

IN THE COURT OF APPEALS OF IOWA

No. 8-295 / 97-1620

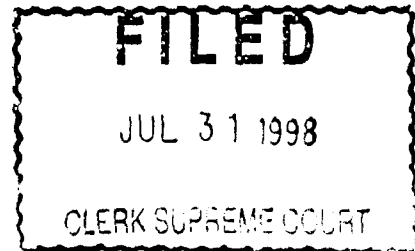
**IN RE THE MARRIAGE OF DANIEL M.
HAYWOOD AND LINDA HAYWOOD**

**Upon the Petition of
DANIEL M. HAYWOOD,**

Petitioner-Appellant,

**And Concerning
LINDA HAYWOOD,**

Respondent-Appellee.



Appeal from the Iowa District Court for Marshall County, Timothy J. Finn,
Judge.

Petitioner appeals various economic provisions of the parties' dissolution
decree. **AFFIRMED.**

Barry S. Kaplan of Fairall, Fairall, Kaplan, Hoglan, Condon & Klaessy,
Marshalltown, for appellant.

Ronald J. Pepples, Parkersburg, for appellee.

Heard by Sackett, P.J., and Huitink and Mahan, JJ.

MAHAN, J.

Daniel Haywood appeals from the provisions of the parties' dissolution decree. Daniel contends the district court erred when it ordered him to pay Linda Haywood \$55,000 and in return awarded Daniel all right, title, and interest in the modular home the parties lived in during their marriage. We affirm.

This marriage was extremely brief. The parties married on December 14, 1996, and separated in February 1997. The district court entered the decree of dissolution on September 4, 1997. Daniel and Linda were thirty-six years old at the time of trial.

In 1992 Linda purchased a modular home for \$54,590. She received \$12,590 when she traded in another mobile home. Linda borrowed \$50,000 to cover the remaining purchase price, to pay for the digging of a crawl space, and to hook up the utilities. Linda placed the home on a one-hundred-acre parcel of land she inherited.

Prior to the marriage, the parties decided to move the home onto land owned by Haywood Farms Incorporated ("Haywood Farms"). Haywood Farms is a family farm corporation run mainly by Daniel's father, George Haywood, who owns fifty-two percent of the shares in the corporation. Daniel and his sisters each also own shares in the corporation, with Daniel owning twelve percent of the shares.

Daniel claimed George was in charge of moving and reconstructing the home. Daniel testified he had little or nothing to do with moving the home. Daniel also claimed the place where the home was located was decided with no input from him.

Linda claimed Daniel made the final decision to move the home. The district court specifically found Daniel's testimony was not believable. At oral argument Daniel's counsel admitted Daniel did take part in moving the home.

When the house was moved, substantial modifications were made. These modifications make it very difficult, if not virtually impossible, to move the home again. Sealed insulation and steel support beams under the home were removed and an essential beam was cut to accommodate a stairway to the basement. The costs of moving the home and construction at the home site were paid by Haywood Farms. Haywood Farms' records showed the cost to be over \$56,000, but the district court found these bills were inflated and irrelevant. In return for paying for the move and construction, Haywood Farms did not pay Daniel \$45,000 owed to him for land rental and work.

At the trial, George testified he promised Daniel and Linda that Haywood Farms would give them an acre or two around the home. George also testified Haywood Farms does not own the home, "Well, the corporation doesn't own it. Daniel put the money up. All we own is the land that it sits on."

The district court ordered Daniel to buy out Linda's interest in the home and for her to deed it over to him. The district court set the buy out at \$55,000. The district court found the home was no longer mobile and had become a permanent part of the real estate due to the changes made to the structure when the parties moved the home. The district court stated:

For these reasons, the Court determines that the most equitable way to approach the matter is to require Daniel to buy out Linda's interest in the modular home and for her to deed it over to him. In such a manner, Daniel (and his family) can either use the home at its present location or make such arrangements as they jointly desire concerning the house, including its sale.

I. STANDARD OF REVIEW. Our review of this equitable proceeding is *de novo*. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. PROPERTY DIVISION. 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). The courts are not bound to achieve a precisely equal division in awards of marital property. *In re Marriage of Kurtt*, 561 N.W.2d 385, 388 (Iowa App. 1997). The determining factor is what is fair and equitable in each circumstance. *Id.* The distribution should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1995). *Id.*

We find the district court's order is equitable and deny Daniel's request to modify the decree.

III. ATTORNEY FEES. In determining whether to award attorney fees on appeal, our decision is guided by the needs of the party seeking the award, the ability

of the other party to pay, and the relative merits of the appeal. *In re Marriage of Geil*, 509 N.W.2d 738, 743 (Iowa 1993). We award Linda \$500 in appellate attorney fees.

For these reasons, we affirm the decree as entered by the district court.

AFFIRMED.