

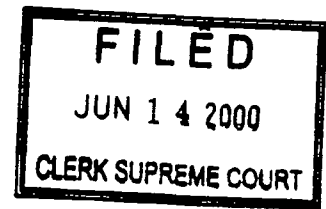
IN THE COURT OF APPEALS OF IOWA

No. 0-050 / 99-841
Filed June 14, 2000

**IN RE MARRIAGE OF KAYE J. YOCK
and FRANCIS A. YOCK**

**Upon the Petition of
KAYE J. YOCK,
Petitioner-Appellee,**

**And Concerning
FRANCIS A. YOCK,
Respondent-Appellant.**



Appeal from the Iowa District Court for Linn County, William R. Eads,
Judge.

Francis Yock appeals the property, alimony, and attorney fee provisions of
the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Michael L. Mollman of Mollman Law Office, Cedar Rapids, for appellant.

E. Daniel O'Brien, Cedar Rapids, for appellee.

Considered by Mahan, P.J., Vaitheswaran, J., and Hayden, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (1999).

PER CURIAM

The parties were married in 1984. At the time of the dissolution trial Kaye Yock was ~~sixty~~ ^{sixty} years old and Francis Yock was ~~fifty~~ ^{fifty}-six years old. The court awarded Kaye the homestead, equity and debts thereon, three vehicles, \$400 per month in alimony, \$600 in attorney fees, \$3000 cash, and various miscellaneous items including a number of guns that allegedly belong to Francis. Francis was awarded a vehicle, his pension and a number of debts. Francis appealed. We affirm as modified.

The parties were married in Toddville, Linn County, Iowa on December 21, 1984. There were no children born as a result of this marriage.

At trial Kaye resided near Chelsea in Tama County, Iowa. Francis resided in Cedar Rapids, Linn County, Iowa.

Francis brought into the marriage \$2000 cash, a 1974 Chevrolet pick-up truck and a boat and motor.

Kaye brought two parcels of real estate into the marriage which were debt and encumbrance free. The parties lived on the Toddville, Iowa property until 1989 when it was sold. They received \$66,375 for the Toddville property. \$30,000 of the proceeds went towards the purchase price of a one-hundred acre farm near Chelsea, Iowa. \$20,000 went toward the purchase of machinery and supplies for building the family home and barn at Chelsea.

The house, barn, and other out-buildings at the rural Chelsea property were built from the proceeds of the sale of Kaye's properties. Kaye and her two sons provided the labor. Most of the wood and other supplies for construction were obtained by Kaye and two of her sons. They received used lumber in

exchange for tearing down old barns and other buildings. The parties used the remainder of the proceeds for their living expenses. Both parties lived on the Chelsea property until their separation in 1998.

On the second property which Kaye owned at the time of the parties' marriage, there was a mobile home. Kaye rented this for the amount of \$125.00 per month until it burned in the late 1980's. It was sold in 1992 for \$10,500. Some of these proceeds were used to make improvements on the Chelsea property. The remainder of the sale proceeds was used for living expenses of the parties.

After the purchase of the rural Chelsea property in 1989, Francis made the majority of the mortgage payments, taxes, and other expenses related to the real estate. Kaye worked as a homemaker and worked on the farm.

In addition, Kaye also brought into the marriage a certificate of deposit in the sum of \$5000 and between five or six hundred dollars in a bank account. She also brought in an automobile and two pick-up trucks.

At the time of trial, the parties had borrowed \$35,000 from the Keystone Savings Bank. The Chelsea property was given as security for this loan. The trial court determined the fair market value of this property was \$72,000, leaving a net equity of \$37,000. Since the parties separated in 1998 Kaye has been making the mortgage, taxes, and insurance payments on this property of approximately \$485 per month. These monthly payments were made by Kaye borrowing from her family, selling some of the farm machinery, tools, four horses, miscellaneous property and temporary allowances paid by Francis. Kaye also borrowed money from her children to make the property payments.

Kaye brought at least \$82,000 in assets into this marriage.

Two weeks after the parties were married Francis quit his job as a truck driver. He did not have regular employment again until 1989. During the first five years of marriage the parties lived off their limited savings, Francis's part-time employment, and produce they raised on their property. Kaye also received \$1000 a month from social security for her two youngest children born from prior marriages. These children are now adults and Kaye no longer receives support from social security for them. During the first few years of marriage Francis was required to pay child support for his children of a prior marriage.

Kaye has worked at home on the farm. She has earned a little money by working for her son on his produce farm and from selling produce at farmers markets.

Francis is fifty-six years old and is now employed full time by Williams Brothers as a truck driver. He earns \$35,000 a year. He suffers from high blood pressure. This is controlled by medication. He indicated that he intends to retire when he attains sixty-five years of age. His pension through his employer has built up to \$9000.

Kaye is not able to work full-time because of health problems. She has generative joint disease, hypertension, chronic irritable bowel syndrome, glaucoma, coronary artery disease, and other health problems. She takes more than \$200 worth of prescription medicine each month. No doctor has placed any sort of restrictions on her.

Francis has life insurance through his employment and his daughter is listed as the beneficiary. He has a second policy through Principal Life Insurance

Company with Kaye listed as a beneficiary. Francis has been providing health insurance for himself and Kaye during the pendency of this action.

Francis has a 1974 truck. Kaye has a 1974 pick-up truck that her daughter gave her. There were several other non-operable vehicles of the parties. Kaye receives a widow's benefit from social security in the amount of \$820 per month. Francis inherited \$2,565.99 from his deceased aunt Jessie Bougman's estate. The parties borrowed money from AVCO in the sum of \$6800 which was incurred during the marriage. Francis has been paying on this debt.

In the decree, the trial court awarded Kaye the real estate where she lives located in Chelsea, Tama County, Iowa. She was ordered to pay the mortgage and real estate taxes on this land. She was awarded \$3000 from Francis which constitutes one-third of his pension due at the time of the decree. Francis was entitled to 100% of any increases in the pension benefits from the date of the decree forward. Kaye was awarded the 1974 pick-up that her daughter gave her. It's value was approximately \$400 or \$500. Francis was ordered to pay the indebtedness on Kaye's vehicle that is pledged as security for the AVCO financial loan. Each party was awarded their own life insurance policies and bank accounts and the property in their possession.

Francis was ordered to pay Kaye \$400 per month alimony until she reaches the age of sixty-five years at which time alimony will terminate.

Each party was ordered to pay any debts incurred after the parties' separation in April of 1998.

If the social security administration determines Kaye should not have been receiving \$820 per month while the divorce has been pending then she was ordered to pay it back, and be solely responsible and to hold Francis harmless from any liability thereon.

Francis was ordered to pay the indebtedness owed to his mother and AVCO financial services. Kaye was ordered to be solely responsible for any judgment McBurney Rowe Well Drilling may obtain against the parties. Francis was ordered to pay \$600 toward Kaye's attorney fees at trial.

I. Scope of Review

We review dissolutions of marriage de novo. Iowa R. App. P. 4; *Marriage of Burgess*, 568 N.W.2d 827, 828 (Iowa App. 1997). Parties in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *Marriage of Gonzalez*, 561 N.W.2d 94, 98 (Iowa App. 1997). 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 identified in Iowa Code section 598.21(1); See *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983).

Property which a party brings into the marriage is a factor to consider in making an equitable division. Iowa Code section 598.21(1)(b). A pre-marital asset is not necessarily set aside like gifted and inherited property. *In re Marriage of Miller*, 552 N.W.2d 460, 465 (Iowa App. 1996). Instead, it is a factor to consider, together with all other circumstances, in making an overall division.

Id. Its impact on distribution will vary with the particular circumstance of each case. *Id.*

II. Property Distribution

The trial court determined Kaye suffered a financial loss in the sum of \$31,875. The court ordered Francis to pay \$3000 to Kaye. This amount is one-third of the pension due Francis at the time of the decree. Francis is entitled to 100% of any increases in pension benefits from that date.

We note fifteen acres of this real estate is tillable and the remaining eighty-five acres more or less is pasture and timber land. We have considered Francis's total contribution to this marriage and determined the award of the farm and \$3000 to Kaye is fair and equitable under the circumstances of this case.

III. Support Payments

Iowa Code section 598.21(3) sets forth the criteria for the court to consider in determining whether to award support payments for a limited time or an indefinite length of time to either party. We do not set forth the criteria in detail, but may make reference to it in our discussion on this issue.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Gonzalez*, 561 N.W.2d 94, 99 (Iowa App. 1997). When determining the appropriateness of alimony, the court must consider: (1) the earning capacity of each party and (2) the present standard 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);

The property division and alimony must be viewed together in evaluating their individual sufficiency. *In re Marriage of Helmle*, 514 N.W.2d 461, 464 (Iowa App. 1994).

At trial Kaye was sixty years old. She did not have a high school education, lacked job experience, and she was in bad health. Her prescription medication costs \$200 per month and a health insurance premium would cost her from \$180 to \$192 per month.

At the time of trial Francis was fifty-six years old. He plans to work until he is sixty-five. He earns over \$35,000 per year and has health insurance benefits through his employer. His employment is stable and he is in relatively good health. He does not have any dependants or special needs.

The trial court determined Kaye would receive \$820 per month from the social security administration. The court contemplated Kaye would be able to earn an additional \$300 per month from part-time work. The court awarded support of \$400 per month from Francis so her monthly income would be \$1,525. This support of \$400 per month will terminate when Kaye reaches age sixty-five.

We affirm the trial court on this issue.

IV. Trial Attorney Fees

The trial court awarded Kaye \$600 to apply upon her trial attorney fees. At the time of trial Kaye's attorney fees amounted to \$2064. Five hundred dollars has been paid on this bill.

Francis objects to the award of \$600 to Kaye for trial attorney fees. He claims he incurred \$3300 in attorney fees before the trial of this case to have prior proceedings set aside because of fraud that was committed in an earlier

proceeding by a different lawyer. The decree in that proceeding was declared null and void and set aside. In the decree, the court stated:

Attorney fees in a dissolution case are to enable a party to prosecute an action against the other party. In addition awards of attorney fees in dissolution cases must be fair and reasonable amounts and based upon the parties' ability to prosecute or defend the action against them and their respective abilities to pay. *In re Marriage of Coulter*, 502 N.W.2d 168 (Iowa App. 1993).

We affirm the trial court on the award of trial attorney fees.

V. Francis Requests For His Guns

At the time of the dissolution when Francis moved out of the house he left four guns in the house and apparently they are still there. There was one rifle, one pistol and two shot guns. Kaye does not appear to contest returning these guns back to Francis. We modify the decree to award Francis these guns and affirm the trial court in all other respects.

VI. Kaye Seeks Attorney Fees on Appeal

Her appellate attorney fees are in the sum of \$2192.

Attorney fees on appeal are within the court's discretion and the parties financial positions to pay. *In re Marriage of Helmle*, 514 N.W.2d 461, 464 (Iowa App. 1994).

We are to consider 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. *Id.* at 464.

We determine Kaye is entitled to \$800 to apply upon her appellate attorney fees. Kaye shall have judgment against Francis for this amount until it is paid in full. Costs of appeal are taxed to Francis.

AFFIRMED AS MODIFIED.