

FILED

APR 25 1989

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF LOIS VIRGINIA YOUNGBLUT
AND CHARLES CHARLES YOUNGBLUT

Upon the Petition of	)	357
LOIS VIRGINIA YOUNGBLUT,	)	
Petitioner-Appellee,	)	
And Concerning	)	
CHARLES CHARLES YOUNGBLUT,	)	9-25
Respondent-Appellant.	)	<u>88-805</u>

Appeal from the Iowa District Court for Black Hawk
County (35128), James L. Beeghly, Judge.

Appellant appeals the economic provisions of his
dissolution decree. **AFFIRMED AS MODIFIED.**

John J. Hines, of Mosier, Thomas Beatty, Dutton, Braun
& Staack, Waterloo, for the respondent-appellant.

David L. Riley of Lindeman & Yagla, Waterloo, for the
petitioner-appellee.

Considered by Donielson, P.J., and Sackett and Habhab,
JJ.

SACKETT, J.**358**

We are asked to address a series of economic issues surrounding the dissolution of a long-term marriage. Respondent-appellant Charles Charles Youngblut and petitioner-appellee Lois Virginia Youngblut were married in 1970. They have three minor children born in 1972, 1977 and 1979. Lois was approximately forty-two years of age at the time of trial and Charles was fifty-three years of age. Charles has a high school education. He has worked thirty-three years for John Deere and is eligible to retire after thirty years. Lois has a B.A. Degree in Business Education which she obtained in 1975. Thereafter, she taught. During the marriage Lois obtained a real estate sales license. She was employed as a closing agent and operated her own real estate business. She is currently a full-time student at The University of Northern Iowa pursuing her Masters Degree in school counseling. She expects to obtain a K-12 school counselor certificate in May 1990.

The decree gave Lois custody of the children. Charles was ordered to pay child support of \$350 per month per child to continue if the children remain full-time students through age twenty-two years. Charles was ordered to pay alimony of \$250 a month for thirty-six months.

The trial court determined the parties had current assets of \$490,928. The court awarded Lois property worth

\$56,000. Additionally, Charles was ordered to pay her \$140,000, payable \$70,000 within thirty days of order and \$70,000 by October 1, 1988. He was ordered to pay her attorney \$2,000. The balance of the assets were awarded to Charles.

Charles contends the trial court was not correct in determining the value of the parties' current assets was \$490,928. The trial court arrived at its figure by first determining the parties had assets of \$433,428 and adding to that figure the amount of \$57,500 the trial court determined Charles had taken from the parties' assets and not accounted for since the parties' separation. Charles contends the trial court should not have considered the unaccounted for assets and should only have considered the value of the parties' property at the time of trial.

Property given by a husband to a son of a prior marriage before filing a dissolution petition has been considered in assessing the husband's obligation for alimony. In re Marriage of Cerven, 335 N.W.2d 143, 146-47 (Iowa 1983). And in In re Marriage of Johnson, 350 N.W.2d 109, 202 (Iowa 1984), the court refused to ignore a husband's unilateral postseparation disposition of marital assets.

We have clearly noted our displeasure with the failure of a party to a dissolution to account for property under his or her control during the divorcing process. In re

Marriage of Williams, 421 N.W.2d 160, 164 (Iowa App. 1988). We have considered transfers of property with no accounting and or explanation in assessing a property settlement. Williams, 421 N.W.2d at 165. We determine the trial court was correct in considering unaccounted for property under Charles control in assessing the property settlement. See Johnson, 350 N.W.2d at 202; Williams, 421 N.W.2d at 167. We reject Charles' claim we should do otherwise.

Charles next contends the trial court did not give adequate consideration to the \$85,000 to \$100,000 he had when he was married; the \$58,000 he inherited from his father and the \$35,000 to \$45,000 his father gave him in annual gifts of \$3,000. In considering an equitable property division we are directed to consider property brought into the marriage. Iowa Code section 598.21(1)(b). We are further directed that property received by a party through gift or inheritance is not subject to division unless there is a finding a refusal to do so is inequitable to the other party or the children of the marriage. Iowa Code section 598.21(2).

The parties agreed Charles had property when they were married and received an inheritance from his father. There is some disagreement on the amount received. Lois contends the annual gifts of \$3,000 should not be considered because Charles' father made the gifts to the family not just to

Charles. We agree with the trial court Charles brought between \$85,000 and \$100,000 into the marriage. We find he inherited \$58,000 from his father. We determine he received annual gifts from his father of \$35,000. We reject Lois' argument the annual gifts were made to the family. The gift came by way of a single check written only to Charles. There is no evidence other than Lois' assumption that she was included on the gifts.

There is no compelling reason why under this record Charles should not have his premarital, gifted and inherited property set aside to him. There is no evidence Lois assisted in the acquisition of Charles premarital property. It was preserved during the marriage and the parties acquired other substantial assets through their joint efforts. Lois has furthered her education during the marriage and is on the threshold of an excellent career. She is younger and will have time to advance while Charles is near the end of gainful employment.

We find no inequity in not dividing Charles' inherited and gifted property with Lois. We have considered the factors above. There is no evidence of any independent close relationship between Lois and Charles' father and we find no separate contributions by Lois toward the preservation of the property. See In re Marriage of Thomas, 319 N.W.2d 202, 211 (Iowa 1982); In re Marriage of Dahl, 418 N.W.2d 358, 360 (Iowa App. 1987); In re Marriage

of Martens, 406 N.W.2d 819, 822 (Iowa App. 1987); In re Marriage of Byall, 353 N.W.2d 103, 105-06 (Iowa App. 1984). We modify the property award to reduce the second cash settlement from \$70,000 to \$20,000.

Charles challenges the amount of child support and alimony. He contends they are inequitable and particularly argues the trial court failed to consider the fact he had planned to retire in October 1988 in assessing their reasonableness. Charles' birth date is April 9, 1935. While he may want to retire, there is no evidence he cannot continue to work. Charles fathered three children after his thirty-fifth birthday. His desire to retire at an early age does not lessen the needs of his children. See Ellis v. Ellis, 262 N.W.2d 265, 267 (Iowa 1987) (obligations of family life may compel persons to maintain employment they find undesirable); In re Marriage of Wegner, 343 N.W.2d 397, 399 (Iowa 1988) (dissolution may require prior plans as to support to be abandoned).

In 1987 Charles showed a salary of nearly \$35,000. He realizes substantial employee benefits. He leaves the marriage with substantial assets and investments. We examine Charles' challenge to the alimony award under the dictates of Iowa Code section 598.21(3). In re Marriage of Luebbert, 400 N.W.2d 80, 82 (Iowa App. 1986). We consider the economic provisions of the dissolution as a whole. In re Marriage of Griffin, 356 N.W.2d 606, 608

(Iowa App. 1984). We look at the total financial picture. In re Marriage of Bales, 380 N.W.2d 754, 756 (Iowa App. 1985). Lois is currently without a salary because she is being educated for a good job which will ultimately benefit Lois and the children. Lois currently needs the alimony. Charles has a good income and the ability to pay alimony. This has been a marriage of substantial duration. Lois has substantial responsibility for the children. In re Marriage of Bornstein, 359 N.W.2d 500, 502 (Iowa App. 1984). We find the alimony equitable and affirm the award.

Charles contends the child support is excessive. We consider his salary and investment income. We look at his children's needs. See In re Marriage of Anderson, 400 N.W.2d 84, 85 (Iowa App. 1986); In re Marriage of Butler, 346 N.W.2d 45, 46 (Iowa App. 1984). Both Charles and Lois have an obligation to contribute to their children's support in accordance with their ability to pay. Anderson, 400 N.W.2d at 86. Support for the children while they are full time students through age twenty-two is equitable in this case. Byall, 353 N.W.2d at 108-09. We affirm the child support award made by the trial court.

Each party shall pay his or her own attorney fees. Appellate costs are taxed one-half to each party.

AFFIRMED AS MODIFIED.

Donielson, P.J., concurs; Habhab, J. dissents.

HABHAB, J. (dissenting)

I respectfully dissent. I would affirm the trial court in all respects.