FILED
JUN 4 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF PHYLISS A. ROBERTS and WILLIAM DAVID ROBERTS

UPON THE PETITION OF PHYLISS A. ROBERTS,	)	278
Petitioner-Appellant,	)	6-82 85-908
AND CONCERNING WILLIAM DAVID ROBERTS,	)	FILED JUNE 4, 1986
Respondent-Appellee	)	

Appeal from the Iowa District Court for Harrison County (No. 962) - J. C. Irvin, Judge.

Petitioner Phyliss Roberts appeals the provisions of the dissolution decree entered by the trial court. **AFFIRMED.**

Maynard S. Telpner of Telpner, Smith & Sawatzke of Council Bluffs, Iowa for respondent-appellee.

Edward Bjornstad of Larson, Childs & Hall of Harlan, Iowa for petitioner-appellant.

Considered by Snell, P.J., and Schlegel and Sackett.

SCHLEGEL, J. 279

Petitioner Phyliss Roberts appeals the provisions of the dissolution decree entered by the trial court. On appeal, she argues the trial court erred in that it, (1) incorrectly considered the parties' respective contributions, both before and during the marriage, (2) overemphasized evidence relating to gifts made to the parties' children, and (3) incorrectly assessed attorney fees and costs. We affirm.

Respondent William D. Roberts (hereinafter David) married petitioner Phyliss Roberts on July 6, 1963. At that time both parties worked for Woodmen of the World Life Insurance Company. David sold insurance and Phyllis did clerical work. Already David had accumulated approximately $75,000 in assets and he brought those assets into the marriage. Phyliss had no substantial assets and discontinued her employment soon after the marriage. She subsequently devoted her time to raising the parties' three children. At the time of the decree, Aaron, the oldest son, was 21 and on his own; Eric, the second son, was 17 and graduating from high school, and Diana, the daughter, age 11, was in sixth grade and living with Phyliss.

During the marriage, David became very successful working as a life insurance salesman. He worked an average of 60-65 hours a week and accumulated approximately 90 college credits for the purpose of aiding his sales. David has added to his vocational success by wisely investing in farms and other rental property. At the time of the decree, the combined assets in both parties' names exceeded one million dollars. The evidence shows that the decisions to invest in the property ventures were made by David, but the subsequent care and management was shared by both parties.

In addition to her duties in the home and rearing the children, Phyliss assisted David in his job by answering the phone and performing many clerical tasks. She wrote most of the checks associated with the maintenance and

operation of the farms and rental property. A few years prior to the decree, Phyliss also obtained her real estate license but has not generated a substantial income from this part-time profession.

I. Division of Assets. The primary issue before us in this appeal is the contention by Phyliss that the trial court did not equitably divide the parties' assets. Our review of this equitable proceeding is de novo. Iowa R. App. P.4. Our analysis is governed by Iowa Code section 598.21 (1979), which has codified many aspects of our prior case law. The ultimate question is, as it has always been, whether the distribution of property was equitable. We reject any rule based on a percentage division of the assets and must determine what is equitable under the specific facts of this case. In re Marriage of Lattig, 318 N.W.2d 811, 814 (Iowa App. 1982).

Some of the property was in David's name, some in Phyliss', and some was held jointly. Each party had his or her own assessment of the value of the properties, and the trial court was faced with the formidable task of dividing these assets. The following is a breakdown of the trial court's divison of capital and liquid assets.

CAPITAL ASSETS	PHYLISS	DAVID
125 acres - Harrison Twp.	89,605	
550 acres - Allen & Mag Twp.		287,605
200 acres - LaGrange Twp.		162,835
10 acres - St. Johns	60,000	
Rental house - Blk. 72, Lt. 4	10,500	
Rental house - Blk. 83, Lt. 11	9,500	
Omni-View TV Lease	8,500	
Rental house - 3rd Street		21,500
3-Unit Apartment house		32,000

116 N. 8th Street, Mo. Valley		35,000
Household goods and furnishings	3,685	
Farm machinery	5,685	6,300
NET CAPITAL ASSETS	187,475	545,240

LIQUID ASSETS	PHYLISS	DAVE
1982 Dodge		3,000
1975 Dodge	1,000	
1970 AMC		700
1977 AMC	2,000	
Life Insurance	910	
Livestock		47,445
Stored Grain		35,991
Stock in David's name		14,712
Stock in Phyliss' name	7,800	
1 & 1/2 shares Allen Crk		
University Nebraska Bond	20,000	O
Sears Liquid Asset Fund		22,293
CD - First National Bank	10,000	
Joint Checking Acct., First Nat'l		1,402
Checking Acct. - First Nat'l		26,273
Checking Acct. - First Nat'l	400	
Joint Money Market, First Fed.	12,298	
Savings Acct. - First Fed.	5,711	
NET LIQUID ASSETS	60,119	151,816
TOTAL ASSETS	247,594	697,056

The trial court ordered David to pay the remaining indebtedness against two of the properties he received which amounted to $74,500. Phyliss was ordered

to pay the $85,000 debt remaining on the Harrison township property. David was also ordered to pay to Phyliss $70,000 in 10 equal installments. Thus, when the respective debt responsibilities are considered, along with the $70,000 lump sum property settlement, David's final asset award amounts to $552,556, and Phyliss' award equals $232,594.

We can find no specific reason for this disparity in the trial court's findings of fact and conclusions of law. However, David testified that the 550-acre farm property was purchased in 1969 with his premarital assets. That testimony was not refuted by Phyliss, and there is no evidence that she had participated in the decision to purchase that farm, or that she helped to maintain it. Thus, if the value of that farm is removed from the consideration of David's award, his assets would amount to $264,951 ($552,556 - $287,605). As was stated earlier, we do not adhere to any rule based upon a percentage division of the assets. Lattig, supra. However, we do take into account factors such as the duration of the parties' marriage, their respective ages and earning capacities, and the property brought into the marriage. Locke v. Locke, 246 N.W. 2d 246, 251 (Iowa 1976); Iowa Code §598.21(1); See also Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968).

David's ability to cultivate relatively minor resources and make them grow into substantial assets is well documented in the record. It is also without dispute that he brought significant assets into the marriage that helped to permit such an accumulation of assets during the marriage. Therefore, we cannot say that the trial court's division of assets was inequitable, whether that division was based upon assets brought into the marriage or the respective parties' marital contribution to those assets.

Under the circumstances of this case, the award to Phyliss is also equitable. She entered this marriage twenty-two years ago with essentially no assets and

a high school education. Upon dissolution, she leaves the marriage with $232,594 in assets, that includes a home fully paid for, rental property, and a real estate license.

When we consider all the circumstances of this case, we arrive at the conclusion that the trial court's division of assets is fair and just, and affirm its decision.

II. Gifts, Support and Alimony. The trial court found that an irrevocable trust, with a net value of $171,500, has been created for the parties' three children. The trust will be paid in equal shares to the children when the youngest child reaches age 21. In addition to the trust, gifts have been made to the children under the Uniform Gift to Minors Act. Aaron has been given $46,117; Eric has received $60,604; and Diana has received $51,420. The trial court determined that with respect to Eric and Diana, these funds are available for their education beyond high school.

In addition to the gifts and the trust, the trial court awarded Phyliss child support in the amount of $400 per month for Eric, while he is in college, and $1,000 per month for Diana until she is 18 or otherwise emancipated from Phyliss' home. If Diana should decide to attend college, David would be required to pay $400 per month for as long as she qualified for the support under Iowa Code section 598.1. David is also required to provide medical and dental insurance for the two youngest children.

Phyliss alleges the trial court overemphasized the gifts to the children in determining the amount of support and denial of alimony. It is true, the trial court noted that considerable funds were made available to the children in the trust and given to them under the Uniform Gift to Minors Act. But the trial court did not consider these funds for the childrens' support. The trial court concluded, "The Court finds that such funds with respect to Eric and Diana

should be utilized for any college education they wish to pursue." Thus, Phyliss' allegation that the gifts were overemphasized are without merit.

We also affirm the amount of support and denial of alimony in this case. In Locke v. Locke, 246 N.W.2d at 254, the supreme court stated:

> The alimony and property division portions of a dissolution decree should be interrelated in an overall attempt to fairly treat the parties involved. This court, on many occasions, has said:
>
> "Although allocations of support money, alimony and property have a different purpose, they are closely related in determination of the amounts to be awarded. In re Marriage of Winter, Iowa, 223 N.W.2d 165, 169. Each issue necessarily must be decided after an examination of the entire record." In re Marriage of Peterson, 227 N.W.2d 139, 142 (Iowa 1975). See also In re Marriage of Zoellner, supra, 219 N.W.2d at 524.

As part of the property settlement, Phyliss received $56,209 in cash, in addition to the $70,000 ordered to be paid in installments. As part of the $70,000 award, she will receive $7,000 in principle and 10% interest on the remaining principle each year for ten years. There will also be income from the rental property, and we must assume that the purchase of the 125 acres in Harrison township was intended to be a profitable one. Phyliss is also experienced in clerical and management duties associated with the property she has acquired from the marriage. Finally, we note that she has her real estate license which, although may not be able to provide a substantial income at present, is a sufficiently reliable source of earnings when the other means of revenue are considered.

III. Attorney Fees. The trial court ordered each party to pay his and her attorney's fees. Phyliss alleges the trial court should have ordered David to pay all or a significant portion of her attorney's fees. The primary consideration in making the determine of an award of attorneys fees is the parties' resources. In re Marriage of Lattig, 318 N.W. 2d 811, 817 (Iowa 1982). We find that Phyliss has sufficient resources to pay her attorney's fees and

therefore affirm the trial court on this issue.

Because we hold the trial court's division of assets, determination of child support, and denial of alimony are fair and equitable, we affirm its decree on all issues raised in this appeal.

AFFIRMED.