Needles, Judge.

Respondent husband appeals the decree dissolving the parties' marriage, contending that the property division is inequitable, that the trial court should not have awarded petitioner wife alimony, and should have required petitioner wife to pay half of the children's transportation expenses for his visitations with them. Petitioner wife cross-appeals, asserting that the property division is inequitable, that the alimony and child support awards are inadequate, and that the trial court should have awarded her attorneys fees. She also requests attorney fees on appeal. **AFFIRMED.**

John R. Sandre of Scalise, Scism, Sandre & Uhl, Des Moines, for appellant.

David L. Brown of Hansen, McClintock & Riley, Des Moines, for appellee.

Considered by Oxberger, C.J., and Donielson and Sackett, JJ. Snell, J.,
takes no part.

PER CURIAM

The parties to this appeal, John and Carol Hadley, were granted a dissolution of their marriage by the District Court for Polk County on September 3, 1986. The district court, in those parts of the dissolution decree pertinent to our review, divided the marital property, imposed spousal and child support obligations upon John, established a visitation schedule, and held each party responsible for attorney fees. John has appealed and Carol has cross-appealed, each party taking issue with some part of the above-noted decretal provisions. Our review is de novo. Iowa R. App. P. 4. Although we are not bound by the district court's findings of fact, we give them weight, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7).

I.

Both parties maintain the district court fashioned an inequitable property division. John contends the district court incorrectly assessed the value of certain property and unjustifiably failed to take proper account of certain real estate expenditures he made prior to the parties' marriage. He argues the value of these prenuptial outlays should be set aside to him. Carol contends the court erred in setting aside to John gifts received from his parents and in awarding him his interest in both a corporation and a partnership. Carol argues such an award fails to properly recognize her contribution to these assets.

In reviewing a district court's division of marital property, we are guided by the criteria set out in Iowa Code section 598.21(1) (1985). We reaffirm our rejection of any rule based upon a percentage division of the assets. In re Marriage of Lattig, 318 N.W.2d 811, 814 (Iowa App. 1982). We are not bound to achieve a precisely equal division in awards of marital property. In re Marriage of Anderson, 243 N.W.2d 562, 564 (Iowa 1976). In general, the division of property is based upon each marital partner's right to a just and equitable share of the

property accumulated as a result of the efforts of both parties. In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1976). The controlling mandate is that courts achieve an equitable and just award under the circumstances. In re Marriage of Wallace, 315 N.W.2d 827, 831 (Iowa App. 1981).

John claims the district court incorrectly valued both a corporation in which he maintained an interest and the principle asset of a partnership in which he participated. The district court placed a value of \$50,000 on a corporation that John co-owned with his mother. At trial John variously stated his interest in the corporation to be 75% and 6/11ths. The district court awarded Carol \$7,000 as her interest in John's share of the corporation. The evidence establishes that, at the time of trial, there was \$10,000 in the corporation's checking account. The corporation generated gross income of \$63,477 and \$76,571 during the fiscal years ending in 1984 and 1985, respectively. With respect to the challenged value of the partnership asset, certain real estate, John testified to a market analysis which placed its value at between \$45,000 and \$47,000. Carol testified that it at one time was listed for sale for \$79,000. The district court valued the property at \$65,000, calculated its equity to be \$43,000, concluded that John possessed a one-half interest in that equity, and awarded Carol one-half of John's interest. We think the court's valuation of those assets was well within the permissible range of the evidence and are not persuaded to disturb those valuations on appeal. In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984).

John maintains the district court erred in failing to set off to him the value of certain expenditures he made in real estate prior to the parties' marriage. Shortly before the parties' marriage, John made down payments on both the marital homestead and a ten-acre tract in Warren County, Iowa. He now asks that those down payments be set aside to him. The record establishes that

Carol contributed substantially to the nine-year marriage as a homemaker and primary caretaker of the parties' three children. We have stated that "[w]here a party contributes significantly to the marriage, those efforts should be recognized when the property is distributed." In re Marriage of Lattig, 318 N.W.2d 811, 816 (Iowa App. 1982). Although in dividing marital property a court is required to consider property brought to the marriage by each party, Iowa Code § 598.21(1)(b) (1985), a court is not required to set such property aside to that party. Compare Iowa Code § 598.21(2) (1985) (gifted and inherited property set aside unless inequitable to do so). The benchmark remains the demands of equity in each situation. In re Marriage of Wallace, 315 N.W.2d at 831. We do not think equity was insulted by the district court's failure to set aside John's down payments.

Carol believes the district court erred in not attaching sufficient weight to her contribution to the home and to John's business endeavors. We find a dearth of evidentiary support of this claim. A similar quantity of evidence supports her claim that the district court erred in awarding John certain gifts from his parents and a future interest in his mother's home. We are persuaded of the substantial equitableness of the district court's property division and are not inclined to disturb it.

II.

John contends the district court erred in awarding Carol alimony; Carol counters by maintaining that the award, obviously appropriate in nature, was woefully inadequate in amount. We are informed by both the cases and Iowa Code section 598.21(3) that the payment of alimony is not an absolute right; it is awarded out of fairness, according to the particular facts of the case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976); Iowa Code § 598.21(3) (1985). When determining the appropriateness of alimony, the trial court must

consider the earning capacity of each party, present standards of living, and ability to pay balanced against the relative needs of the other. In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983).

John's argument is grounded in his claim that Carol did not request alimony. Such a request is not a necessary precursor to the award of alimony. Hopping v Hopping, 233 Iowa 993, 1003, 10 N.W.2d 87, 90 (1943); see Iowa Code § 598.21(3) (1985). In addition, the record demonstrates the parties were aware that the propriety of alimony was an issue to be determined at trial. We think the district court's award of \$100 per month for five years was appropriate and, contrary to Carol's assertions, adequate. We accordingly affirm.

III.

John maintains that Carol, the physical custodian of the parties' children, should be required to contribute fifty-percent of the transportation costs associated with John's exercise of his visitation rights. The district court's decree provides that "each party will be required to provide transportation for the children any time they exercise visitation." This is an equitable resolution of the matter with which we are not disposed to alter.

IV.

Carol maintains the district court imposed an inadequate child support obligation on John. That obligation is in the amount of \$45 per child per week. We must consider the factors enumerated in Iowa Code section 598.21(4) (1985) to determine the propriety of an award of child support. While both parties have an obligation to support their children, this obligation is not necessarily to be borne equally by them. It should be apportioned according to the fair ability of each to contribute. In re Marriage of Bornstein, 359 N.W.2d 500, 504 (Iowa App. 1984). In light of the relative circumstances of the parties,

we think the district court's award of child support was reasonable and, therefore, affirm.

V.

Carol maintains the district court erred in failing to award her attorney fees. Recognizing that the district court is vested with considerable discretion in such matters, In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983), we are not persuaded to interfere with the district court's judgment in the present case.

Carol requests attorney's fees for this appeal. In evaluating such a request, we 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 Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). We conclude that the parties should be responsible for their respective attorney's fees incurred upon this appeal. See In re Marriage of Pittman, 346 N.W.2d 33, 37 (Iowa 1984). Costs are assessed one-half to each party.

AFFIRMED.