

IN THE COURT OF APPEALS OF IOWA

No. 7-075 / 96-0310

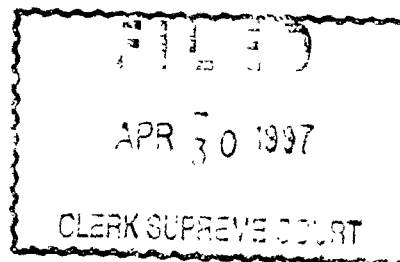
IN RE THE MARRIAGE OF CHARLES
W. HAY AND BARBARA J. HAY

Upon the Petition of
CHARLES W. HAY,

Appellee/Cross-Appellant,

And Concerning
BARBARA J. HAY,

Appellant/Cross-Appellee.



Appeal from the Iowa District Court for Black Hawk County, Jon C. Fister,
Judge.

Respondent appeals and petitioner cross-appeals from various economic
provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Joseph R. Sevcik and L. Don Snow of Snow, Knock, Sevcik & Betterton,
Cedar Falls, for appellant.

R. James Sheerer of Correll & Sheerer, Cedar Falls, for appellee.

Heard by Habhab, C.J., and Huitink and Streit, JJ.

HABHAB, C.J.

Charles and Barbara Hay were married on February 16, 1962. Barbara was fifty-three years of age at the time of trial and Charles was fifty-seven. Charles was employed at John Deere at the time of trial and had been employed there since 1964. He earned approximately \$58,000 in 1995. During the marriage he also worked on the farm land and other property owned by the parties. Charles is in generally good health, although he did have hip replacement surgery and heart problems.

Barbara sporadically worked a variety of jobs during the marriage. At the time of trial she was employed part-time at the Area Education Agency 7 during the school year. She earns slightly more than \$6500 per year from this position. Barbara has had a number of surgeries, but is otherwise in good health.

During the course of the marriage, the parties purchased an eighty-acre farm from Barbara's father for \$48,000. The title of the farm was held in joint tenancy by the parties. In 1989, Barbara's father forgave \$30,000 of that debt. In 1991, Barbara received a \$157,000 inheritance from her father's estate. The \$157,000 amount was offset by the gifted amount of \$30,000 in 1989.

After the payment of inheritance tax, Barbara netted approximately \$120,000 in inheritance. She gave approximately \$20,000 to the parties' children. She spent the balance of her inheritance and purchased significant assets, including a home in Arkansas, a van, camper, riding lawn mower, and many other items. The Arkansas home and the van was placed in joint tenancy by the parties.

In the final dissolution decree, the district court awarded Barbara the eighty-acre farm, the Arkansas home, her IPERS account, life insurance policies, the trailer, and the Pioneer fund valued at \$24,057. She also received the van, a 1988 Eagle wagon, a camper, her computer, video equipment, jewelry, and other items of personal property. Barbara was ordered to pay various credit card debts and loans as well as the debts associated with the property awarded to her.

Charles was awarded a forty-acre parcel of land, his pickup, his life insurance policies, his 401K plan valued at \$22,916, his John Deere pension valued at \$81,056, and various equipment and personalty. Charles was ordered to pay a \$9000 loan owed by the parties, his credit card debt and all debts associated with the property awarded to him. Charles was further ordered to pay Barbara \$600 per month in spousal support until she dies or remarries or he until retires from John Deere.

Barbara appeals. Charles cross-appeals.

Barbara contends the district court erred in failing to award her a portion of Charles' retirement benefits from John Deere. She asserts the district court also erred in treating only the assets directly traceable to her inheritance as inherited property and in treating the remainder as joint marital assets. Barbara next claims she should be awarded spousal support in the amount of \$1100 per month until she receives social security, at which time she asserts the amount of social security received should be offset against Charles' spousal obligation.

In his cross-appeal, Charles contends the district court erred in setting aside certain marital assets to Barbara. He maintains the home in Arkansas and the conversion van were jointly held and their combined value of \$29,000 should have been divided equally. Charles maintains the district court erred in awarding Barbara \$600 per month in alimony. He proposes spousal support be set at \$350 per month for thirty-six months.

As this is an equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew the rights of the parties on the issues properly presented. *In re Marriage of Stark*, 542 N.W.2d 260, 262 (Iowa App. 1995). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. *Id.*; Iowa R. App. P. 14(f)(7).

I. Division of Property. It is a fundamental principle that parties to a marriage are entitled at the time of a divorce to a just and equitable share of the property accumulated from their joint efforts. *In re Marriage of Wiedemann*, 402 N.W.2d 744, 747 (Iowa 1987). What constitutes a just and equitable award depends on the particular circumstances of each case after consideration of all the recognized criteria. *In re Marriage of Hanson*, 475 N.W.2d 660, 662 (Iowa App. 1991); see Iowa Code § 598.21(1) (1995). The division of marital debts inheres in the property division. *In re Marriage of Johnson*, 299 N.W.2d 466, 467 (Iowa 1980).

Iowa Code section 598.21(1) states, "the court shall divide all property, except inherited property or gifts received by one party, equitably between the parties." In determining whether inherited property is divisible as marital property, the controlling factors are the intent of the donor and the circumstances surrounding the inheritance or gift. *In re Marriage of Liebich*, 547 N.W.2d 844 (Iowa App. 1996). Placing inherited property into joint ownership does not, in and of itself, destroy the separate character of the property. *Id.*

In our de novo review of the record, we find the district court's division of marital property and debt to be equitable and will enable each party to enjoy a secure retirement. Moreover, we find the district court did not err in its award of \$85,000 in property and relief from joint marital debt to Barbara in light of her inheritance.

II. Alimony. 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). Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *Id.* "The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3)." *Stark*, 542 N.W.2d at 262; see *In re Marriage of Hayne*, 334 N.W.2d 347, 350 (Iowa App. 1983). The ability of one spouse to pay alimony must be balanced against the needs of the other spouse. *Stark*, 542 N.W.2d at 262. The division of property is also considered. See *In re Marriage of McFarland*, 239 N.W.2d 175, 179 (Iowa 1976).

In our de novo review of the record and after considering the factors listed in Iowa Code section 598.21(3), we affirm the trial court's award of alimony to Barbara. However, we modify the decree to the extent that alimony of \$600 per month shall be paid until Barbara attains the age of sixty-two years. At that time monthly alimony shall continue and be paid in an amount equal to the difference between \$600 and the amount Barbara is entitled to receive in Social Security benefits. However, alimony payments shall terminate on the death of either party or upon the remarriage of Barbara.

AFFIRMED AS MODIFIED.