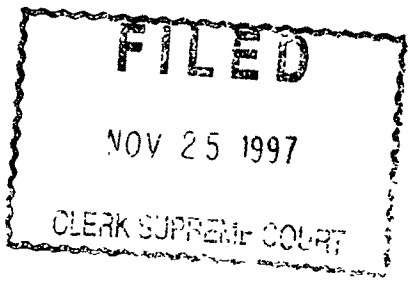
IN THE COURT OF APPEALS OF IOWA

No. 7-373 / 96-1542

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IN RE THE MARRIAGE OF LINDA KAY BOYLES AND CHARLES LEE BOYLES

Upon the Petition of
LINDA KAY BOYLES,
Appellee,

And Concerning
CHARLES LEE BOYLES,
Appellant.

Appeal from the Iowa District Court for Johnson County, Patrick R. Grady, Judge.

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

Bruce L. Walker and Julie L. Pulkrabek of Phelan, Tucker, Mullen, Walker, Tucker & Gelman, L.L.P., Iowa City, for appellant.

Sharon A.. Mellon of Mellon & Spies, Iowa City, for appellee.

Heard by Cady, C.J., and Huitink and Streit, JJ.

HUITINK, J.

Charles Lee Boyles appeals the alimony and property division provisions of the decree dissolving his twenty-five year marriage to Linda Kay Boyles. Linda cross-appeals from the property division and attorney fee provisions of the dissolution decree. We affirm as modified.

I. Background Facts and Proceedings.

Charles and Linda married on December 5, 1970. At the time of trial, Charles was fifty-one years old and Linda was forty-nine. Both Charles and Linda have high school diplomas, but no further formal education. They have three children, all of whom were adults at the time of trial.

Charles worked full-time throughout the marriage. At the time of the marriage, he was employed as a tool and dye maker. In 1985, he started working at Victor Manufacturing. Charles was promoted to general manager of Victor Manufacturing in 1992. At the time of trial, Charles' base salary was $70,000. Charles also receives an annual bonus of three percent of Victor's adjusted pretax profit. In 1994, his bonus was $124,058.

Linda has been sporadically employed throughout the marriage. She babysat in her home between 1976 and 1980. Between 1980 and 1990, Linda worked as a part-time retail sales clerk. In 1990, she was hired as a part-time secretary at Oaknoll Retirement Center. Since 1995, Linda has worked full-time as secretary and office manager at Oaknoll. Her gross annual income is $17,460.

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The June 27, 1996 decree awarded Linda $2500 monthly alimony for ten years, reduced to $1500 per month until the death of either party or Linda's remarriage. The decree also provided for a division of the Boyles' real and personal property. Charles was ordered to pay Linda $5000 for her attorney fees. In an effort to balance the property division, Linda was awarded $102,346 of the parties' home equity. Any remaining equity is to be divided equally.

II. Scope of Review.

Our review of this equitable action is de novo. Iowa R. App. P. 4; *In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa App. 1995). We are not bound by the trial court's findings of fact, but we do give them deference because the trial court had the opportunity to view, firsthand, the demeanor of the witnesses when testifying. *Id.*; *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992).

III. Alimony.

In its decree, the court awarded Linda permanent alimony of $1500, with an additional $1000 per month for ten years in rehabilitative alimony. On appeal Charles argues (1) the $1000 rehabilitative alimony is inappropriate, and (2) the $1500 permanent alimony award should be reduced at the time of Charles' retirement.

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). 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 the relative needs of the other." *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa App. 1994); *In re Marriage of Estlund*, 344 N.W.2d 276, 281 (Iowa App. 1983)(citation omitted).

We consider alimony and property division together in assessing their individual sufficiency. They are neither made nor subject to evaluation in isolation from one another. *In re Marriage of McLaughlin*, 526 N.W.2d 342, 345 (Iowa App. 1994); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa App. 1984). An alimony award is justified when the distribution of the assets of the marriage does not equalize the inequities and economic disadvantages suffered in marriage by the party seeking alimony who also has a need for support. *In re Marriage of Weiss*, 496 N.W.2d 785, 787 (Iowa App. 1992). Following a marriage of long duration, we have affirmed awards of both alimony and substantially equal property distribution, especially where the disparity in earning capacity has been great. *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993). The court should also consider the feasibility of the party seeking alimony becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. *In re Marriage of Debbler*, 459 N.W.2d 267, 270 (Iowa 1990); Iowa Code § 598.21(3)(f).

An alimony award will differ in amount and duration according to the purpose it is designed to serve. *In re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989). Rehabilitative alimony is awarded to support an economically dependent spouse through a limited period of retraining. *Id.* The duration of this type of award depends

on the particular needs of the dependent spouse. *Id.* at 63. Traditional or permanent alimony in contrast is usually payable for life or for so long as the dependent spouse is incapable of self-support. *Id.* at 62. The purpose of a traditional or permanent alimony award is to provide the receiving spouse with support comparable to what he or she would receive if the marriage continued.

Linda was forty-nine years old at the time of trial. She has no plans to further her education. Even if this were her intention, it is unlikely further education would result in increased earnings sufficient to sustain a standard of living reasonably comparable to that she enjoyed during the marriage. An award of rehabilitative alimony is not justified under these circumstances.

We nevertheless decline to disturb the amount or duration of Linda's alimony award. This is a twenty-five year marriage with great disparity in the parties' earning capacities. The total amount of alimony awarded is necessary to meet the objectives of traditional alimony. It provides Linda with the needed financial support she would receive if the marriage continued. Charles' ability to pay these amounts is not subject to reasonable disagreement.

We also find it inequitable to reduce the amount of alimony upon Charles' retirement. Charles is a man of considerable means with a high earning capacity. Although he may experience a reduction in income upon retirement, his ability to pay the amount awarded will not be significantly affected. Conversely, there is no

evidence suggesting Linda will experience a commensurate reduction in her financial needs when Charles retires.

IV. Property Division.

The district court ordered Charles to purchase a $150,000 life insurance policy on his life for Linda's benefit and maintain the policy until his alimony obligation to her ends. On appeal both Charles and Linda agree Charles should be allowed to decrease the policy in accord with Linda's life expectancy. Accordingly, we modify the dissolution decree to provide:

(1) Charles may reduce the amount of life insurance he is obligated to provide on his life for Linda's benefit to $100,000 twenty years from the date of the decree; and

(2) Charles may reduce the amount of life insurance he is obligated to provide on his life for Linda's benefit to $50,000 thirty years from the date of the dissolution decree, assuming Charles still has an alimony obligation to Linda at that time.

Charles was awarded $164,179 of the property subject to division. Linda received property valued at $61,833. She also received $102,346 from the proceeds of the sale of the marital home, with the remaining proceeds to be divided equally between Charles and Linda. Charles claims the property division should be equal in light of Linda's alimony award. He also argues the court erred in ordering him to pay real estate taxes accrued on the marital residence for the fiscal years 1994 and 1995. Charles maintains the court should order the real estate taxes be deducted from the proceeds of the sale of the marital home. We disagree.

As stated before, 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); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa App. 1984). 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); *In re Marriage of Johnson*, 499 N.W.2d 326, 328 (Iowa App. 1993). Iowa courts do not require an equal division or percentage distribution. *Id.* The determining factor is what is fair and equitable under the circumstances. *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).

We conclude the district court's division of the Boyles' property was equitable. Our review of the record indicates Charles received sufficient assets to meet his obligations under the decree and provide for his accustomed subsistence. Any resulting reduction in his standard of living is reasonably proportionate to that Linda will experience. Moreover, Linda no longer enjoys the advantage of Charles' resources and earning capacity and, therefore, is unable to accumulate assets essential to her financial security without the greater percentage of property she received under the decree.

V. Cross-Appeal of Property Division.

On cross-appeal, Linda argues: (1) the court erred in modifying the dissolution decree to reflect a $35,000 bank account, originally unaccounted for, when it attributed $17,500 to Linda and failed to attribute $17,500 to Charles; and (2) the court erred in excluding Charles' March 1996 bonus from the property distribution.

We find Charles' share of the $35,000 bank account was applied to his obligations under the court's temporary order. There is no resulting need to further modify the district court's property division.

We also decline to modify the property division to include Charles' March 1996 bonus. It is sufficient to note post-separation bonuses are treated as income and are not property subject to division. *See In re Marriage of O'Rourke*, 547 N.W.2d 864, 866 (Iowa App. 1996). Based on our review of the record, we find the district court equitably divided the Boyles' real and personal property. We affirm on this issue.

VI. Attorney Fees.

On appeal, Charles maintains each party should bear his or her own attorney fees. We disagree.

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 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). Because we find no evidence the trial court abused its discretion in awarding attorney fees, we affirm the award of $5000 to Linda.

Linda has requested appellate attorney fees of $6422.66 to defend this appeal. An award of attorney fees on appeal is not a matter of right, but rests within the court's discretion and the parties' financial positions. *In re Marriage of Gilliam*, 525 N.W.2d 436, 439 (Iowa App. 1994). Although Linda has successfully defended the trial court's decision on appeal, she has not prevailed on her cross-appeal. We accordingly award Linda $4000 in appellate attorney fees. Costs are taxed to Charles.

AFFIRMED.