

IN THE COURT OF APPEALS OF IOWA

No. 1-309 / 10-1694
Filed June 15, 2011

**IN RE THE MARRIAGE OF FLORA A. DANHAUER
AND DORLAND E. DANHAUER**

Upon the Petition of

FLORA A. DANHAUER,
Petitioner-Appellee,

And Concerning

DORLAND E. DANHAUER,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Douglas F. Staskal,
Judge.

Dorland Danhauer appeals from the economic provisions of the decree
dissolving his marriage to Flora Danhauer. **AFFIRMED.**

Joseph G. Bertogli, Des Moines, for appellant.

Joseph W. Seidlin, Des Moines, for appellee.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

TABOR, J.

Dorland Danhauer appeals from the economic provisions of the decree dissolving his fifty-year marriage to Flora Danhauer. He contends the district court erred by including inherited property in the division of assets. He also contests the award of spousal support. Considering the significant length of the marriage and Dorland's representations to Flora that the inherited property was equally hers, we conclude that it was equitable to include Dorland's inheritance in the property division. We also conclude Flora is entitled to \$400 per month in traditional spousal support, which places the parties in roughly equal economic positions.

I. Background Facts and Proceedings.

Dorland and Flora were married on July 19, 1959. Flora filed a petition seeking to dissolve the marriage on October 28, 2009. At the time of the August 2010 trial, Dorland was seventy-two years of age and Flora was sixty-nine.

During the marriage, Flora stayed home to raise the parties' four children. Once the children were grown, she traveled with Dorland in his employment as an over-the-road truck driver until she retired around 2003 to undergo treatment for cancer. Although Flora worked for several months in 2010 as a home health aide, she testified she does not have the stamina to continue working. She receives \$802 per month from Social Security.

Dorland worked as a supervisor for Old Home Bread and then as a truck driver during the marriage. He retired in approximately 2006. He receives \$1743 per month in Social Security. He has no serious health concerns.

In late 2006 or early 2007, Dorland's mother died. Dorland received a total of approximately \$306,849 from the estate in four distributions during 2007 and 2008. The parties spent approximately \$160,000 of that inheritance on trips, vehicles, remodeling their home, and paying debts. Although his mother left the money solely to Dorland, he admits he told Flora the money was just as much hers as his.

Just before filing her petition to dissolve the marriage, Flora transferred \$59,160 from the parties' joint checking account into a personal bank account. In January 2010, the court entered a temporary order allowing Flora to withdraw up to \$400 per month from that account for support. The court held trial in August 2010 and entered the decree dissolving the marriage in September 2010. In it, the court distributed the majority of the property pursuant to the parties' agreement. It found Dorland's inherited property was divisible and awarded Flora the remainder of the inherited money she had transferred to her bank account. The court also awarded Flora \$400 per month in traditional spousal support.

II. Scope and Standard of Review.

We review dissolution of marriage proceedings de novo. Iowa R. App. P. 6.907; *In re Marriage of Witten*, 672 N.W.2d 768, 773 (Iowa 2003). Our job is to examine the entire record and decide anew the issues raised on appeal. *In re Marriage of Beecher*, 582 N.W.2d 510, 512-13 (Iowa 1998). We give weight to the district court's factual findings, especially regarding the credibility of the witnesses. *Witten*, 672 N.W.d at 773. We defer to the district court's opinion

regarding the credibility of the parties because of the trial judge's superior ability to gauge their demeanor. *In re Marriage of Pundt*, 547 N.W.2d 243, 245 (Iowa Ct. App. 1996).

III. Property Division.

Dorland first contends the district court erred in awarding Flora the \$59,160 she withdrew from the parties' joint bank account and placed in her own account. He argues the property was not divisible because it was part of his inheritance.

Partners in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Dean*, 642 N.W.2d 321, 323 (Iowa Ct. App. 2002). The property should be distributed based on what is equitable under the circumstances and considering criteria listed in Iowa Code section 598.21(5) (2009). *Id.* We look at the decree as a whole in determining what is equitable. *Id.* at 325. We value the assets and liabilities as of the date of trial. *In re Marriage of Driscoll*, 563 N.W.2d 640, 642 (Iowa 1997). The district court is afforded wide latitude, and we will disturb the property distribution only when there has been a failure to do equity. *In re Marriage of Schriener*, 695 N.W.2d 493, 496 (Iowa 2005).

Section 598.21(6) states inherited property is not subject to property division "except upon a finding that refusal to divide the property is inequitable to the other party." In determining whether it is inequitable to refuse to divide inherited property, we consider the following factors:

- (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 Goodwin, 606 N.W.2d 315, 319 (Iowa 2000). Length of the marriage also may be an important factor in determining whether inherited property should be subject to distribution. *Id.* Where the parties have enjoyed, over a lengthy period of time, a substantial increase in their standard of living as the result of gifts or inheritances, then any division of property should enable the parties to continue that lifestyle, even if that goal requires the division of gifted property. *Id.* at 320.

In this case, failure to divide the inherited property would be inequitable to Flora. The parties were married for fifty years. In the final years of their marriage, they spent roughly half of the inherited monies to improve their standard of living: paying off debts, purchasing a new vehicle, and taking trips. Dorland admits he told Flora the inherited funds were just as much hers and testified that the remaining inheritance probably would have been spent on more vacations and “living expenses for both of us.” When considering the length of the marriage, the lifestyle the parties had become accustomed to, and Flora’s expectation she would continue to enjoy this lifestyle through Dorland’s sharing in his inheritance, we conclude the award of approximately \$59,160 in inherited property to Flora was equitable.

IV. Spousal Support.

Dorland next contends the district court erred in awarding Flora \$400 per month in traditional spousal support. He argues the award is inequitable in light of the property distribution. He claims he does not have the financial wherewithal to make these payments.

Spousal support is not an absolute right but is awarded depending on the circumstances of each particular case. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). In considering whether to award a party spousal support, the court must consider the length of the marriage, the age and health of the parties, the property distribution, and earning capacity, among other factors. Iowa Code § 598.21A(1). Although our review is de novo, we give the district court considerable latitude in determining whether to award spousal support based on the criteria found in Iowa Code section 598.21A(1). *Anliker*, 694 N.W.2d at 540. We only disturb that determination where there is a failure to do equity. *Id.*

The record shows Dorland receives approximately \$1750 per month from social security. Flora receives approximately \$800 per month. Her social security payments are substantially lower because she stayed out of the workforce to raise the parties' four children. Flora's prior bout with cancer, her age, and her testimony that she does not have the energy to continue working all indicate her need for spousal support.

Given the significant length of the marriage, the parties' advanced ages, Flora's health—which impedes her ability to work—and the overall property

distribution, we conclude an award of traditional spousal support is merited. An award of \$400 per month makes the parties' monthly income relatively equal, with Dorland receiving \$1350 and Flora receiving \$1200. Such an award is equitable under the facts of this case and, accordingly, we affirm.

V. Appellate Attorney Fees.

Finally, Flora seeks an award of her appellate attorney fees in the amount of \$3000.

An award of attorney fees on appeal is not a matter of right, but rests within the discretion of the court. *In re Marriage of Gonzalez*, 561 N.W.2d 94, 99 (Iowa Ct. App. 1997). We consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the district court's decision on appeal. See *In re Marriage of Maher*, 596 N.W.2d 561, 568 (Iowa 1999).

Considering the foregoing factors, we award Flora \$2000 in her appellate attorney fees.

AFFIRMED.