IN THE COURT OF APPEALS OF IOWA

No. 7-081 / 96-415

IN RE THE MARRIAGE OF JOHN BERTRAM MURRAY, III, AND JULIA LYNN MURRAY

Upon the Petition of
JOHN BERTRAM MURRAY, III,

Petitioner-Appellee/Cross-Appellant,

And Concerning
JULIA LYNN MURRAY,

Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Ida County, Michael S. Walsh, Judge.

Julia Murray appeals, and John Murray cross-appeals, from certain economic provisions contained in their dissolution of marriage decree. **AFFIRMED AS MODIFIED.**

Dan Connell of Dan Connell, P.C., Storm Lake, for appellant.

Ted Brown, Storm Lake, for appellee.

Heard by Sackett, P.J., Cady, and Vogel, JJ.

CADY, J.

This is an appeal and cross-appeal from the property division, alimony, and attorney fee provisions of a decree for dissolution of marriage. We modify the decree to award alimony on our de novo review of the case.

John and Julia Murray were married in 1985. John was 29 years old, and owned and operated a jewelry store in Ida Grove. John purchased the business from his father a year prior to the marriage. Julia was also 29 years old at the time of the marriage. She has a history of mental illness which predated the marriage. It was generally controlled by medication. John was aware of her illness prior to the marriage.

John worked as a jeweler throughout the marriage. Julia did not work outside the home. John and Julia purchased a home in 1987 with financial help from John's father, reflected by a promissory note for $18,000 . The terms of the note indicated repayment was "dependent upon the good faith of the person receiving [the] money."

Julie inherited an interest in real estate during the marriage, valued at $246,758. This interest produces annual income in excess of $7000.

The parties agreed to the division of most of their property prior to the final divorce hearing. They had no children. Julia sought alimony.

The jewelry business increased $75,000 in value during the marriage. John's annual salary was $38,120 at the time of the divorce. John had also substantially reduced the obligation to his father incurred in the purchase of the business. Julia accumulated over $43,000 in income from her inheritance by the time of the dissolution hearing.

The trial court awarded John the entire $75,000 increase in the value of the jewelry business. It noted Julia never worked at the store and did not contribute to its growth. It also found the $18,000 promissory note to John's father was a marital obligation to be shared by the parties. John was ordered to provide health insurance for Julia for three years, but Julia's claim for alimony was denied. John was ordered to pay Julia's attorney fees.

Julia appeals. She argues the district court erred in failing to award her one-half of the accumulated value in the jewelry business, and in finding the $18,000 promissory note was a marital debt. She further claims she was entitled to alimony.

John cross-appeals. He claims the district court erred in requiring him to provide health insurance for Julia and pay her attorney fees.

I. Property Division

The division of property in a dissolution of marriage is based on each partner's right to a just and equitable share of the property accumulated as a result of their joint efforts. *In re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989). What is just and equitable in each particular case is determined after careful consideration of our statutory criteria. *In re Marriage of Robison*, 542 N.W.2d 4, 5-6 (Iowa App. 1995). This criteria includes the length of the marriage, property brought into the marriage, contributions of each party to the marriage, physical and emotional health of the parties, earning capacity of each party, economic circumstances of each party, tax consequences to each party, written agreements concerning the distribution of the property, and any other relevant considerations. Iowa Code § 598.21(1) (1995).

Property which was inherited by or gifted to a party prior to or during the marriage is set aside to that party unless it would be inequitable to the other party or the children. Iowa Code § 598.21(2) (1995). Thus, this property is not included in the division process. *See* Iowa Code § 598.21(1).

The net value of the property awarded to John by the district court was \$139,194. This amount included the accumulated value of the business and the \$18,000 debt to John's father. The net value of the property awarded to Julia was \$85,195. The district court set aside Julia's inheritance and the resulting income and interest. John makes no claim to this property.

John claims the \$54,000 disparity in the property division was justified because he owned the jewelry business prior to the marriage and its accumulation in value during the marriage was due solely to his efforts. He points out Julia never worked in the business and never rendered any corresponding child care services. *See* Iowa Code § 598.21(c) (consideration of contributions to the marriage include contributions in homemaking and child care services).

We recognize the tangible contributions which parties make toward acquiring their assets are an important consideration in the division of the property. *In re Marriage Moffatt*, 279 N.W.2d 15, 20 (Iowa 1979). Yet, it is not the only important consideration, nor is it of greater importance than the other considerations. *See Moffatt*, 279 N.W.2d at 20. Instead, our focus extends beyond the direct contributions to the accumulation of property, and includes the contributions of each party "to the marriage." Iowa Code § 598.21(1)(c). This does not mean the mere existence of the marital relationship is enough. *Hass*, 538 N.W.2d at 893. It means we give comparable consideration to other contributions which spouses can make to a marriage. *Id.* This includes such contributions as homemaking and child care services. Iowa Code § 598.21(1)(c). There are many contributions which a spouse makes to a marriage, and we specifically reject the notion that Julia's contributions were diminished because they did not include child care services. In the end, we give consideration to all the relevant criteria established by our legislature, as well as any other relevant factor derived from the particular facts and circumstances.

We agree John was directly responsible for the success of his business. *See* Iowa Code § 598.21(1)(c). We also acknowledge he owned the business prior to the marriage. Iowa Code § 598.21(1)(b). On the other hand, Julia was the homemaker. *See* Iowa Code § 598.21(1)(d), and John has a superior earning capacity. *See* Iowa Code § 598.21(1)(f). Thus, we recognize factors which impact the claims of both parties. Yet, we also recognize Julia has substantial assets which provide her with an annual income. *See* Iowa Code § 598.21(1)(i).

Considering all the circumstances, including the length of the marriage, we conclude the trial court correctly awarded John a greater share of the assets acquired during the marriage. It is equitable for Julia to receive a portion of the accumulated value of John's business under these circumstances, but not half. Furthermore, some of the factors weighing in favor of Julia's claim for an equal division of property can be addressed in her claim for alimony.

Julia claims the money John's father contributed to the purchase of the house was a gift, not a loan, and is not a debt to be considered in the division of the property. A gift requires donative intent, delivery and acceptance. *Gray v. Roth*, 438 N.W.2d 25, 29 (Iowa App. 1989). The controlling element is the intent of the donor.

The terms of the promissory note revealed a reluctance by John's father to make a gift at the time the money was transferred to John and Julia. The donor must express a clear intention to pass property as a gift. *Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa App. 1983). Moreover, John's father testified he continued to treat the transaction as a loan because he wanted to treat all his children equally. The trial court found the transaction was a debt, and we give weight to the finding of the trial court on appeal. Iowa R. App. P. 14(f)(7).

We have considered all the claims raised by the parties. The property division made by the trial court was fair and equitable under all the circumstances.

II. Alimony

Alimony is not a right, but depends on the particular circumstances of each case. *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976). It is related to the division of property, but has a different purpose. *In re Marriage of Tucker*, 213 N.W.2d 498, 501 (Iowa 1973). Alimony is an allowance to a spouse in lieu of the legal obligation for support established by the marriage. *In re Marriage of Misol*, 445 N.W.2d 411, 413 (Iowa App. 1989). Like the division of property, we consider a variety of factors. Iowa Code § 598.21(3).

John acknowledged Julia's illness makes her prospect of steady future employment questionable. It is unlikely she could secure and maintain adequate employment to meet her entire future financial needs. *See* Iowa Code § 598.21(3)(f). On the other hand, Julia's inheritance provides her with a modest income and she has substantial assets with no debt.

The principal components in determining the amount of alimony are need and ability. *In re Marriage of Stark*, 542 N.W.2d 260, 262 (Iowa App. 1995). Clearly, Julia has a present need. Her income is insufficient to satisfy her reasonable financial needs. John also has the ability to contribute to Julia's support. In fact, he made no argument otherwise. Instead he claimed Julia did not need alimony due to her substantial assets. We disagree. Julia's assets are substantial, but their value to her at this time in her life is the income they produce. Unfortunately, this income is inadequate to meet her current needs. Moreover, Julie is unable to increase or supplement this income.

In determining the amount and duration of alimony, we observe Julia intends to apply for social security disability benefits in the future. The parties, however, chose not to develop the record concerning the likelihood of receiving the benefits or the amount of benefits. Nevertheless, the property division to Julia includes a cash payment in excess of $64,000, which will begin to produce additional interest income for her. Furthermore, John is obligated to provide insurance for Julia into the future. Considering all the circumstances, we conclude Julie should receive alimony of $15,000, payable at the rate of $200 a month. We decline to alter the terms of the decree requiring John to provide health insurance of Julia.

III. Attorney Fees

Trial courts have discretion to award attorney fees in a dissolution of marriage. *In re Marriage of Roberts,* 545 N.W.2d 340, 344 (Iowa App. 1996). We agree with the trial court's decision to award attorney fees to Julia. We award Julia an additional $500 in attorney fees on appeal.

IV. Conclusion

In conclusion we modify the decree entered by the trial court to award Julia alimony of $15,000, payable at the rate of $200 a month beginning the first day of the month following the issuance of the procedendo and continuing on the first day of each month following until satisfied. We otherwise affirm all other provisions of the decree. We award appellate attorney fees to Julia of $500.

AFFIRMED AS MODIFIED.

Vogel, J., concurs; Sackett, P.J., concurs in part and dissents in part.

SACKETT, P.J. (concurring in part; dissenting in part)

I concur in part and dissent in part. In this appeal and cross-appeal from the economic provisions of a decree dissolving a childless marriage of a little more than a decade, I would affirm the trial court in its entirety.

The majority has elected to modify the decree to award Julia alimony of $15,000 payable at the rate of $200 a month. I believe the trial court was correct in not awarding Julia alimony. My calculations show that though Jack has greater earning potential than Julia, he leaves the marriage with net assets of $139,196 while Julia leaves the marriage with $375,668 in assets. Some $246,758 of Julia's assets are inherited property.

Julia's assets and inherited property are items to be considered in addressing her need for support. *See In re Marriage of Williams*, 199 N.W.2d 339, 346 (Iowa 1972); *Schantz v. Schantz*, 163 N.W.2d 398, 405 (Iowa 1968). Julia has assets to assist with her support and receives income from her inherited property. All of these items are considered in arriving at her need for support. *See Williams*, 199 N.W.2d at 346; *Schantz*, 163 N.W.2d at 405. Inherited property can be considered on the issue of alimony. *In re Marriage of Moffatt*, 279 N.W.2d 15, 20 (Iowa 1979); *In re Marriage of Stewart*, 356 N.W.2d 611, 613 (Iowa App. 1984).

Jack has been ordered to maintain Julia's health insurance for three years and nine months following the dissolution. The evidence in the record reflects this may cost him nearly $500 a month. When I look at this together with the amount of property Julia has available to her, I find no reason to depart from the trial court's decision.

I would not order Jack pay alimony and I would not award Julia attorney fees. In the other respects, I concur with the majority's decision.