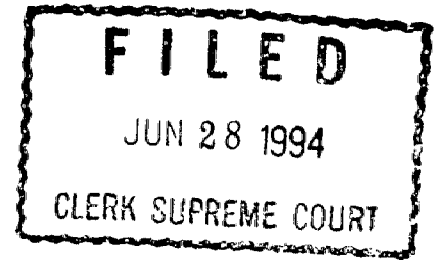


IN THE COURT OF APPEALS OF IOWA

No. 3-508 / 92-1495



IN RE THE MARRIAGE OF DONALD G. FRISBY
AND GARNET LEE FRISBY

Upon the Petition of
DONALD G. FRISBY,

Petitioner-Appellee,

And Concerning
GARNET LEE FRISBY,

Respondent-Appellant.

Appeal from the Iowa District Court for Polk County,
Jack D. Levin, Judge.

Garnet Lee Frisby appeals the district court's decree
of dissolution of marriage and Donald Frisby
cross-appeals. **AFFIRMED.**

David L. Brown of Hansen, McClintock and Riley,
Des Moines, for appellant.

Joseph G. Bertogli, Des Moines, for appellee.

Considered by Donielson, C.J., and Sackett and Huitink,
JJ.

SACKETT, J.

Respondent-appellant/cross-appellee Garnet Lee Frisby appeals and petitioner-appellee/cross-appellant Donald G. Frisby cross-appeals from the economic provisions of a decree dissolving their over thirty-year marriage. We affirm on both appeals.

Donald and Garnet were married in 1961. Two children were born to the marriage; both are now adults. During the marriage, Donald, who was fifty-eight years old at the time of the dissolution, maintained full-time employment outside the home. He currently is a maintenance supervisor at Reames Foods and has an annual income of about \$50,000. Garnet, who was fifty-three at the time of dissolution, assumed the role of homemaker and had occasional part-time jobs outside the home. Her earnings from outside employment have never been more than \$5000 a year.

The parties accumulated property, including a residence in Des Moines, property in Florida, and retirement accounts. Donald currently lives in Des Moines and Garnet currently lives in Florida.

The trial court valued the property and allocated certain property and obligations to each. The net value of the property that went to Donald was \$52,447, and the net value of the property that went to Garnet was \$12,950. To equalize the difference, the trial court ordered Donald pay Garnet an additional \$19,748.64 at \$400 a month with interest at the rate of ten percent per annum on the unpaid

balance. Further, Donald was ordered to pay Garnet alimony of \$600 a month to be reduced to \$400 a month when he retires. The alimony is to continue until Garnet's remarriage or the death of either party.

Garnet contends the trial court erred in undervaluing the property awarded to Donald, in not giving her sufficient credit for a gift she received during the marriage, and in ordering the property settlement paid over an extended period. Donald contends the trial court gave her too much credit for the gift, awarded too much alimony, and abused its discretion in ordering him to pay Garnet's attorney fees.

Our review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We are not bound by these determinations, however. Id.

The partners in the 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).

In allocating property to Donald, the trial court valued the Des Moines home given to him at \$32,500 and valued the undeveloped real estate at \$7000. Garnet contends the trial court's values on this property were too low. The home was valued by the Polk County Assessor at \$34,000 and the real estate at \$7200. Donald introduced as an exhibit an appraisal made by a real estate firm estimating the value of the home at \$32,500. Garnet presented no evidence of value but contends the house should be valued at \$45,000 because Donald valued it at \$45,000 on his financial affidavit.

The undeveloped land was purchased for \$12,500 twenty years earlier and a one-acre right-of-way was sold for \$8000 five years later. The land is in the flood plain and has been twice listed for sale but no one has offered to buy it. Donald argues the right-of-way sold for the price it did because it was needed by the medical clinic buying it and it was the best acre in the land.

We find the value placed on the assets by the trial court to be well within the permissible range of evidence and will not disturb them on appeal. See In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973); In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984).

Three years before the dissolution, Garnet received \$17,000 from a cousin as a gift. Prior to the couple's separation, approximately \$10,000 of this money was spent for family purposes. The trial court set \$7000 aside to

Garnet to compensate her for the gift before dividing the property. Garnet says the entire gift should have been set aside to her. Donald in his cross-appeal contends the trial court should not have set the \$7000 aside to Garnet. We have examined both arguments on the issue. We find no reason to disturb the trial court's decision on this issue.

Garnet's last complaint is Donald should not have been allowed to discharge the \$19,748.64 judgment entered against him at the rate of \$400 a month. Garnet contends the extended payment privilege awarded to Donald discounts the value of the amount awarded to her. She has concern the money will not be paid. Donald points out the payment plan is fair because the property set off to him included a \$28,551 retirement account which was valued at its face value without considering the income tax consequences on cashing it. We consider the income tax consequences as a factor in assessing the equity of the economic provisions of this decree. See In re Marriage of Hogeland, 448 N.W.2d 678, 680-81 (Iowa App. 1989). The trial court entered judgment against Donald in the amount of \$19,748.64 which will remain a lien on Donald's Polk County real estate until paid. The ten-percent interest rate set by the trial court provides Garnet a favorable return on her money in today's market. The provision for installment payments made by the trial court was equitable. We affirm the trial court on this issue.

Donald contends he should not have been required to pay alimony. He notes the trial court found Garnet lives in her mobile home in Florida with a man with whom she has a romantic relationship, and Garnet's boyfriend works forty hours a week earning \$11 an hour. Donald argues we should consider the cohabitation and cites In re Marriage of Orgren, 375 N.W.2d 710 (Iowa App. 1985), in support of his position. This was a long-term marriage. Donald has contributed to FICA and will have twice the FICA benefit Garnet has. The alimony award is equitable. We look to the presence or absence of social security benefits in analyzing what would best serve the requirements of equity of an alimony award. See In re Marriage of Miller, 475 N.W.2d 675, 677 (Iowa App. 1991).

Donald's last contention is the trial court should not have ordered him to pay \$2000 toward Garnet's attorney fees. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). 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. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). Iowa trial courts are permitted considerable discretion in allowing attorney's fees and costs in dissolution actions. In re Marriage of Moorhead, 224 N.W.2d 242, 245 (Iowa 1974). We affirm on this issue.

Each party shall pay his or her own appellate attorney fees. Costs on appeal are taxed one-half to each party.

AFFIRMED.