No. 98-823. [8-737] IN RE MARRIAGE OF VANEE

Appeal from the Iowa District Court for Black Hawk County, Jon C. Fister, Judge. **AFFIRMED AS MODIFIED.** Considered by Huitink, P.J., and Streit and Zimmer, JJ. Opinion by Huitink, P.J. (7 pages $2.80)

Barbara and Terry Vanee were married February 19, 1966. They have five children. Two were minors at the time of the trial; Amber, born in January 1982, and Allisun, born in May 1985. Barbara was awarded physical care of Allisun and Amber. Terry was ordered to pay $955.58 monthly child support. Barbara was awarded the family home valued at $78,000, subject only to a $22,500 home equity loan. Terry was ordered to pay the $450 monthly installments on the home equity loan in lieu of alimony. Terry was awarded all of his John Deere pension benefits presently valued at $76,919.72. Barbara seeks an award of $600 permanent monthly alimony. She also demands an equal share of Terry's John Deere pension and award of appellate attorney fees. **OPINION HOLDS:** *Alimony.* Barbara correctly cites her age, duration of the marriage, and lesser-earning capacity as factors justifying an award of at least transitional alimony. However, we, like the district court, conclude the limits of Terry's ability to pay alimony have been reached by requiring him to pay the parties' home equity loan and the amount of his child support obligation. We also note Barbara's earnings are limited by her failure to maximize her earning capacity. The equity of the provision in lieu of alimony is enhanced by Barbara's pretrial exhaustion of the home equity line of credit for her own use. We affirm on this issue. *Property Division.* Under our interpretation of the decree, the district court's disposition of the parties' home and Terry's pension was intended to equalize the property division. We have affirmed similar awards. We decline to do so in this case because failure to divide Terry's pension unduly diminishes Barbara's prospects for reasonable retirement security. Barbara is fifty-two years of age with a marginal earning capacity. She is unable to provide for her own retirement security without assistance from Terry. We accordingly award Barbara one-half of the value of Terry's John Deere pension at the time the decree was entered payable on such terms and conditions as allowed by John Deere's pension plan. The disposition of Terry's pension benefits requires a proportionate reduction of Barbara's property award. This adjustment is best accomplished by ordering the sale of the family home and equal division of the net sale proceeds within sixty days after Barbara's entitlement to child support ends. Any amount remaining on the home equity loan shall be charged against Terry's share of the proceeds.