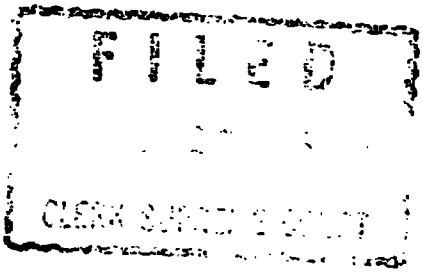
IN THE COURT OF APPEALS OF IOWA



No. 5-223 / 94-924

IN RE THE MARRIAGE OF JAYA BILGI AND ARU BILGI

Upon the Petition of
JAYA BILGI,

Appellee,

And Concerning
ARU BILGI,

Appellant.

Appeal from the Iowa District Court for Polk County, Linda R. Reade, Judge.

Aru Bilgi appeals various provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Paige Fiedler and Elizabeth S. Kruidenier of Parrish, Kruidenier, Moss, Dunn, Montgomery & Thomas, Des Moines, for appellant.

Thomas J. Levis and Mark R. Schuling of Brick, Gentry, Bowers, Swartz, Stoltze, Schuling & Levis, P.C., Des Moines, for appellee.

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

HUITINK, J.

Jaya and Aru Bilgi were married in December 1983. At the time of trial Jaya was forty-nine, and Aru was thirty-one. They have one nine-year-old child, Devon. Devon resides with Jaya at the family home in West Des Moines. His custody, physical care, and support are not at issue on appeal.

Jaya is a pediatrician. He was born in India, educated in England and Canada, and practiced in Des Moines, Iowa, for five years prior to his marriage to Aru. His 1993 income, as disclosed by the W-2 issued by his professional corporation, was $122,000. The record does not contain any information regarding the financial condition of Jaya's professional corporation or its gross earnings.

Aru's motion to continue the trial was denied, and she did not appear or testify at the trial. The record reveals little about her background but shows she completed high school in Toronto, Ontario. The district court found Aru "has not been employed for over ten years and there was no evidence that she has any skills or training to earn money to support herself."

The implications of Aru's emotional and mental stability were disputed at trial. Jaya testified Aru was immature and neglected her domestic and parental responsibilities. Aru's lawyer attributed her behavior to an underlying debilitating psychosis. Jaya acknowledged Aru's hospitalization for psychiatric treatment but denied she was diagnosed as paranoid schizophrenic. A letter from Aru's psychiatrist

was properly excluded for lack of an adequate foundation supporting its admission. The district court ultimately found "there is insufficient evidence in the record to make a finding whether or not Aru suffers from a mental disease or defect."

Jaya brought substantial assets to the marriage. There is no evidence indicating Aru brought property to the marriage. Jaya's pre- and postmarital assets[1] include the following:

I. Assets Owned by Jaya Bilgi at Time of Marriage:

1. House - $140,000 - $80,000	$ 60,000.00
2. 1982 Mercedes	25,000.00
3. 1982 Camaro	14,000.00
4. Medical practice	100,000.00
5. Life insurance and investments	250,000.00
6. Personal property	102,000.00
	$551,000.00

II. Assets Owned by Jaya Bilgi at Time of Dissolution:

1. House - $260,000 - $194,000	$ 66,000.00
2. Office building $250,000 - $197,384	52,616.00
3. 1981 Mercedes	2,500.00
4. 1991 BMW	15,750.00
5. Life insurance	222,525.70
6. Video venture	10,000.00
7. Medical practice	95,085.00
8. Personal property	117,000.00
9. Pension/IRA's	240,684.63

[1]The items are the same as listed by the trial court; however, some values have been corrected to reflect the appropriate amounts found in the record.

10. Guardian Sam annuities	149,250.79
11. IRA's	30,505.18
Total	$1,001,917.30
Debts to First Interstate	(10,000.00)
Net Assets at Time of Dissolution	$ 991,917.30
Net Assets at Time of Marriage	551,000.00
Assets Acquired During Marriage	$ 440,917.30

The district court found the increase was attributable to appreciated asset values and Jaya's productivity. Aru received no credit for any contribution to the increased accumulation of assets during the marriage. She was awarded rehabilitative alimony of $1500 per month for five years or her earlier death or remarriage. She also received a $75,000 cash award as her share of marital property. Jaya was ordered to pay $1500 of Aru's trial attorney's fee. Although Jaya was awarded physical care of their child, Aru was not ordered to pay child support.

On appeal Aru argues her alimony award was not sufficient and the district court's property division was inequitable. She also claims the district court's limited attorney fee award was an abuse of discretion. Aru also requests appellate attorney fees.

Our scope of review is de novo. Iowa R. App. P. 4. The court gives weight to the district court's factual findings, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

I. Alimony.

Alimony is an award to a former spouse in lieu of a legal obligation to support that person. *In re Marriage of Hitchcock*, 309 N.W.2d 432, 437 (Iowa 1981). The court may award alimony for a limited or indefinite length of time after considering the criteria codified in Iowa Code section 598.21(3). Alimony is not an absolute right, but depends on the facts of each particular case. *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976).

Aru's alimony award was expressly made for rehabilitative purposes. The goal of rehabilitative alimony is self-sufficiency. *In re Marriage of Francis*, 442 N.W.2d 59, 63 (Iowa 1989). The duration of the award may be limited or extended depending upon the realistic needs of an economically-dependent spouse. *Id.*

Aru is only thirty-one years of age. She has ample time to prepare for productive employment. We will not presume she lacks the ability to do so. It is not unreasonable to expect her to make the necessary effort and sacrifices to achieve self-sufficiency. Aru has been awarded an adequate amount of money and sufficient time to acquire those skills necessary for her self-sufficiency. Whether she ultimately succeeds depends upon her willingness to avail herself of this opportunity. We find nothing in the record supporting a more substantial award.

II. Property Division.

The parties in a marriage are entitled to a just and equitable share of the property accumulated during the marriage. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). Iowa courts do not require an equal or percentage distribution. *Id.* the determining factor is what is fair and equitable in each case. *Id.* The division should be made after considering all of the relevant factors codified in Iowa Code section 598.21(1). *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983).

In making its property division, the court relied primarily on its finding Aru failed to contribute to the marital accumulation. The parties' contributions to the marriage are, however, only one of several statutory considerations the court is required to make in formulating an equitable property division. Iowa Code § 598.21(1)(a)-(m). Others relevant to this case include the nine-year duration of the marriage, the dramatic disparity in the parties' earning capacities, Jaya's financial security, and the limited amount and duration of Aru's alimony award. *Id.* Although Aru's contributions to the marriage were not as significant as Jaya's, these considerations justify a greater award than she received. We determine Aru is entitled to one-quarter of the property acquired during the marriage.

We, like the trial court, find a cash award preferable to an in kind distribution. The record does not provide sufficient information to allow us to measure the practical consequences of an in kind distribution. Jaya shall accordingly pay Aru $110,230 cash

for her share of their marital accumulation. The remainder of the district court's property division is affirmed.

III. Attorney's fees.

An award of attorney's fees is not a matter of right but rests within the trial court's discretion. *In re Marriage of Dahl*, 418 N.W.2d 358, 361 (Iowa App. 1987). Any award of fees should be based on the parties' respective abilities to pay. *In re Marriage of Lattig*, 318 N.W.2d 811, 817 (Iowa App. 1982). We find no abuse of discretion and affirm the award of fees made by the district court.

In awarding appellate attorney's fees we also consider the needs of the parties and their abilities to pay. *In re Marriage of Hoffman*, 493 N.W.2d 84, 90 (Iowa App. 1992). Jaya should pay $1000 of Aru's appellate attorney's fees. Costs shall be taxed equally.

AFFIRMED AS MODIFIED.