**IN THE COURT OF APPEALS OF IOWA**

FILED
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CLERK SUPREME COURT

No. 8-099 / 97-0986
Filed April 24, 1998

**IN RE THE MARRIAGE OF KAY EILEEN CORBIN AND RODNEY PAUL CORBIN**

Upon the Petition of
**KAY EILEEN CORBIN,**
Appellee,

And Concerning
**RODNEY PAUL CORBIN,**
Appellant.

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Appeal from the Iowa District Court for Fayette County, William G. Klotzbach, Judge.

Rodney Corbin appeals from the property and alimony provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

James S. Updegraff, West Union, for appellant.

Stephen D. Saunders of Clefisch & Saunders, Elkader, for appellee.

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

**STREIT, J.**

Rodney Corbin appeals from the trial court's division of assets acquired during the marriage and the trial court's award of alimony to Kay Corbin. Because of the disparity between the parties' earning capacity and health it was equitable for the trial court to award Kay a larger percentage of the property acquired during the marriage and to award Kay alimony. The alimony award is modified to continue only until Rodney's retirement.

## *I. Background Facts & Proceedings.*

Kay and Rodney Corbin were married February 15, 1969. They have four children over the age of eighteen who are not at issue in this appeal. Kay was fifty-one years old at the time of trial and Rodney was forty-six. Both have high school educations. Rodney is a long-haul truck driver. He was previously employed as a heavy equipment operator, at a car dealership, and at a gas station. Rodney's 1996 gross income was approximately $48,000. Kay was a homemaker and raised the parties' children. She also assisted with chores and bookkeeping for the parties' small farming operation.

The parties purchased their farm from Rodney's mother by contract in 1984. The conveyance was complete in 1995. The parties valued the farm at $32,000. In addition to the farm, Rodney has a $11,752 retirement account. Kay recently inherited approximately $30,000 from her father's estate. The parties have three vehicles, a tractor, and thirteen horses.

Rodney and Kay were divorced in April 1997. The parties' property was valued at approximately $76,797, excluding Kay's inheritance. Kay was awarded approximately $15,000 more in property than Rodney, including the family farm. The court ordered Rodney to pay Kay $500 per month in alimony, to be terminated only upon her death, remarriage, or cohabitation. After the divorce, Kay began working approximately forty-one hours per week at two part-time minimum-wage jobs. Rodney appeals the trial court's division of property and alimony provisions of the divorce decree.

***II. Standard of Review.***

Our review 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 when testifying. *Id.*; *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992). Even though our review is de novo, we accord the trial court considerable latitude in making this determination and will disturb the ruling only when there has been a failure to do equity. *In re Marriage of Wahlert*, 400 N.W.2d 557, 560 (Iowa 1987); *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996).

***III. Division of Property.***

Rodney argues the court's division of the marital estate was inequitable because Kay was awarded $15,000 more than him. Specifically, he contends he

should have been awarded the farm which his parents once owned. There is no evidence the farm was a gift from Rodney's parents to Rodney.

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 Gonzalez*, 561 N.W.2d 94, 98 (Iowa App. 1997). Iowa courts do not require an equal division of property. *Id.* The determining factor is what is fair and equitable in each circumstance. *Id.* The distribution of property is made in consideration of the criteria codified in Iowa Code section 598.21(1) (1997).[1]

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[1]a. The length of the marriage.

b. The property brought to the marriage by each party.

c. The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services.

d. The age and physical and emotional health of the parties.

e. The contribution by one party to the education, training or increased earning power of the other.

f. The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.

g. The desirability of awarding the family home or the right to live in the family home for a reasonable period to the party having custody of the children, or if the parties have joint legal custody, to the party having physical care of the children.

h. The amount and duration of an order granting support payments to either party pursuant to subsection 3 and whether the property division should be in lieu of such payments.

i. Other economic circumstances of each party, including pension benefits, vested or

Kay and Rodney were married for twenty-eight years. Kay spent those years raising the parties' children, taking care of the home, and doing farm chores. She did not work outside the home. She is now a fifty-one-year-old single person with no job experience and a minimum-wage earning capacity. Rodney's claim that Kay should be able to earn considerably more money at one full-time job in a factory or other place is not supported by credible evidence. She is in poor health and has considerable medical expenses. Kay is utilizing her meager earning capacity by working over forty hours per week at minimum-wage jobs. Rodney is younger than Kay, in better health than Kay, and has a much higher earning capacity than Kay. In 1996, he made over $45,000. He has established a residence separate from Kay.

Because of the disparity between the parties, it was equitable to award Kay the family farm and more assets than Rodney. Kay could not establish a new residence on her net income. After Rodney's obligation to provide Kay with insurance through COBRA ceases, she will be required to pay for medical insurance. Because of these

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unvested, and future interests.

j. The tax consequences to each party.

k. Any written agreement made by the parties concerning property distribution.

l. The provisions of an antenuptial agreement.

m. Other factors the court may determine to be relevant in an individual case. Iowa Code § 598.21(1) (1997).

considerations, we decline to disturb the property division of the trial court. *See In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996).

Rodney also argues the trial court erred by failing to discount the present value of his 401K fund, which he can not reach for several years. He suggests the asset be equally divided between the parties rather than crediting the asset to him. We find the value the trial court placed on the 401K fund to be well within the permissible range of evidence and we will not disturb it on appeal. *See In re Marriage of Gonzalez*, 561 N.W.2d 94 at 98.

***IV. Alimony.***

Rodney argues the court abused its discretion in awarding Kay permanent alimony. He argues Kay has the capacity to earn ten dollars per hour rather than the minimum wage she works at now. Kay contends she needs alimony because she is only capable of minimum-wage work and she cannot sustain her medical expenses without financial help. She argues Rodney has the ability to pay her the alimony awarded by the district court.

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 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).

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Miller*, 532 N.W.2d at 162; *In re Marriage of Whelchel*, 476 N.W.2d 104, 110 (Iowa App. 1991); *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976). The discretionary award of alimony is made after considering the factors listed in Iowa Code section 598.21(3) (1995). *See In re Marriage of Hayne*, 334 N.W.2d 347, 350 (Iowa App.1983). Traditional alimony analysis may be used in long-term marriages where life patterns have largely been set and the earning potential of both spouses can be predicted with some reliability. *In re Marriage of Francis*, 442 N.W.2d 59, 62-63 (Iowa 1989).

Rodney was forty-six and Kay was fifty-one at the time of trial. Kay is a high school graduate who has primarily been a homemaker during the marriage and has no specialized job experience or training. Karen has high blood pressure and diabetes mellitus. The cost of her insulin and high blood pressure medication is $90 per month. Her medical expenses will be $150 to $200 per month if she has no insurance. She earns approximately $708 net income per month.

Rodney earns $2375 net income per month. The district court ordered Rodney to continue Kay's health benefits under his present policy through COBRA for three years. Rodney was ordered to pay Kay $500 per month alimony, twenty-one percent of his net monthly income. Not considering the income tax on her alimony payments,

Kay will have approximately $1200 net income per month. The trial court's assessment of alimony and order concerning medical insurance is equitable under these circumstances. However, the alimony shall continue only until Rodney's retirement.

Kay requests attorney fees for this appeal. In deciding whether 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 disparity between the parties' incomes and in considering these other factors, Rodney is ordered to pay $1000 to Kay for appellate attorney fees.

**AFFIRMED AS MODIFIED.**