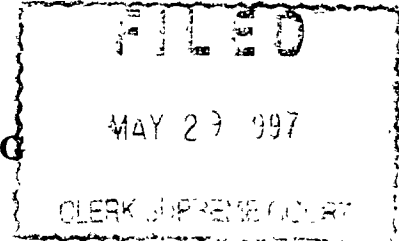


IN THE COURT OF APPEALS OF IOWA

000143

No. 6-693 / 95-1569

**IN RE THE MARRIAGE OF DANIEL L. EKSTROM
AND TERRI A. EKSTROM n/k/a TERRI A. KNUDSVIG**



Upon the Petition of
DANIEL L. EKSTROM,
Petitioner-Appellee,

And Concerning
TERRI A. EKSTROM n/k/a TERRI A. KNUDSVIG,
Respondent-Appellant.

Appeal from the Iowa District Court for Black Hawk County, James L.
Beeghly, Judge.

Terri A. Ekstrom n/k/a Knudsvig appeals from the provisions of the parties'
dissolution decree. **AFFIRMED.**

Jay P. Roberts and Carter J. Stevens of Beecher, Rathert, Roberts, Field,
Walker & Morris, P.C., Waterloo, for appellant.

David H. Correll of Correll & Sheerer, Cedar Falls, for appellee.

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

HUITINK, P. J. 000144

Respondent Terri A. Ekstrom n/k/a Terri A. Knudsvig appeals the district court's property division in its decree dissolving her marriage to the petitioner Daniel L. Ekstrom. She also argues the court erred in failing to award her alimony. We affirm.

I. Background Facts and Proceedings.

Terri, age forty-four, and Daniel, age forty-six, were married in July 1982. Terri has two grown children from a previous marriage, Tony and Tara.

Terri began working at the Area Education Agency VII in Cedar Falls as a full-time teacher's aid in 1973. In 1987, she became a certified respiratory therapy technician. She completed an internship at Allen Memorial Hospital and has been employed there since that time. She worked part-time until June 1995 when she began full-time employment. She earns \$25,000 per year.

Daniel has a bachelor of science degree in psychology and sociology, a master of science degree in school psychology, and a education specialist degree. At the time of the marriage, he was employed at the Area Education Agency VII as a school psychologist. He is currently employed at the Cedarloo Psychiatric Clinic as a licensed psychologist. Daniel also works as an independent contractor with the Iowa Department of Health and Human Services. His combined earnings total \$73,000 per year.

When the parties married, Daniel moved into Terri's home in Waterloo and together they refurbished the home. The home was sold in 1992 for \$35,000 and their \$11,900 equity was applied to the purchase of a new home in Cedar Falls. The purchase price of the new home was \$74,000. The parties made approximately \$20,000 worth of improvements to the home during the marriage. The parties also purchased a cabin in Wisconsin from Daniel's parents for \$44,000. They also made improvements to that property.

The trial court awarded Daniel the cabin in Wisconsin valued at \$64,000. He also received three vehicles, a motorcycle, two boats, a canoe, IPERS retirement funds valued at \$6226, his Cedarloo pension valued at \$13,343, and the John Deere Credit Union savings and checking accounts totaling \$4214. He was also awarded a \$5000 inheritance from his grandmother and \$3530 of other miscellaneous property. Daniel's net property award was \$108,836.

Terri received the homestead valued at \$70,750, IPERS retirement funds valued at \$2277, her Allen Hospital retirement savings valued at \$4968, funds held in various bank accounts, and other miscellaneous property. The court set off \$18,800 to Terri as a premarital adjustment. This amount included the \$11,900 in home equity she brought to the marriage. Terri's total net property award equaled \$79,476. The court equalized the disparity in the net awards by ordering Daniel to pay Terri \$14,681.

Terri's request for alimony was denied. Each party was ordered to pay his or her own attorney fees.

Terri appeals challenging the valuation of several items of premarital and marital property. She contends the actual difference in the property awards was \$114,513. She therefore demands a cash payment of \$57,256.50 instead of \$14,681. Terri also requests \$500 to \$750 monthly alimony. Daniel cross-appeals arguing the court failed to give him credit for his premarital IPERS earnings.

II. Standard of Review.

Our review of this equitable action is de novo. Iowa R.App.P. 4; *In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa App. 1995). We are not bound by the district court's findings of fact, but we do give them deference because the district court had the opportunity to view, firsthand, the demeanor of the witnesses while testifying. *Id.*; *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992).

III. Property Division.

Terri argues the property division is inequitable because the district court: (1) undervalued the equity in the homestead; (2) undervalued household goods and furnishings she brought to the marriage; (3) failed to consider the employer's contribution to Daniel's IPERS account; (4) overvalued the Cedar Falls residence awarded to her; (5) undervalued the Wisconsin home awarded to Daniel; and (6) awarded a \$5000 inheritance to Daniel when it was intended for both parties.

The partners to a marriage are entitled to a just and equitable share of the 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. *Id.* The determining factor is what is fair and equitable in each circumstance. *Id.* The distribution of the property should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1991). *See In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983).

The purpose of determining the value of the parties' assets in a marriage dissolution is to assist the court in making equitable property awards and allowances. *In re Marriage of Steele*, 502 N.W.2d 18, 21 (Iowa App. 1993). It is the province of the trial court to determine the value of marital property and the trial court cannot delegate this responsibility to the parties. *In re Marriage of Dennis*, 467 N.W.2d 806, 808 (Iowa App. 1990).

Iowa law does not give credit to a party for the value of the property owned prior to the marriage. *In re Marriage of Brainard*, 523 N.W.2d 611, 616 (Iowa App. 1994). Instead, the property brought to the marriage by each party is a factor to consider together with the other relevant factors in determining an equitable property division. *Id.*; Iowa Code § 598.21(1)(b) (1995). However, if the marriage is of short duration, the claim of either party to the property owned by the other party is minimal at best. *In re Marriage of Hass*, 538 N.W.2d 889, 892 (Iowa App. 1995).

Terri asserts the court improperly credited her for only \$11,900 equity in the parties' original homestead. She claims she had \$16,500 equity in the home at the start of the marriage. She also contends the trial court undervalued the household furnishings set off to her as part of her premarital adjustment.

We reject Terri's arguments on both issues. Terri concedes that at the time of sale, the equity in the home had decreased. It is the net worth of the parties at the time of trial which is relevant in adjusting their property rights. *In re Marriage of Klein*, 522 N.W.2d 625, 628 (Iowa App. 1994) (citations omitted). Accordingly, we find the court used the appropriate figure to credit Terri for her contribution to the home equity. We also reject Terri's demands for credit for household furnishings she brought into the marriage. The amount set off to her is reasonable and we affirm on this issue.

The parties stipulated that one-half of their respective IPERS accounts should be considered marital property. However, Terri argues the court erred in failing to include the employer's contributions in both pensions. Daniel cross-appeals asserting the premarital IPERS funds set off to him as part of his premarital adjustment are too low

Pension benefits are proportionally divided to provide the parties with an equitable share of retirement security earned during the marriage. A division of benefits is unnecessary if this objective is met by awarding each party their

individually acquired benefits and if the division of other assets reasonably accommodates any resulting disparity. Our review of the record indicates the district court's division of retirement benefits and other assets accomplishes these objectives.

We also reject Terri's claim to a portion of the \$5000 Daniel inherited from his grandmother. Generally, gifts or inheritances received by a party during the marriage are not subject to a property division unless the failure to do so would be inequitable to the other party. *In re Marriage of Steele*, 502 N.W.2d 18, 20 (Iowa App. 1993) (citing *In re Marriage of Oler*, 451 N.W.2d 9, 10-11 (Iowa App. 1989)). Terri has not shown that any unfairness results from awarding the entire amount to Daniel.

Finally, we address the arguments made in reference to the valuations of the Wisconsin and Cedar Falls properties. Terri argues the Wisconsin property awarded to Daniel should have been assessed a value of \$96,500. The trial court found the testimony of Daniel's expert to be more credible and assigned a value of \$64,000 to the cabin. Terri emphasizes Daniel's expert conceded that the property could potentially be valued in the range of \$90,000 to \$95,000. Terri's expert testified the property could sell for \$129,000.

Terri also contends the court incorrectly assessed the value of the Cedar Falls property awarded to her. The parties purchased the property in 1992 for \$74,000. Improvements were made to the home at a cost of approximately \$25,000. Daniel's expert opined that the home had a fair market value of \$140,000. The court again

found Daniel's expert to be more credible and assigned a value of \$135,000 (reduced by the outstanding mortgage of \$64,250 = \$70,750 net value). Terri asserts that in accordance with her expert's market analysis, the property should have been valued at \$105,000. We find the values placed on the real estate properties by the trial court to be well within the permissible range of evidence and we will not disturb them on appeal. See *In re Marriage of Bare*, 203 N.W.2d 551, 554 (Iowa 1973); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa App. 1984).

IV. Alimony.

Terri has requested she be awarded alimony in light of the advantages Daniel enjoys in earning capacity, education, and work experience. She asserts it is unlikely she will become self-supporting at a standard of living comparable to that enjoyed during the marriage. She also cites to her contributions as homemaker while working full-time as well as the property she brought into the marriage as reasons supporting an alimony award. Finally, Terri contends her current income is insufficient to meet her monthly expenses of \$2000. Terri asks that she be awarded rehabilitative alimony in the amount of \$500 - \$750 per month for five years.

Alimony is an allowance to the former spouse in lieu of a legal obligation to support that person. See *In re Marriage of Hitchcock*, 309 N.W.2d 432, 437 (Iowa 1981). When determining the appropriateness of alimony, the court must consider: "(1) the earning capacity of each party, and (2) present standards of living and ability

to pay balanced against the relative needs of the other.” *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa App. 1994); *In re Marriage of Estlund*, 344 N.W.2d 276, 281 (Iowa App. 1983) (citation omitted).

We consider alimony and property division together in assessing their individual sufficiency. They are neither made nor subject to evaluation in isolation from one another. *In re Marriage of McLaughlin*, 526 N.W.2d 342, 345 (Iowa App. 1994); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa App. 1984). An alimony award is justified when the distribution of the assets of the marriage does not equalize the inequities and economic disadvantages suffered in marriage by the party seeking the alimony who also has a need for support. *In re Marriage of Weiss*, 496 N.W.2d 785, 787 (Iowa App. 1992). The court should also consider the feasibility of the party seeking alimony becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. *In re Marriage of Debbler*, 459 N.W.2d 267, 270 (1990); Iowa Code § 598.21(3)(f).

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). Rehabilitative alimony is awarded to support an economically dependent spouse through a limited period of retraining. *Id.* The duration of this type of award depends on the particular needs of the dependent spouse. *Id.* at 63. Traditional or permanent

alimony in contrast is usually payable for life or for so long as the dependent spouse is incapable of self-support. *Id.* at 62.

The record indicates Terri is not in need of a period of retraining. Terri earned a degree in respiratory therapy during the marriage and increased her earning capacity. She is employed full-time in her profession at a reasonable salary. An award of rehabilitative alimony is accordingly unnecessary. We note Terri enjoys substantial financial security provided by virtue of her property award. We affirm on this issue.

V. Attorney Fees.

Daniel has requested \$2000 in appellate attorney fees. An award of attorney fees on appeal is not a matter of right, but rests within the court's discretion and the parties' financial position. *In re Marriage of Gilliam*, 525 N.W.2d 436, 439 (Iowa App. 1994). We find Daniel has sufficient resources to pay his own attorney fees. We order each party to pay his or her fees and we assess one-half of the costs of this action to each party.

AFFIRMED.