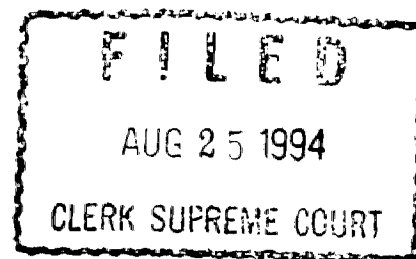


IN THE COURT OF APPEALS OF IOWA

No. 4-134 / 93-0037



IN RE THE MARRIAGE OF DONALD WILBUR ALLEN AND
KAREN KAY ALLEN

Upon the Petition of
DONALD WILBUR ALLEN,

Appellant/Cross-Appellee,

And Concerning
KAREN KAY ALLEN,

Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Henry County,
R. David Fahey, Judge.

Petitioner appeals, and respondent cross-appeals, from
various economic provisions of the parties' dissolution
decree. **AFFIRMED.**

J. Bryan Schulte of Bauer, Schulte, Hahn & Swanson, for
appellant.

Thomas M. Walter of Johnson, Hester & Walter, Ottumwa,
for appellee.

Considered by Hayden, P.J., and Habhab and Cady, JJ.

HAYDEN, P.J.

Donald and Karen Allen were married in 1965. They have two children who reached the age of majority and are not subject to the present action. Throughout the marriage, Donald was employed as a farmer. Karen was a full-time homemaker until 1989, at which time she became employed at the Wal-Mart in Mount Pleasant.

Donald's farm income averaged \$42,329 between 1985 and 1991, resulting in a net income of \$2,107 per month. Karen earns a net monthly income of \$560.13. Both parties are generally in good health, although Karen does suffer from asthma.

On February 28, 1992, Donald filed a petition for dissolution of marriage. According to Donald's financial statements, he had monthly expenses of \$884 per month, while Karen estimated her monthly expenses at \$1,888. The main real estate asset was a 74.66-acre farm. Donald valued the farm using a comparable sales method of appraisal, and estimated the fair market value of the farm at \$1,600 per acre. Karen utilized an unrecognized method of appraisal based upon a corn suitability rating and valued the farm at \$2,000 to \$2,200 per acre.

Following a hearing, the trial court entered its decree. Pursuant to the decree, Donald was awarded \$282,455 in marital assets, consisting of the farm, which the court valued at \$2,000 per acre; a truck, valued at \$11,500; \$52,000 worth of machinery and tools; \$19,530 in

stored corn; \$8435 in guns; and the remainder in various household goods. Karen was awarded \$239,357 in marital assets, consisting of a Keogh plan valued at \$227,162, \$11,306 in stock, a \$700 Pontiac, and \$235 in household goods. The trial court ordered Donald to pay debts in the amount of \$10,240. Because Donald was awarded a greater share of the marital assets, the trial court awarded Karen a judgment against Donald in the amount of \$14,000. Donald was additionally ordered to pay Karen \$1,025 per month alimony for a period of forty-eight months and to thereafter pay \$500 per month. Donald appeals, and Karen cross-appeals.

Donald contends the trial court erred in its valuation of the farm. Donald claims the corn suitability method used by Karen has not been proven to be accurate. Donald maintains if the trial court had used his method of valuing the farm, the farm value would have decreased by \$13,420. Donald further asserts because of the award of the Keogh plan, Karen could receive investment income which would allow her to live at a higher standard than during the marriage. Donald argues alimony is therefore unnecessary.

Karen contends the trial court failed to include stored crops in the value of the assets to be divided. Karen believes her cash award should be increased from \$14,000 to \$22,000. Karen also insists the trial court should have awarded her attorney fees for trial. Additionally, Karen seeks appellate attorney fees.

In this equity action, our review 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. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). 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).

There are five distinct issues on appeal. We affirm the trial court on all issues. Each issue will be discussed in turn.

I. Method of Valuation.

Upon every judgment of dissolution, the court is required by statute to divide the property of the parties and transfer titles accordingly. Iowa Code § 598.21(1) (1993). It is the province of the trial court to determine the value of marital property. In re Marriage of Dennis, 467 N.W.2d 806, 808 (Iowa App. 1991).

Donald contends the trial court erred when it valued the farm at \$2,000 per acre. Donald's chief complaint seems to be the trial court did not choose his own expert's valuation. In fact, the trial court came down between the value set by Donald's expert and the figure set by Karen's expert. A trial court can properly value equity in land between the former spouses' estimates. In re Marriage of Athy, 428 N.W.2d 310, 313-14 (Iowa App. 1988); In re Marriage of Fish, 350 N.W.2d 226, 231 (Iowa App. 1984).

Donald further complains Karen's expert used an unorthodox method in determining the value of the land. However, the method was shown by the testimony to have validity. In fact, there was evidence the method resulted in accurate appraisals on 500 occasions.

Even assuming the valuation method used was unorthodox, we determine 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).

II. Property Equalization Judgment.

"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) (quoting In re Marriage of Havran, 406 N.W.2d 450, 452 (Iowa App. 1987)). Iowa courts do not require an equal division or percentage distribution. Russell, 473 N.W.2d at 246. 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) (1993). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983).

Because Donald was awarded a greater share of the marital assets, the trial court awarded Karen a judgment against Donald in the amount of \$14,000. Donald, in his

appeal, and Karen, by virtue of cross appeal, complain of the award of cash to equalize the property settlement. Donald contends the \$14,000 should not have been awarded. Karen argues the amount should have been \$22,000 rather than \$14,000.

Donald claims the award is inequitable based on his allegation the trial court misvalued the farm. The argument has been disposed of in the preceding section of the opinion. Simply put, the value placed on the assets by the trial court is well within the permissible range of evidence and will not be disturbed on appeal. See Bare, 203 N.W.2d at 554; Griffin, 356 N.W.2d at 608.

Karen claims the award is inequitable because the trial court failed to include stored crops in the value of the marital assets to be divided. The trial court instead chose to categorize the stored corn as an integral part of the production of income by Donald.

Stored crops are normally considered a divisible marital asset. See, e.g., In re Marriage of Blume, 473 N.W.2d 629, 630 (Iowa App. 1993). Further, there is precedent for treating growing crops as a divisible marital asset. See In re Marriage of Martin, 436 N.W.2d 374, 376 (Iowa App. 1988). In the instant case, however, both Donald and Karen recognized the financial pattern by which Donald has always farmed. Under Donald's operational pattern, stored crops are a part of present and future income.

Additionally, the trial court chose to award Karen alimony based upon Donald's future farm income. Donald's future farm income will necessarily include sale of existing stored grain. Thus, the value of the stored grain should not again be considered in regard to the disposition of the marital property. To do so would allow Karen two bites from the same apple. Karen would receive alimony based upon the projected sale proceeds from the stored grains and at the same time receive a property disposition award based upon this same value. This court has often stated we consider property division and alimony together in evaluating their individual sufficiency. In re Marriage of Dahl, 418 N.W.2d 358, 359 (Iowa App. 1987); Griffin, 356 N.W.2d at 608. Under these circumstances, the property equalization award of \$14,000 was proper.

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." Estlund, 344 N.W.2d at 281 (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. See 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) (1993). See In re Marriage of Hayne, 334 N.W.2d 347 (Iowa App. 1983).

The trial court required Donald to pay alimony to Karen in the sum of \$1,025 per month beginning November 1, 1992, for a period of forty-eight months, and thereafter pay alimony in the sum of \$500 per month. The alimony will continue until either party dies or Karen remarries.

Donald claims the award of alimony is inequitable. Specifically, he contends Karen could immediately withdraw funds from the profit-sharing plan (known as the Keogh plan) she was awarded in the dissolution decree. Donald asserts if Karen did so, she would not require alimony. As Karen points out, if she were to do so, she would be left in retirement without support. Donald is asking Karen to provide for her present security by depriving her of future security.

Furthermore, the trial court clearly based its award of alimony on appropriate statutory factors. Although Karen is currently employed at the fabric department at Wal-Mart and the job is apparently secure, it is a minimum paying job with very little advancement. § 598.21(3)(e); see In re Marriage of Wegner, 434 N.W.2d 397, 399 (Iowa 1988) (earning capacity a factor in deciding alimony). There is income disparity between the parties of approximately \$1,700 per month. § 598.21(3)(e); see In re Marriage of Debler, 459 N.W.2d 267, 269 (Iowa 1990) (income disparity a

factor in deciding alimony). Karen periodically requires substantial and expensive medication by reason of an asthmatic condition. § 598.21(3)(b); see In re Marriage of Earsa, 480 N.W.2d 84, 86 (Iowa App. 1991) (physical health a factor in deciding alimony). Karen's educational level is such that without further training, employment at Wal-Mart is probably going to be the future of her employment possibilities. . § 598.21(3)(f); see In re Marriage of Behn, 385 N.W.2d 540, 543 (Iowa 1986) (need for retraining or education a factor in deciding alimony) (citation omitted). This case clearly calls for spousal support. The decision of the trial court in the amount indicated is upheld.

IV. Gifts.

When either party receives gifts during the marriage, the controlling factors in determining whether the property constitutes marital property for purposes of dividing the property at dissolution include (1) the intent of the donor and (2) the circumstances surrounding the gift. Iowa Code § 598.21(2) (1993); see also In re Marriage of Wertz, 492 N.W.2d 711, 714 (Iowa App. 1992).

Donald's parents gave monetary gifts to Donald and Karen during the course of their marriage. The trial court held these monetary gifts to be marital property. Donald claims these gifts were made to him alone and should not be considered marital property.

With regard to the donor's intent, Donald's mother admitted at trial she fully expected Karen would receive benefits from her monetary gifts. Further, there is nothing surrounding the circumstances of the gifts which demonstrates the trial court's ruling was inequitable. We determine the monetary gifts constitute marital property.

V. Attorney Fees.

Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). To overturn an award the complaining party must show that the trial court abused its discretion. Id. Awards of attorney fees must be for fair and reasonable amounts, In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977), and based on the parties' respective abilities to pay. In re Marriage of Lattig, 318 N.W.2d 811, 817 (Iowa App. 1982).

Karen asks this court to reverse the trial court's decision not to award her attorney fees. Additionally, Karen requests appellate attorney fees. However, the trial court did not abuse its discretion. The trial court correctly concluded Karen's net worth and income enable her to pay her own attorney fees. The same conclusion is compelled in regard to appellate attorney fees.

Each party shall pay his or her own attorney fees. Costs on appeal are assessed one-half to each party. Judgment of the trial court is affirmed.

AFFIRMED.