

IN THE COURT OF APPEALS OF IOWA

No. 1-583 / 11-0048
Filed October 19, 2011

**IN RE THE MARRIAGE OF ALLISON KAY LARSON
AND ROGER MARLYN LARSON**

Upon the Petition of

ALLISON KAY LARSON,
Petitioner-Appellee/Cross-Appellant,

And Concerning

ROGER MARLYN LARSON,
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Kossuth County, Nancy L. Wittenburg, Judge.

Roger Larson appeals from the economic provisions of the decree dissolving his marriage to Allison Larson. **AFFIRMED AS MODIFIED.**

Earl B. Kavanaugh of Harrison & Dietz-Kilen, P.L.C., Des Moines, for appellant.

Ann M. Gales, Algona, for appellee.

Heard by Sackett, C.J., and Vaitheswaran and Tabor, JJ.

TABOR, J.

Following twenty-five years of marriage, Allison and Roger Larson are before us appealing the economic provisions of the decree dissolving the union. The question presented on appeal is whether the 160 acres of farmland Roger inherited from his parents is subject to division in light of the contributions Allison made during the marriage. We also consider whether it was equitable to award Allison eighty-five acres of farmland purchased by the parties during the marriage. Allison seeks an award of spousal support if the property division is modified and appeals the denial of her trial attorney fees. Both parties seek an award of their appellate attorney fees.

Because we find the inherited farmland is not subject to division, we modify the property award. But equity dictates Allison be awarded the eighty-five acres of farmland purchased by the parties during the marriage. Considering the property division, we do not order spousal support. In light of the assets of both parties, we decline to award either party attorney fees.

I. Background Facts and Proceedings

Roger and Allison were married on March 31, 1984, in Union County. They have three children who are not at issue in this appeal. Allison was the children's primary caregiver during the marriage.

Roger was born in 1947 and at the time of trial was self-employed as a farmer. Exhibits showed his five-year salary average as \$66,407.80. His projected income for 2010 was \$54,173.14.

Allison was born in 1954 and at the time of trial was employed by Pharmacists Mutual as a claims service representative in the legal department, earning \$27,208 per year. She has a bachelor's degree in elementary education from Mount Mercy College. Allison taught from 1978 until 1990. In 2001, Allison returned to education as a teacher's aide until she began her current position in 2007. Allison has an IPERS pension plan with a cash refund value of \$41,728.00. She also has a 401(k) plan through Pharmacists Mutual with a vested balance at the time of trial of \$10,118.00.

At the time of the marriage, Roger was in the process of buying a 180-acre farm in Adams County. The couple moved into the farm residence. Roger earned \$8715 in 1984 and reported no income in 1985. When he could not make the balloon payment on the mortgage, Roger forfeited the real estate contract. The couple then moved to Union County where Roger worked for UPS and as an over-the-road truck driver.

Roger's mother, Jeanette Larson, died in March 1990. His father, Maurice Larson, died in June 1990. After his father's death, Roger inherited a 160-acre farm in Bode, which includes a four-acre building site with a farmhouse and 153.8 tillable acres of land. The farm was appraised at \$1750 per acre (\$280,000) at the time of Maurice's death. In the final computation of distribution of the father's estate, the farm was valued at \$1950 per acre (\$312,000). Roger also inherited \$36,346.81 in cash.

The parties moved to the Bode property in 1990 so Roger could pursue his dream of being a farmer. Allison left her teaching position at the time of the

move and did not again work outside the home until 2001. The parties disagree regarding the extent of Allison's contributions to Roger's farming operation. Allison claims that in addition to her role as homemaker and the children's caretaker, she kept the books for the farm and assisted with the harvest. Roger testified Allison's claims were "exaggerated" but agreed "[s]he would come out there and do stuff during the busy times" and that she did "the compilation of the book work. She would compile the figures and then hand it to the tax man."

Before and during the marriage, Allison inherited property from her relatives. As a teenager, she received an inheritance from her grandmother and still had approximately \$13,000 remaining at the time of the marriage. On December 30, 1985, Allison invested these funds and by February 7, 1994, the investment had grown to \$32,918. On March 1, 1994, Allison and Roger used these funds as a down payment to purchase an eighty-five-acre parcel of farmland that borders the Bode farm Roger inherited. The parcel consists of 83.61 tillable acres for which the parties paid \$1950 per acre (\$160,000). The remaining balance was paid off with marital funds during the course of the marriage.

In 2000 and 2001, Allison inherited a total of \$355,000.00 in cash from her uncle. She invested the majority of these funds in Edward Jones accounts and at the time of trial, the accounts were valued at \$371,358.57. In 2008, Allison inherited \$100,560 in cash from her mother's estate. She used \$30,000 as down payment on a \$126,000 home in Algona, purchased in November 2008, after the parties' separation. At the time of trial, the mortgage on the home was \$78,459.

Another \$6100 was used to purchase a 2005 Chevy Impala. Allison invested another \$60,000 of the funds into a CD, which was rolled over into a limited edition savings account at Northwest Bank.

The parties made improvements to the farm over the years. In 1994, a tiling project was completed for \$2591. The parties completed tiling projects on both the 160-acre original tract of inherited farmland and the purchased eighty-five acres in 1999, 2000, and 2002, with a total cost of approximately \$31,000. The parties also added outbuildings and improvements to the building site of the inherited farm during the course of their marriage. These improvements include a hog confinement building in 1991 that cost \$34,470, the Quonset building in 1992 that cost \$16,336, the pole building in 1995 that cost \$5380, and the 12000 bushel storage bin in 2003 that cost \$19,488. The parties also purchased farm equipment in excess of \$64,975.

Allison and Roger separated in March 2008. Allison filed for dissolution of the marriage on June 29, 2009. The district court held trial on May 27, 2010, to determine issues of child custody, support, and visitation, as well as property division and spousal support. With regard to the property division, the parties disputed the division of three assets: the 160-acre inherited farm, the eighty-five-acre purchased farm, and a duplex in Iowa City.¹

In its December 13, 2010 decree, the court granted physical care of their remaining minor child to Allison and ordered Roger to pay \$780 per month in child support. Citing the length of the parties' marriage, Allison's sacrifice of her

¹ At trial, the parties disputed the valuation of six assets, but on appeal accept the values assigned by the district court.

teaching career and contributions to Roger's farming operation, and Allison's use of inherited funds (along with the money Roger inherited from his parents' estate) to contribute to the appreciation of the farm's value, the court found it would be inequitable to exclude the entire 160-acre farm from the marital estate subject to division. The court also found Allison's inheritances from her uncle and mother to be separate property not included in the marital estate subject to division, noting Allison never commingled the assets, the lack of evidence Roger contributed to their maintenance or appreciation, and the lack of evidence of any independent, close relationship between Roger and Allison's uncle or mother. The court then awarded Roger the 160-acre farm (valued at \$826,800) and Allison the eighty-five-acre farm (valued at \$433,500). The final property division resulted in Allison receiving a net marital property award of \$688,133 and Roger receiving \$1,080,646. Of the inherited property kept separate, Allison's inherited property was valued at \$487,373 and Roger's at \$23,700. The court ordered Roger to pay Allison \$100,000 to equalize the property settlement, with her share being \$788,133 and Roger's share being \$980,646. In view of the property division, the court declined to award Allison spousal support or attorney fees.

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

We review the district court's award of attorney fees for an abuse of discretion. *Witten*, 672 N.W.2d at 773.

III. Analysis

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). An equitable division does not necessarily mean an equal division of each asset. *In re Marriage of Robison*, 542 N.W.2d 4, 5 (Iowa Ct. App. 1995). The property should be distributed based on what is equitable under the circumstances and with attention to the criteria listed in Iowa Code section 598.21(5) (2009).² *Id.* The determining factor is what

² These factors are:

- a. The length of the marriage.
- b. The property brought to the marriage by each party.
- c. The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services.
- d. The age and physical and emotional health of the parties.
- e. The contribution by one party to the education, training, or increased earning power of the other.
- f. The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children, and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.
- g. The desirability of awarding the family home or the right to live in the family home for a reasonable period to the party having custody of the children, or if the parties have joint legal custody, to the party having physical care of the children.

is fair and equitable in each particular circumstance. *In re Marriage of Miller*, 552 N.W.2d 460, 463 (Iowa Ct. App. 1996).

We look at the decree as a whole in determining what is equitable. *Dean*, 642 N.W.2d 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).

A. *Should Roger's inherited farmland be considered marital property for purposes of division?*

Roger contends the district court erred in including the 160-acre farm he inherited as marital property to be divided in the dissolution case. He seeks to have the decree modified to exclude that farm from the property division as his separate inherited property.

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- h. The amount and duration of an order granting support payments to either party pursuant to section 598.21A and whether the property division should be in lieu of such payments.
 - i. Other economic circumstances of each party, including pension benefits, vested or unvested. Future interests may be considered, but expectancies or interests arising from inherited or gifted property created under a will or other instrument under which the trustee, trustor, trust protector, or owner has the power to remove the party in question as a beneficiary, shall not be considered.
 - j. The tax consequences to each party.
 - k. Any written agreement made by the parties concerning property distribution.
 - l. The provisions of an antenuptial agreement.
 - m. Other factors the court may determine to be relevant in an individual case.
- Iowa Code § 598.21(5).

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 equitable to refuse to divide inherited party, 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).

In determining whether inherited property is divisible as marital property, the controlling factors are the intent of the donor and the circumstances surrounding the inheritance or gift. *In re Marriage of Liebich*, 547 N.W.2d 844, 850 (Iowa Ct. App. 1996). Placing inherited property into joint ownership does not, in and of itself, destroy the separate character of the property. *Id.* The length of the marriage or the length of time the property was held after it was devised, though not independent factors, may indirectly bear on the question for their effect on these factors, and still other matters that “might tend to negative or mitigate against the appropriateness of dividing the property under a claim that it falls within the exception [to the general rule against division].” *In re Marriage of Thomas*, 319 N.W.2d 209, 211 (Iowa 1982).

At the time of trial, Allison and Roger had been married for twenty-six years. Roger inherited the farmland in 1990, six years into the parties' marriage. During the nearly twenty years the parties lived and worked on the farm, the property appreciated in value from \$1750 per acre to \$5376 per acre. The increase in the value of the land was, in part, fortuitous as the value of farmland fluctuates based on economic factors. But the parties also improved the land over the course of those twenty years, largely through the use of marital funds.

Weighing in favor of including the inherited farm in the property division are the contributions Allison made during the marriage. For Roger to realize his dream of being a farmer, the parties moved to the acreage, Allison gave up teaching and instead assisted Roger in performing tasks on the farm while raising the couple's three children.

Roger disputes the economic contributions Allison made to the farming operation. He claims the improvements to the farm were funded solely through his own inheritance. He also argues the inherited money Allison contributed to the purchase of the eighty-five-acre tract to the main farm's south should not be considered an improvement to the farm, but rather a separate real estate purchase. The evidence outlined by Allison shows that during the marriage the parties paid approximately \$33,591 for tiling projects, \$75,674 for the construction of new buildings, and more than \$64,975 in equipment. While Roger may have used the \$36,346.81 inheritance to assist with these costs, marital funds paid for the majority of the improvements. Furthermore, even if we consider the purchase of the eighty-five acres separately, Allison's contribution of

her \$32,918 in inherited funds for the down payment meant the parties had additional marital funds to use on improvements. The eighty-five-acre addition also garnered the parties more income, which allowed the farm to stay solvent and helped contribute to the improvements made on the main farm.

Although we recognize the contributions Allison made during the parties' marriage, we also note the record is devoid of any evidence Roger's parents intended to devise the farm to Allison, nor do any circumstances signal such an intent. There is no evidence of an independent, close relationship between Allison and Roger's parents. We also find Allison does not have any special needs that require inclusion of the inherited farm in the property division. Her own inherited assets are substantial.

Roger cites to *In re Marriage of Thomas*, 319 N.W.2d 209 (Iowa 1992) to support his argument that division of the inherited farmland is in error. In *Thomas*, the husband inherited a one-third interest in farm property. *Thomas*, 319 N.W.2d at 211. The parties then lived on the farm for approximately fifteen years, making improvements to the property and paying some taxes. *Id.* Neither party worked on the farm or used it as a source of income. *Id.* at 211-12. Although our supreme court found the wife's "contributions to the improvement to the farm home, and her extensive contributions to family income, mitigate toward division of the farm interest," it noted she was also "well qualified to fend and care for herself." *Id.* at 212. The court then held that "[o]n the balance," the exception to section 598.21(6) was not met. *Id.*

As our supreme court did in *Thomas*, we conclude “we should give way to the thrust of the statute and not to its exception.” See 319 N.W.2d at 212. After considering the totality of factors affecting the inheritance issue, we modify the property division to exclude the value of the 160-acre farm.

B. Should Allison be awarded the eighty-five-acre farm purchased jointly in 1994?

Roger next contends it was inequitable to award Allison the eighty-five-acre farm the parties purchased in 1994. He argues the court failed to consider Allison’s inherited property in determining an equitable award. Roger further argues the rent he receives from that tract equals approximately half of the income he earns on the farm, and therefore is necessary for his maintenance and retirement. He proposes a payment of \$216,750 (one-half the \$433,500 value of the eighty-five-acre farm) in installments to Allison would be a more equitable way to compensate her for the award of farmland to Roger.

Although we have modified the property settlement to set aside the 160-acre farm from the marital property, we conclude awarding Allison the eighty-five-acre farm is appropriate. The income from the farmland will supplement her employment income and, eventually, her retirement income.

We do not accept Roger’s contention that the award of the eighty-five acres to Allison would “severely limit” his ability to provide for himself in retirement. According to trial testimony, Allison plans to rent the eighty-five acres of land, expecting an annual return of approximately \$16,700.³ When this rental

³ This return is based on testimony assuming a rental rate of \$200 per tillable acre.

income is combined with her other sources of income, Allison could expect to receive about \$34,700 annually in retirement. This amount compares to approximately \$50,000 annually that Roger would receive from social security and cash rent on his remaining farm property.

C. Other property division issues.

Roger also seeks to have ten percent of the 2010 corn and soybean crop yield set aside as non-marital property. We find it unnecessary to set aside this \$12,255 in assets. In light of the removal of the 160-acre farm from the marital property to be divided, Allison's property award is reduced to \$688,133 and Roger's is reduced to \$343,646. Accordingly, we find it is unnecessary for Roger to pay Allison a property equalization payment of \$100,000. Although Allison's property award is greater than Roger's share, we consider the fact that Roger leaves the marriage with \$850,500 in inherited property; in contrast, Allison has \$487,373 in inherited property.

D. Is Allison entitled to an alimony award given our modification of the property division?

On cross-appeal, Allison argues that in the event we modify the property division, she should be awarded traditional alimony to allow her to maintain her standard of living.

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) (2009). 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 parties' marriage was one of substantial length. Allison is relatively young and in good health. Her earning capacity is roughly half of Roger's capacity, but will be supplemented by renting the eighty-five-acre farmland. Considering the substantial property settlement she is receiving along with the sizable inheritance she has, we decline to award Allison spousal support.

E. Did the trial court abuse its discretion in denying Allison her trial attorney fees?

On cross-appeal, Allison also argues the district court abused its discretion in denying her request for trial attorney fees in the amount of \$5000.00.

The district court has discretion to award attorney fees so long as the award is fair, reasonable and based on the parties' respective abilities to pay. *In re Marriage of Drury*, 475 N.W.2d 668, 671 (Iowa Ct. App. 1991). To overturn such an award, "the complaining party must show that the trial court abused its discretion." *Id.*

The district court declined to award Allison her trial attorney fees given the property distribution. While Allison does earn less than Roger, considering her

substantial property award and the nearly \$500,000 in inherited property she still held, the court did not abuse its discretion in denying Allison's request for trial attorney fees.

F. Whether either party should be awarded their appellate attorney fees.

Both parties seek an award of their appellate attorney fees. An award of appellate attorney fees is not a matter of right but rests within our discretion. *In re Marriage of Erickson*, 553 N.W.2d 905, 908-09 (Iowa Ct. App. 1996). In determining whether to award appellate attorney fees, 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 decree on appeal. *Id.*

Considering the relative merits of the issues on appeal and the considerable value of the property held by both parties, we decline to award either party their appellate attorney fees. Costs on appeal are taxed one half to each party.

AFFIRMED AS MODIFIED.