IN THE COURT OF APPEALS OF IOWA

No. 22-1725
Filed March 27, 2024

**IN RE THE MARRIAGE OF KELLY SCOTT BAST
AND KATHLEEN SUE BAST**

**Upon the Petition of
KELLY SCOTT BAST,**
Petitioner-Appellant/Cross-Appellee,

**And Concerning
KATHLEEN SUE BAST,**
Respondent-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Polk County, Joseph Seidlin, Judge.

Kelly Bast appeals, and Kathleen Bast cross-appeals, the spousal support and property provisions in the decree dissolving their marriage. **AFFIRMED ON APPEAL; AFFIRMED AS MODIFIED ON CROSS-APPEAL.**

Karmen R. Anderson of Anderson & Taylor, PLLC, Des Moines, for appellant.

Joseph G. Bertogli, Des Moines, for appellee.

Considered by Bower, C.J., and Schumacher and Langholz, JJ.

BOWER, Chief Judge.

Kelly Bast appeals the spousal support and property distribution provisions in the decree dissolving his marriage to Kathleen (Kathy) Bast. Kathy cross-appeals the property distribution provisions in the decree and challenges the trial court's decision to not award her attorney fees. Finding no failure to do equity as to Kelly, we affirm on appeal. But we agree with Kathy the court should have set aside $40,000 in proceeds traceable to her inheritance from her sister. As a result, we modify the decree by vacating Kathy's equalization payment but affirm on the trial court's denial of additional attorney fees.

I. Background Facts and Procedure

Kelly divorced his first wife, with whom he had two children, in 1985.

Kelly and Kathy married in 1986.[1] Thirty-five years later, in June 2021, Kelly filed a petition for dissolution of marriage. At the time of dissolution, both parties were sixty-nine years old and in "relatively good health."

Kelly has a medical degree and was a family practice physician who began his practice in 1981 and retired in 2020. Kathy graduated from high school in 1971 and worked in graphic arts until 1988. Because both parties are retired, their primary source of income other than investments is social security. Kelly receives $3373.42 per month in social security benefits; Kathy receives $1035 per month.[2]

At the time of the dissolution, the parties owned several assets with a net value of about $2 million. They owned real property, including the marital home, which the court valued at $327,950, and a neighboring property that was rented

[1] They have no children together.
[2] Both figures are a net sum after Medicare Part A deductions.

out, which the court valued at $222,000[3]; the court awarded both properties to Kathy. Two additional rural forty-acre properties were not valued by the court but were ordered to be sold at auction and the proceeds equally divided.[4]

The court also ordered Kathy's "doll collection" equally divided and provided a process to do so.[5]

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[3] This residence was rented at the time of trial and brought in about $10,000 per year in income.

[4] Kelly estimated the value of the forested acreage to be $130,000 and Kathleen presented an appraiser's value of $253,825. Kelly estimated the value of the other forty acres to be $175,000 and Kathleen's appraiser valued it at $299,775.

[5] The court noted the parties' valuations of the doll collection varied greatly: Kathleen testified the collection was worth about $10,000 and Kelly testified it was worth $140,000. Neither party submitted any evidence to document the extent of the collection or an appraisal value. Kelly testified he had considered getting the collection appraised but did not want to spend the $125 per hour appraisal charge, stating "it could take days and days to see all the many, many, many, many items there were and to appraise each one that it would be—it was financially not conceivable to do."

In the decree, the court set out a procedure to split the collection:

> Kathy shall preserve the entire doll and keepsake collection in one room of her home. She shall not remove any items in the collection from the room. The parties and their respective attorneys shall agree upon a day and time no later than 30 days after entry of this Decree upon which the parties and their respective attorneys shall gather in that room and the parties, supervised by their attorneys, shall alternate selection of the dolls and keepsakes one at a time until all the dolls and keepsakes have been divided, or until Kelly thinks that he has enough to satisfy him, whichever happens first (Kathy may have the first selection). Each party shall be responsible for their own attorney's fee for this exercise. In the alternative, the parties, prior to the date selected above, can agree upon a reasonable value for the items, and Kathy can pay one-half of that amount to Kelly in cash or from the proceeds of the sale of the two Guthrie County properties.

After trial, the parties' efforts to split the collection was aborted and they urged the district court to order the appointment of a special master to referee the process. In ruling on that request, the court noted a special master would charge $350 per hour. The court found the problem was due to the parties "petulant behavior and not any deficiency in the [court's] order itself." It noted the parties "were free to agree to hire a referee and bestow whatever powers they wish upon that person" but the court would not enter an order.

Kelly and Kathy also had several investment and insurance assets, some with stipulated values, and agreed those would be equally divided;[6] three were previously distributed with court approval. Kelly was awarded an Ameritrade account valued at $142,000. Kathy was awarded a Pacific Life IRA valued at $147,350 and a Vision Bank IRA valued at $57,100.

Kelly argued he should be awarded—as premarital property—the proceeds from a $48,000 pension account he claimed he was awarded in a 1985 divorce from his first wife. Kelly asserted he had kept this amount separate from the parties' commingled funds throughout the marriage, and the value of the funds had grown to $601,407. In the alternative, he claimed he should be awarded the entirety of the pre-marital value of the pension and half of the post-marital appreciation. But the court found Kelly had provided no documentation or accounting to support his claims and noted most of the value "represents appreciation over the course of the marriage," which the court concluded was subject to division. As a result, the court equally divided the funds in the two Lincoln financial five-year rollover IRAs ($52,799 and $66,062) and the Equitrust IRA ($482,546).

Kelly sought to have set aside his recent inheritance from his father, which was a third of a million-dollar trust. The court found two AIG accounts funded near in time to Kelly's father's death should be set aside to Kelly ($271,860 and $121,165).

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[6] Two life insurance policies with combined surrender value of $212,796, two savings accounts, and a checking account.

The court also granted Kathy's request to set aside an account she funded with $17,000 she inherited upon her brother's recent death and deposited in a separate account.

In a posttrial motion, Kathy asked the court to "account for" $80,000 net proceeds from the sale of a property (at trial this was referred to as Merle Hay house) she and her brother inherited from her sister in 2006. There had been testimony at trial about this inheritance. Kathy testified she had also received a certificate of deposit (CD) from her sister and used that money to buy out her brother's half of the property. Kelly testified he and Kathy used $40,000 in joint funds to buy her brother out of the property. In any event, after buying the brother out, the parties rented out the inherited property until 2016, when Kathy and Kelly sold the property. Forty thousand dollars of the net proceeds were used to pay off the mortgage on the parties' other rental property. In its posttrial ruling, the court noted it *had* considered Kathy's interest in the Merle Hay house but determined "[t]he proceeds from the sale of the home were either spent or commingled with marital assets long ago. [Kathy] is not entitled to a set aside for this asset."

The court ordered several assets to be equally divided within thirty days of the decree, which the parties' pretrial filings noted an agreed combined current value of about $470,000:

> Equitable Life Insurance net surrender value
> Talcott Life Insurance net surrender value
> Precious gold and metals
> Lafayette Federal Credit Union 3-year fixed CD, 4-year fixed CD, and 5-year fixed CD and a 5-year fixed IRA, and savings account
> Penn Air 48-month CD and 60-month CD
> PSECU 24-month CD

People's Bank IRA[7]

The court also divided the parties' personal property, including vehicles, a trailer, riding lawnmowers, and boats. The parties' real properties were without debt, and the parties had little credit card debt that was to be paid from their joint checking account. The court observed the parties had earlier agreed each would withdraw $15,990 from their joint account to pay their respective lawyers.

Additional proceedings followed the trial, both before and after entry of the decree, including cross-motions to reconsider, and several motions to show cause.

The district court entered the dissolution decree on July 5, 2022. In addition to the property to be sold at auction and divided equally and the listed items to be split equally, the district court awarded Kelly additional assets with a value of $515,380 and Kathy assets with a value of $556,025. The court ordered Kathy to make an equalization payment of $20,322.50, which would be deducted from her share of the sale of the acreages. The equalization payment was later reduced by $3500 to account for the People's Bank IRA, which had not been identified earlier.

The court declined to make any ruling on two issues Kelly had complained about during the trial: (1) a list of personal items he asserted were missing from items he requested be returned to him because the court noted Kelly did not request any specific relief; and (2) Kathy's excessive spending during the pendency of the dissolution proceedings, which the court noted was the subject of contempt proceedings.

[7] This $7000 IRA was purchased by Kelly with marital funds and omitted in the original decree but was ordered split by posttrial ruling.

The district court awarded Kathy traditional spousal support in the amount of $1750 per month and denied Kathy's request for additional attorney fees.

Kelly appeals, claiming the district court incorrectly awarded Kathy spousal support and failed to award Kelly the premarital portion of his pension fund. Kathy cross-appeals, claiming the district court erred in declining to award her attorney fees and to award her additional inherited property.

II. Scope and Standard of Review

"Dissolution-of-marriage actions are reviewed de novo." *In re Marriage of Towne*, 966 N.W.2d 668, 674 (Iowa Ct. App. 2021). "Accordingly, we examine the entire record and adjudicate anew the issue of the property distribution." *Id.* (citation omitted). We give weight to the findings of the district court, particularly about the credibility of witnesses, but we are not bound by them. *Id.* The district court is granted considerable latitude, and we will interfere in its rulings in dissolution matters only where there has been "a failure to do equity." *In re Marriage of Pazhoor*, 971 N.W.2d 530, 537 (Iowa 2022); *In re Marriage of Gust*, 858 N.W.2d 402, 416 (Iowa 2015).

III. Discussion

A. Kelly's Appeal

1. Spousal support. Kelly asserts spousal support was not warranted here because Kathy received a large property division.

"An award of traditional spousal support is equitable in marriages of long duration to allow the recipient spouse to maintain the lifestyle to which he or she became accustomed." *In re Marriage of Sokol*, 985 N.W.2d 177, 185 (Iowa 2023); *accord Gust*, 858 N.W.2d at 408. "Generally speaking, marriages lasting twenty

or more years commonly cross the durational threshold and merit serious consideration for traditional spousal support." *Gust*, 858 N.W.2d at 410–11.

In awarding traditional alimony, the amount and duration "is primarily predicated on need and ability." *Id.* at 411 (citation omitted). "In determining need, we focus on the earning capability of the spouses, not necessarily on actual income." As for the "ability to pay, we have noted that '[f]ollowing a marriage of long duration, we have affirmed awards both of alimony and substantially equal property distribution, especially where the disparity in earning capacity has been great.'" *Id.* (citation omitted). "Ideally, the support should be fixed so the continuation of both parties' standard of living can continue, if possible." *In re Marriage of Stenzel*, 908 N.W.2d 524, 534 (Iowa Ct. App. 2018).

The district court explained the award of traditional support to Kathy as follows:

> In applying the [statutory] analysis and factors,[8] the court concludes that this is a long-term marriage ([thirty-five] years). Kelly and Kathy are each [sixty-nine] years old. Both are retired. Each is receiving a substantial property settlement herein in excess of a million dollars, with no associated debt. Both parties are in relatively good health. Kelly receives approximately $3000 per month in Social Security retirement benefits, and Kathy receives about $1000 per month in Social Security retirement benefits. Kathy will also be receiving the Johnston rental property which has rental income of about $10,000 per year. Otherwise, the parties' respective incomes will be derived from their assets. Due to his sizeable inheritance, Kelly will have almost $400,000 more in assets than Kathy from which to support his living in his retirement years.
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> After [thirty-five] years of marriage, leaving one spouse with a substantially higher standard of living derived from a substantially larger pool of money to draw from in retirement is inequitable. *See* Iowa Code § 598.21A(1)(j); *In re Marriage of Thomas*, 319 N.W.2d 209, 212 (Iowa 1982) (" . . . nothing in the statute prohibits a consideration of ownership of property acquired by gift or

[8] *See* Iowa Code § 598.21A(1)(a)–(j) (2021).

> inheritance, along with the earning capacity or anything else which might relate to an ability to pay, in determining whether alimony should be allowed."). The court determines, having given consideration to the length of the marriage and parties' respective incomes going forward as well as their respective income-earning assets, that Kelly should be required to pay traditional alimony to Kathy in the amount of $1750 per month.

We acknowledge Kelly disagrees with the trial court's analysis, but we find no reason to disturb the award. Kelly claims he does not have the ability to pay spousal support, arguing its payment will leave his income "just above the poverty bracket set by the federal government which is $14,580.00." But Kelly received about a million dollars in assets in the dissolution and has a substantial inheritance from his father's trust—we do not ignore Kelly's resources from which to draw in retirement. *See Thomas*, 319 N.W.2d at 212; *accord In re Marriage of Meredith*, 394 N.W.2d 336, 339 (Iowa 1986).

Kathy too was awarded an equal share of the marital assets, but a large part of her award was in real property requiring upkeep and maintenance. Kathy had a considerably lower earning capacity during this thirty-five-year marriage, and her Social Security benefits are just over $1000 per month, about a third those of Kelly's, while her monthly expenses are more than $4000. Kelly was awarded more liquid assets and has access to considerably more funds than Kathy. We find no inequity in the trial court's award of spousal support.

2. Premarital property. Kelly next contends the court should have set aside his prior pension, which he brought to the marriage. Iowa Code section 598.21(5) provides: "The court shall divide *all property*, except inherited property or gifts received or expected by one party, equitably between the parties after considering"

the relevant statutory factors.[9] "Property brought into the marriage by a party is merely a factor considered by the court, together with all other factors, in exercising its role as an architect of an equitable distribution of property at the end of marriage." *In re Marriage of Schriner*, 695 N.W.2d 493, 496 (Iowa 2005).

Kelly draws attention to this phrase in his 1985 dissolution decree to support his claim: "IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the children shall be the exclusive and co-equal beneficiaries of his retirement plan, so long as his child support obligation continues." This is not persuasive evidence of Kelly's claim of the original amount of the retirement plan, much less the accumulated value.

As the district court noted, the only evidence that a premarital account existed is Kelly's testimony. Kelly did provide financial records from 1990 through 1997, but those records do not differentiate between pre-marital and post-marital assets. The trial court did consider all the factors for which the parties provided evidentiary support and found Kelly's claim of bringing a substantial retirement account to the marriage lacked evidentiary support. We affirm.

3. Personal property. On appeal, Kelly contends he provided as an exhibit a list of personal items he has not been allowed to retrieve from the marital home,[10]

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[9] *See* Iowa Code § 598.21(5)(a)–(m).

[10] The exhibit provides:

> 1. There [have] been multiple failures [by] Kathy to allow Kelly to retrieve his property.
>
> 2. A list of requested personal property was [provided] to Kathy's attorney.
>
> 3. An agreed time and date was set for 5 PM on April 7th, 2022. Kelly was on time.
>
> 4. Kelly was not given any communication of a dispute to the requested documents or property.

and he testified there were household contents he wanted. Kelly contends, "It was error for the Court not to award Kelly' [sic] personal, unrefuted property in the dissolution." But the trial court found Kelly had asked for no specific relief. The parties' pretrial stipulation notes only that "[t]he household contents is disputed including the doll collection."[11] The parties did not explain what they proposed the trial court do about that dispute, and we will not find fault with the trial court's conclusion no relief was requested.

B. Kathy's Cross-appeal

1. Merle Hay house. On cross-appeal, Kathy argues the trial court "neglected to account for the $80,000 proceeds from the Merle Hay property which came from Kathy's inheritance." "Iowa Code section 598.21(5) and (6) require us to exempt inherited and gifted property from the typical property division in a dissolution unless doing so would be inequitable." *In re Marriage of George*, No. 21-1998, 2022 WL 17829366, at *2 (Iowa Ct. App. Dec. 21, 2022).

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5. Kelly's property was placed in a dirt floor of a shed which was within 6 feet of the bike path in front of the house.

6. Only 2 of the 9 req[u]ested posters were provided.

7. Only 1 of 5 walking canes was provided. It was damaged, unuseable, and unrepairable.

8. The antique Pewter plates were not provided. Kelly can return the metal horse plate.

9. Wooden infant cutout of Kelly was not included.

10. Remoted financial records of Kelly dating back to 1972 was not included.

11. Kelly would like his mother's wheelchair which was hanging in the north garage.

12. Again Kelly was not allowed access in their home—not even in the garage.

[11] The parties stipulated Kathy would receive the doll collection. The court ordered otherwise.

Kathy asserts the Merle Hay house was sold in 2016, about the same time Kelly received the investment accounts from his father's estate—which the court did set off to Kelly. She argues:

> To treat Kathy's inheritance of the Merle Hay real estate from her sister's estate received in 2016, the same year Kelly received inheritance from his father's estate, was inequitable in light of the undisputed testimony of the parties that the Merle Hay real estate was clearly inherited by Kathy and half of the $80,000 sale proceeds from its sale could be traced into the rental property in Johnston, which still existed at the time of trial and was awarded to Kathy at a value of $222,000 in the Decree. Under the same principles that the trial court carved out Kelly's inherited property traced to the AIG accounts totaling over $400,000, the trial court should have reduced the joint marital value of the parties' Johnston rental property from $222,000 to $182,000 . . . .

Kelly counters, "The issue of whether Kathy should have been entitled to an offset has not been properly preserved." While Kathy may not have specifically asked for an offset, we find her request that the court "account for" her inheritance from her sister was sufficiently made to preserve error.

The court noted it had considered Kathy's interest in the house and determined the proceeds were either spent or comingled with marital assets. But, "comingling of inherited or gifted funds with marital assets is not enough, alone, to require the property to be divided as a marital asset." *Id.*

> Notwithstanding the classification of property as inherited or gifted, the court may still divide such an asset as marital property, where awarding the gift or inheritance to one spouse would be unjust. We consider the following factors when deciding whether it would be inequitable to exempt a spouse's gift or inheritance from division:
>
> (1) contributions of the parties toward the property, its care, preservation or improvement[ ];
>
> (2) the existence of any independent close relationship between the donor or testator and the spouse of the one to whom the property was given or devised;

> (3) separate contributions by the parties to their economic welfare to whatever extent those contributions preserve the property for either of them;
>
> (4) any special needs of either party;
>
> (5) any other matter[,] which would render it plainly unfair to a spouse or child to have the property set aside for the exclusive enjoyment of the donee or devisee.

In re Marriage of McDermott, 827 N.W.2d 671, 679 (Iowa 2013) (alterations in original) (citations omitted).

There is no evidence separate funds were used for the care and preservation of the Merle Hay house, and we assume marital funds were used for the ten years the parties rented the house to others; but we have no evidence as to the extent of that upkeep. There is no evidence Kathy's sister had an independent close relationship with Kelly. When the house sold, there was a net profit of $80,000. Even assuming joint funds were used to buy out Kathy's brother's half, there is no dispute Kathy's inherited value was $40,000.[12] And, there is no dispute that $40,000 of the $80,000 net proceeds from the sale of the Merle Hay house were traceable to paying off the mortgage on the other rental property still in their possession. *See In re Marriage of Sterner*, No. 18-0409, 2019 WL 1057304, at *4 (Iowa Ct. App. Mar. 6, 2019) (finding although the husband used inheritance funds to pay off the farm mortgage on jointly held property, "the use of the inherited funds [was] traceable and the property was still in the possession of parties at the time of dissolution"; and affirming the court's determination the inherited funds should be set aside prior to the property division).

[12] There is a dispute as to origin of funds to purchase the brother's interest. Kathy testified it came from a CD she also inherited from her sister. Kelly testified the $40,000 came from joint funds. In any event, Kathy seeks a set aside of $40,000 and not the full $80,000 netted from the sale of the Merle Hay house.

We are not persuaded it is "plainly unfair" to set aside $40,000 in value to Kathy. Because the property division entered by the trial court did not set off Kathy's traceable inheritance of $40,000, we modify the decree to eliminate any equalization payment by Kathy to Kelly.

2. Trial attorney fees. Kathy argues the district court erred in not awarding her attorney fees because "[a] significant portion of litigation in this case . . . was attributable to Kelly's claim for . . . his claimed pre-marital $48,000 IRA" and "Kelly was completely in charge of the parties' finances," necessitating more time for discovery.

An award of trial attorney fees rests in the sound discretion of the district court. *In re Marriage of Michael*, 839 N.W.2d 630, 639 (Iowa 2013). The key factor to be considered is "the parties' respective abilities to pay." *Id.* We do not disturb a ruling on attorney fees unless the court abused its discretion. *In re Marriage of Wessels*, 542 N.W.2d 486, 491 (Iowa 1995).

Here, the district court noted the parties' agreement to each pay $15,990 to their respective attorneys from their joint bank account and ruled, "Each party has been awarded substantial assets from which to pay their attorneys. Each party will pay their own attorney fees above the agreed-upon amount." We find no abuse of the court's discretion.

C. Appellate Attorney Fees

Both parties request an award of appellate attorney fees. "Appellate attorney fees are not a matter of right, but rather rest in this court's discretion." *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). We consider the needs of the party and the ability of the other party to pay, and the relative merits of

appeal. *Id.* Because both parties have substantial assets from which to pay their attorney fees, each party is responsible for their own attorney fees on appeal. Costs are assessed equally between the parties.

AFFIRMED ON APPEAL; AFFIRMED AS MODIFIED ON CROSS-APPEAL.

Langholz, J., concurs; Schumacher, J., concurs in part and dissents in part.

SCHUMACHER, Judge (concurring in part and dissenting in part).

I concur with the majority opinion on Kelly's appeal of the property division and also concur with the majority opinion on the cross-appeal. I respectfully part ways only as to the majority opinion that affirmed the trial court's award and amount of traditional alimony to Kathy. Because of the amount of assets each party received, each party's retirement status, and the needs of Kathy, ordering Kelly to pay Kathy traditional alimony of $1750 per month does not provide equity between the parties.

Our court recently addressed a similar fact pattern concerning an alimony issue in which both parties considered themselves retired and had received considerable marital assets. *See In re Marriage of Merry*, No. 23-0177, 2024 WL 470350, at *4 (Iowa Ct. App. Feb. 7, 2024). Our court affirmed the trial court's denial of a request for alimony when both parties were not employed, considered themselves retired, and had each received assets of just over six million dollars. *Id.* The husband received $32,208 per year in social security benefits, while the other spouse anticipated receiving $24,780 per year when she could draw those benefits. *Id.* We noted that aside from social security benefits, both parties were living off the assets awarded in the division of marital property. *Id.*

Similarly, the instant parties will be living primarily off social security benefits and marital assets, with each party having some minimal additional income. Kathy has rental income, and Kelly anticipates a yearly Conservation Reserve Program (CRP) payment. Each party received assets of just over one million dollars. Neither party has much debt, if any. As noted by the majority, at the time of the dissolution of marriage, both parties were sixty-nine years old and in fairly good

health. Kelly receives social security benefits of around $3000 per month, and Kathy receives social security benefits of around $1205 month.[13] Kelly is anticipated to receive a CRP payment on inherited property of around $5000 per year. Kathy receives income from the rental property she was awarded in the dissolution proceedings, about $10,000 per year, or $910.00 per month. Under the trial court's alimony award, Kathy's monthly income will be about $3800 (social security, plus rental income, plus alimony) and Kelly's monthly income will be approximately $1700 (social security, plus anticipated yearly CRP payment, minus alimony payment to Kathy).

I am cognizant of the institutional deference afforded the district court in determining spousal support counsels against undue tinkering with spousal support awards.[14] An appellate court should disturb the district court's determination of spousal support "only when there has been a failure to do equity." *In re Marriage of Gust*, 858 N.W.2d 402, 406 (Iowa 2015) (quoting *In re Marriage of Olson*, 705 N.W.2d 312, 315 (Iowa 2005)). Otherwise, "[w]hen appellate courts unduly refine these important, but often conjectural, judgment calls, they thereby foster appeals in hosts of cases, at staggering expense to the parties wholly disproportionate to any benefit they might hope to realize." *In re Marriage of*

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[13] While Kelly argues in his appellate brief that Kathy's social security benefit will go up after the dissolution of marriage as she would be eligible for fifty percent of his benefit, there is a lack of documentation in the record to support such. And while Kelly argues that "a simple search on the social security website details this procedure," a trial court's role is not to comb the internet following trial for information to support a party's position.

[14] "Unless and until our state adopts formal alimony guidelines, appellate courts should not be second-guessing lower courts' judgment calls." *In re Marriage of Sokol*, 985 N.W.2d 177, 188 (Iowa 2023) (Mansfield, J., concurring in part and dissenting in part).

Benson, 545 N.W.2d 252, 257 (Iowa 1996) (en banc). And in marriages of long duration where the earning disparity between the parties is great, both spousal support and nearly equal property division may be appropriate. *In re Marriage of Weinberger*, 507 N.W.2d 733, 735 (Iowa Ct. App.1993).

But here, both parties will be living off assets and social security benefits. And on this record, Kathy has not demonstrated a need for alimony in the amount awarded by the trial court, nor is the award equitable between the parties. Spousal support is a discretionary award, dependent upon each party's earning capacity and present standards of living, as well as the ability to pay and the relative need for support. *In re Marriage of Kurtt*, 561 N.W.2d 385, 387 (Iowa Ct. App.1997).

Kelly's brief on appeal requests that the alimony award be eliminated. But at a hearing on a motion to reconsider, Kelly suggested that an equal division of the parties' respective social security benefits would be equitable. The later argument has merit. Given the parties' incomes, age, and retirement status, Kathy's alimony award should be reduced from $1700 per month to $900 per month until the death of either party or Kathy's remarriage, which puts both parties on a fairly even playing field with respect to social security benefits.