# IN THE COURT OF APPEALS OF IOWA

No. 8-737 / 98-0823

Filed June 23, 1999

**IN RE THE MARRIAGE OF BARBARA VANEE AND TERRENCE VANEE**

Upon the Petition of
**BARBARA VANEE,**
Appellant,

And Concerning
**TERRENCE VANEE,**
Appellee.

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Appeal from the Iowa District Court for Black Hawk County, Jon C. Fister, Judge.

The petitioner appeals various economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Robert L. Rausch of Rausch Law Firm, Waterloo, for appellant.

Curtis J. Klatt of Dunakey & Klatt, Waterloo, for appellee.

Considered by Huitink, P.J., and Streit, and Zimmer, JJ.

**HUITINK, P.J.**

## *I. Background Facts and Proceedings.*

Barbara Vanee appeals various economic provisions of the parties' dissolution decree. She contends the trial court erred in not awarding her permanent alimony and the property division was inequitable. We affirm the alimony decision and modify the property division.

The petitioner, Barbara Vanee, and respondent, Terrence (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 fifty-two years old and Terry was fifty-four years old when the decree was entered.

Terry has a high school diploma and is in good health. He has been employed by Deere & Company in Waterloo throughout the marriage. Terry's current net monthly income is $3,144.68.

Barbara has a high school diploma and has recently enrolled in computer courses at Hawkeye Community College. She is in good health except for a blood disorder which causes her to bruise easily. Barbara has been employed throughout the marriage cleaning residential and commercial buildings and as a telemarketer. Barbara would like to return to school to obtain a two-year marketing degree. Her net monthly income is $690.59.

Barbara filed a petition for dissolution of marriage on May 28, 1997. Temporary spousal support and attorney fees were denied because of the parties' continued cohabitation. In August 1997, Terry was summarily removed from the home based on Barbara's allegations of domestic abuse and ordered to pay temporary alimony and attorney fees.

Barbara was awarded physical care of Alisun 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.

In this appeal, 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.

### *II. Standard of Review.*

This case is an appeal of a dissolution of marriage decree involving alimony and property division. We review de novo. Iowa R. App. P. 4.

### *III. Alimony.*

When determining the appropriateness of alimony, the court must consider "(1) the earning capacity of each party, and (2) present standards of living and ability to pay balanced against relative needs of the other." *In re Marriage of Estlund*, 344 N.W.2d 276, 281 (Iowa App. 1983) (citation omitted). Alimony is an allowance to

the former spouse in lieu of a legal obligation to support that person. *See In re Marriage of Hitchcock*, 309 N.W.2d 432, 437 (Iowa 1981).

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3). *See In re Marriage of Hayne*, 334 N.W.2d 347, 350 (Iowa App. 1983).

We consider property division and alimony together in evaluating their sufficiency. *In re Marriage of Hardy,* 539 N.W.2d 729, 732 (Iowa App. 1995); *In re Marriage of Hogeland,* 448 N.W.2d 678, 682 (Iowa App. 1989); *In re Marriage of Griffin,* 356 N.W.2d 606, 608 (Iowa App. 1984). They are neither made nor subject to evaluation in isolation from one another. *In re Marriage of McLaughin,* 526 N.W.2d 343, 345 (Iowa App. 1994); *In re Marriage of Griffin,* 356 N.W.2d at 608.

Alimony is awarded to accomplish one or more of three general purposes. Transitional or rehabilitative alimony is intended to assist an economically dependent spouse gain self-sufficiency. *In re Marriage of Smith*, 573 N.W.2d 924, 926-27 (Iowa 1998); *In re Marriage of Francis*, 442 N.W.2d 59, 63-64 (Iowa 1989). An award of reimbursement alimony is predicated upon economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the other. *Id.* Traditional alimony is payable for life or for so long as a dependent spouse is

incapable of self-support. *Id.* The amount of alimony awarded and its duration will differ according to the purpose it is designed to serve. *Id.*

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.

***IV. 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 Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). 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 codified in Iowa Code section 598.21(1) (1991). *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983).

The appellate courts of this state have devised several schemes for the distribution of pension benefits in a dissolution. The first scheme is to award a percentage of the benefits already being received. *In re Marriage of Mott*, 444

N.W.2d 507, 510-11 (Iowa App. 1989). The second scheme available is to award a lump sum percentage based on the present value of the pension. *Id.* The third scheme available is to award a percentage of the pension, as it becomes payable, in the form of periodic alimony. *Id.* The fourth scheme for dividing pension benefits is to award a portion of the pension benefits if and when they accrue. The fourth system differs from periodic alimony in that it awards a portion of the pension benefits in the property division. *Id.*

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. *See In re Marriage of Schepple*, 524 N.W.2d 678, 679 (Iowa App. 1994); *In re Marriage of Johnston,* 492 N.W.2d 206, 208 (Iowa App. 1992); *In re Marriage of Hansen*, 465 N.W.2d 906, 909-10 (Iowa App. 1990). We decline to do so in this case because failure to divide Terry's pension unduly diminishes Barbara's prospects for easonable retirement security. As noted earlier, 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.

Terry shall pay $500 of Barbara's appellate attorney fees and court costs. The district court's decree is affirmed as modified and this case is remanded for entry of an appropriate judgment consistent with our opinion.

**AFFIRMED AS MODIFIED.**