

FILED

SEP 25 1986

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

**IN RE THE MARRIAGE OF RICKY LAVERN PETERS AND
JOELLEN M. W. PETERS**

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**UPON THE PETITION OF
RICKY LAVERN PETERS,**

)

Filed September 25, 1986

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6-161
85-1238

Petitioner-Appellee,

)

**AND CONCERNING
JOELLEN M. W. PETERS,**

)

Respondent-Appellant.

)

Appeal from the Iowa District Court for Floyd County (No. 23456), Leslie L. Boomhower, Judge.

Respondent-wife appeals from the judgment and decree dissolving the parties' marriage and from an order overruling her motion for a new trial.
AFFIRMED IN PART AND REVERSED IN PART.

Roger L. Sutton, Charles City, for respondent-appellant.

William M. Frye of Erb, O'Donohoe & Frye, Charles City, for petitioner-appellee.

Heard by Oxberger, C.J., Schlegel, and Sackett, JJ.

OXBERGER, C.J.

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Respondent JoEllen Peters appeals from the decree dissolving the parties' marriage. She asserts that the trial court erred: (1) in failing to make an equitable division of property; (2) in failing to grant an adequate alimony award; and (3) in failing to require petitioner Rick Peters to pay her attorneys fees in full. We affirm in part and reverse in part.

I. Standard of Review

Our standard of review is *de novo*. Iowa R. App. P. 4. We review the facts and the law and determine anew the rights of the parties based upon credible evidence where issues have been properly presented and preserved. In re Marriage of Phipps, 379 N.W.2d 26, 27 (Iowa Ct. App. 1985). Although we give weight to the findings of the trial court, especially concerning the credibility of the witnesses, we are not bound by them. In re Marriage of Bornstein, 359 N.W.2d 500, 502 (Iowa Ct. App. 1984); Iowa R. App. P. 14(f)(17).

II. Division of Assets

JoEllen contends that the trial court erred in failing to follow the guidelines set forth in Iowa Code section 598.21(1)(1985). The crucial inquiry is whether the trial court's distribution of property is equitable given the circumstances of the case. In re Marriage of Wallace, 315 N.W.2d 827, 830 (Iowa Ct. App. 1980).

We first address the parties' dispute concerning the value of the property acquired after the date of the marriage. The trial court did not specify a value for these assets. JoEllen contends that the value totaled \$53,040, excluding the value of the car which she received. This figure includes the following items and subscribed values:

Growing crop with a value of	\$12,284.00
1984 Stored crop with a value of	15,000.00
Two cultivators with a value of	6,150.00
Value of loan reduction	\$11,000.00
Equity in house with a value of	3,038.00
Equity in motorcycle	1,500.00
Cash	4,068.00
TOTAL	\$53,040.00

Rick contends that the farm items should be segregated from this figure because the farm land is leased from his grandparents and because JoEllen did not participate in the generation of income from the farming operation. We disagree. Property accumulated during the marriage is to be divided in an equitable manner after an examination of the facts and circumstances. In re Marriage of Callenius, 309 N.W.2d 510, 514 (Iowa 1981). An important consideration in dividing such property is whether its acquisition was the result of the joint efforts of both parties. In re Marriage of Lattig, 318 N.W.2d 811, 815 (Iowa Ct. App. 1982). We find sufficient evidence in the record revealing JoEllen's contribution to the farming operation by virtue of Rick expending the couple's monetary assets to pay the farm debts.

An additional dispute in the division of the accumulated property concerns the value of the 1985 growing crop. JoEllen argues that \$12,284, the estimated income generated from the crop, should be included in the marital assets. Rick argues that because the parties were separated in September of 1984, only \$4088, the amount expended toward the production of the crop at the time of the trial, is properly included.

It is well settled that the net worth of the parties in a dissolution is determined at the time of trial. In re Marriage of Hitchcock, 309 N.W.2d 432, 434-35 (Iowa 1981); see also Locke v. Locke, 246 N.W.2d 246, 252 (Iowa 1976). Rick does not dispute the \$12,284 value subscribed to the 1985 growing crop by JoEllen. Accordingly, we think that this figure adequately represents the value of the crop as of November 1985, the time of the trial.

The parties also disagree as to the proper treatment of the debt reduction at the Alta Vista State Bank and the depreciation in the value of Rick's tractor and combine. Rick acknowledges that he used \$11,000 of marital funds to reduce the debt incurred on his farm machinery before the marriage. We think that this figure should be included in calculating the parties' assets. Rick argues that he has lost \$26,000 due to the depreciation of his tractor and combine since the date of the marriage. He contends that the value of his assets should be offset by this figure. We agree. But cf. In re Marriage of Lattig, 318 N.W.2d 811, 815 (Iowa Ct. App. 1982)(increase in value of accumulated property due to inflation not included as joint property). We think, however, that the \$11,000 expended to reduce the farm debt should be credited to Rick's net loss. Thus, we conclude that Rick has suffered a net loss of \$15,000.

A question has also been raised concerning whether Rick's potential worker's compensation claim is to be included in the parties' marital assets. Based upon our decision in In re Bornstein, 359 N.W.2d 500, 503 (Iowa Ct. App. 1984), we agree with Rick that the potential proceeds of this claim are not a proper consideration in determining the assets of the marriage. Similarly, we find that in the circumstances of this case, the possible future proceeds of Rick's pension plan are not to be included in the couple's assets. The facts disclose that Rick had only contributed to the pension for one month. Given this fact, the value of the pension at the time of the trial would be negligible and impossible to ascertain. Moreover, JoEllen provided no evidence as to the valuation of the pension. On these bases, we hold that it is properly excluded. See In re Marriage of Bevers, 326 N.W.2d 896, 900 (Iowa 1982).

Relatedly, we disagree with JoEllen's contention that the \$4086 which Rick held in a savings account at the time of trial is properly included as marital property. Based upon Iowa Code section 598.21(2)(1985), we agree with Rick's

contention that because he had a savings account in excess of \$4086 before the marriage, the account at the time of the trial should be offset by this amount. See also In re Marriage of Wallace, 215 N.W.2d 827, 831 (Iowa Ct. App. 1981).

We conclude that an equitable calculation of the property acquired through the joint efforts of the parties is as follows:

1985 growing crop	\$12,284.00
1984 Stored crop with net value of	15,000.00
Two cultivators valued at	6,150.00
Equity in house	3,038.00
TOTAL	<u>\$36,472.00</u>
LESS \$15,000 depreciation	<u>\$21,472.00</u>

It is at this juncture that we consider the factors enumerated in Iowa Code section 598.21(1)(1985) in arriving at an equitable distribution of the marital assets. After considering the statutory factors, we conclude that the decree should be modified to provide that JoEllen shall receive one-half of the \$21,472, or a sum of \$10,736. Rick shall either pay this sum ninety days from the date of the filing of this opinion or pay in three equal annual installments with the first payment due ninety days from the filing of this opinion, plus ten percent annual interest on the unpaid remainder. Rick shall receive \$2700 credit for the 1980 Chevrolet Citation awarded to JoEllen by the trial court.

III. Alimony

JoEllen contends that the trial court erred in granting her an inadequate alimony award. We cannot agree. The trial court awarded JoEllen alimony payments of \$400 per month for a twenty-five month period. JoEllen claims that this award is inadequate because it is necessary for her to attend two and one-half years of college before she can receive her master's degree and become self-supporting at a standard of living comparable to that enjoyed during the marriage.

The criteria for granting alimony are codified in Iowa Code section

598.21(3)(1985). Two primary factors in determining an award of alimony are the duration of the marriage and the ability of the spouse seeking support to engage in gainful employment. In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972). The payment of alimony is not an absolute right, and is premised upon the dictates of fairness in the circumstances, which includes consideration of the property settlement. In re Marriage of Bevers, 326 N.W.2d 896, 900 (Iowa 1982).

We have considered the factors set forth in section 598.21(3) and conclude that the district court's alimony award was more than adequate, particularly in light of the increased property award granted in this appeal, the short duration of the marriage, and the fact that there were no children. JoEllen is, however, entitled to rehabilitative alimony to compensate her for the time she devoted to the marriage rather than pursuing her education. See In re Marriage of Sanders, 255 N.W.2d 109, 111 (Iowa 1977). We think that an alimony award of \$200 per month for the two and one-half years that JoEllen remains in college is reasonable in amount and duration. See In re Marriage of Bevers, 326 N.W.2d at 900. Accordingly, the alimony award is reduced.

IV. Attorneys Fees

The trial court ordered Rick to pay \$1200 of JoEllen's attorneys fees, which totaled \$2267. JoEllen contends that Rick should be required to pay the remaining \$1000 as well.

Trial courts are vested with considerable discretion in allowing attorneys fees awards in dissolution cases. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa Ct. App. 1983). Furthermore, because trial courts are familiar with the value of services in such cases and because most of the services are rendered before the trial judge, trial courts possess considerable discretion fixing amounts of fees. Id. We are not convinced that the record requires a disruption of the

trial court's award in the instant case. There is no request for attorneys fees incurred in this appeal. Costs are taxed to Rick.

AFFIRMED IN PART AND REVERSED IN PART.