

IN THE COURT OF APPEALS OF IOWA

No. 1-604 / 11-0172
Filed November 9, 2011

**IN RE THE MARRIAGE OF SCOTT OLSON
AND ALICIA OLSON**

**Upon the Petition of
SCOTT OLSON,**
Petitioner-Appellant,

**And Concerning
ALICIA OLSON, n/k/a ALICIA SVOBODA,**
Respondent-Appellee.

Appeal from the Iowa District Court for Emmet County, David A. Lester,
Judge.

Scott Olson appeals from the economic provisions of the parties'
dissolution decree. **AFFIRMED.**

Andrew B. Howie of Hudson, Mallaney, Shindler & Anderson, P.C., West
Des Moines, for appellant.

Michael J. Houchins of Zenor & Houchins, P.C., Spencer, for appellee.

Heard by Danilson, P.J., and Tabor and Mullins, JJ.

DANILSON, P.J.

Scott Olson appeals from the property division in the parties' dissolution decree. Scott argues that he should have been given full credit for his premarital property. Because we find the property division equitable, we affirm.

I. Background Facts and Proceedings

When he graduated from high school in 1984, Scott began farming with his father, Arnold Olson. In 1993 he and his brother, Mark Olson, rented and sharecropped a retired relative's land. Since that time, Scott's farming activities have included growing crops (corn, soybeans, hay, and alfalfa) and raising livestock (cattle and hogs). Scott first purchased farmland in 1995 when he acquired a twenty-five percent interest in an approximately seventy-five-acre tract of land. Scott used cash from savings bonds previously gifted to him by his parents and monies he earned working for the ten percent down payment on that property.

Scott married Alicia on April 4, 1998.¹ At the time they were married, Scott had farm equity in the amount of \$122,932. Scott also had non-farm assets of \$39,000, of which \$33,000 were gifted shares of a family business, Olson Land and Livestock Co., Inc. Scott's mother died in 2004, at which time he inherited an additional 4300 shares of Olson Land and Livestock. On October 1, 2007, Scott's father died. Scott inherited \$198,454 in cash from his father, all of which went back into the farm. He also inherited from his father additional shares in Olson Land and Livestock, which was placed in a spendthrift trust.

¹ The parties have one child, whose custody and support are not challenged on appeal.

Alicia brought no significant assets to the marriage. At the time they were married, Alicia had been working for a manufacturer in Spirit Lake, Iowa. She obtained a certified nursing assistant (CNA) degree during the marriage and later took classes to be a surgical technician. She worked in nursing homes for a time and then a surgery center.

In February 2005, Alicia and her parents purchased a building with the intent of running a restaurant together. Scott provided the \$4500 down payment for the purchase. Alicia's father had some restaurant experience; however, he injured his back and became physically unable to work at the business. Later, Alicia's mother discontinued working at the restaurant as well. Alicia had no restaurant background and was left to manage the business. Scott helped with restaurant expenses until there was a fire on Christmas Eve 2005, which shut the business down.² Notwithstanding the fire, the building was sold "for what we owed on it," according to Scott. After the fire, Alicia went to work at a nearby newly opened casino. She worked at the casino for about two years. She then worked as a youth counselor and later as an administrative assistant at a residential facility.

In 2008, Scott and Alicia purchased an acreage on which stood a house they intended to renovate. While electrical work was being done, the house burned down. They received insurance proceeds of \$72,000;³ an additional \$108,000 in insurance proceeds is available for reconstruction of the house. At

² In December 2008 Alicia was charged with arson in relation to the fire. She entered an *Alford* plea to falsely reporting an arson and received a deferred judgment.

³ Scott had used money from his operating funds to purchase the acreage and "[s]tuck [the \$72,000 insurance proceeds] back into [his] operating."

the time of trial, the walls and the roof of the house were constructed. Scott intends to live in the house upon its completion.

Scott and Alicia separated in mid-2009 and, on June 12, 2009, Scott filed a dissolution petition.

At the time of trial (February 9-10, 2010), Scott was forty-four years old and Alicia was thirty-four. Scott was farming 870 acres “or so,” 125 acres of which he owned; 175 acres he owned with his brother, Mark; and the remainder of which he “sharecrop[ped] with the corporation.” Mark’s farm operation no longer included livestock; all of his tillable acres were planted in corn or beans. In 2009, he received about \$372,000 for grain sales. Scott’s five-year average farm net income was \$47,038.

At the time of trial, Scott owned forty-seven percent of Olson Land and Livestock.⁴ Olson Land and Livestock owned 1000 acres of farm ground; there was testimony that farm ground was valued at about \$4500 per acre. The income generated from Scott’s interest in Olson Land and Livestock for the 2008 calendar year was \$57,465. Mark, as trustee of the spendthrift trust, had made no distributions to Scott. Scott asked that all his gifted and inherited assets—with a value of more than two million dollars—be set aside to him.

Alicia’s annual income was \$10,392 in 2006; \$17,953 in 2007; and \$16,887 in 2008. After the parties separated, Alicia and her daughter moved back in with her parents in Minnesota, and Alicia found work in a grocery store.

⁴ The forty-seven percent interest includes the shares Scott owned individually as well as the shares in the spendthrift trust. Mark owned the remaining fifty-three percent of Olson Land and Livestock.

She works thirty-three to thirty-five hours per week at a rate of \$8.50 per hour. She states she intends to pursue a degree to become a registered nurse.

Alicia and Scott agreed that Scott should receive ownership and possession of all marital assets. Alicia asked the court to award her one-half the value of the marital assets through a cash equalization payment from Scott. She also requested \$1000 per month in rehabilitative alimony for a period of two years. Scott contested any award of alimony and asked that all his pre-marital equity, as well as gifts and inheritance, be set aside to him prior to any property distribution.

The district court did set aside to Scott all gifted and inherited assets, the \$198,000 cash inheritance from his father, as well as his forty-seven percent interest in Olson Land and Livestock.⁵

The court accepted the parties' proposed valuations of the marital assets and awarded Scott all assets totaling \$1,253,593 and assigned him debts of \$805,889. Thus Scott was awarded marital assets with a net value of \$447,704. Alicia was assigned known debts of \$21,196 and two debts of unknown amounts (sales taxes owing from the failed restaurant and liability for a car accident).⁶

The court wrote:

⁵ The parties' Form Bs noted Scott had a twenty-five percent interest in Olson Land and Livestock valued at \$1,057,000. However, testimony presented at trial established Scott, personally and via the spendthrift trust, had a forty-seven percent interest in Olson Land and Livestock. Olson Land and Livestock owned one thousand acres of farmland, which at the time of trial had an approximate value of \$4500 per acre. Thus, Scott's forty-seven percent interest in Olson Land and Livestock had an approximate value of more than \$2 million.

⁶ The court's order enlarging the decree filed January 6, 2011, permitted Scott the option to pay the sales tax debt and resulting small claim judgment and receive full

After careful consideration of the entire record, the court has concluded that an equal division of the parties' marital assets is appropriate in this case. In reaching that conclusion, the court again notes that this is a marriage of relatively long duration [12 years]. Secondly, during the course of their marriage, both parties contributed to the growth and accumulation of the marital property they now have; Scott, through his management and operation of the farming operation, and Alicia through her work outside the home, as a homemaker, and to a limited extent, on the farm. While the parties' ages differ by approximately 10 years, both are in good physical and emotional health. Additionally, other than their residential situation immediately prior to their separation, the parties have enjoyed a rather comfortable standard of living, and it appears evident from the record that Alicia is incapable of earning the type of income that Scott earns from his farming operation, and may further enjoy as income from his trust in the future. Therefore, in order to equalize the property division, Scott shall be required to pay to Alicia a cash settlement in the amount of \$234,450. This cash settlement shall be payable in semi-annual installments of \$7,815 for a period of fifteen (15) years.

The court did not award alimony, citing to Alicia's "demonstrated . . . ability to earn a comfortable income" and the "substantial payments" Alicia was to receive from Scott for the equalization award. Scott was also ordered to pay \$3000 toward Alicia's attorney fees.

Scott appeals, asking that we modify the property distribution to afford him full credit for the assets he brought to the marriage.

II. Scope and Standard of Review

An action for dissolution of marriage is an equitable proceeding, so our review is de novo. Iowa R. App. P. 6.907; *In re Marriage of Fennelly*, 737 N.W.2d 97, 100 (Iowa 2007). In equity cases, we give weight to the fact findings of the district court, especially on credibility issues, but we are not bound by the court's findings. Iowa R. App. P. 6.904(3)(g). We examine the entire record and

credit toward his cash settlement payments because they constituted liens against the acreage.

adjudicate anew rights on the issues properly presented. *In re Marriage of Ales*, 592 N.W.2d 698, 702 (Iowa Ct. App. 1999).

III. Property Is To Be Divided Equitably

Scott claims the district court failed to divide the parties' assets equitably. In matters of property distribution, we are guided by Iowa Code section 598.21 (2009). Iowa courts do not require an equal division or percentage distribution. *In re Marriage of Campbell*, 623 N.W.2d 585, 586 (Iowa Ct. App. 2001). "The determining factor is what is fair and equitable in each particular circumstance." *In re Marriage of Miller*, 552 N.W.2d 460, 463 (Iowa Ct. App. 1996). In considering the economic provisions in a dissolution decree, we will disturb a district court's ruling "only when there has been a failure to do equity." *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998) (citation omitted).

In a dissolution of marriage, the court makes an equitable distribution of "all property, except inherited property or gifts" after considering numerous statutory factors, including the length of the marriage, contributions of each party to the marriage, the age and health of the parties, each party's earning capacity, and any other factor the court may determine to be relevant to any given case. Iowa Code § 598.21(5); see *In re Marriage of Schriener*, 695 N.W.2d 493, 496 (Iowa 2005). "Equitable distribution" essentially means that courts divide the property of the parties at the time of divorce, except any property excluded from the divisible estate as separate property, in an equitable manner in light of the particular circumstances of the parties. *Id.*

Under our statutory distribution scheme, the first task in dividing property is to determine the property subject to division and the proper valuations to be assigned to the property. *Fennelly*, 737 N.W.2d at 102; *In re Marriage of Vieth*, 591 N.W.2d 639, 640 (Iowa Ct. App.1999). The second task is division of that property in an equitable manner according to the enumerated factors in Iowa Code section 598.21(5). See *Fennelly*, 737 N.W.2d at 102. “Although an equal division is not required, it is generally recognized that equality is often most equitable.” *Id.* (quoting *In re Marriage of Rhinehart*, 704 N.W.2d 677, 683 (Iowa 2005)). Ultimately, what constitutes an equitable distribution depends upon the circumstances of each case. *In re Marriage of Hansen*, 733 N.W.2d 683, 702 (Iowa 2007); *In re Marriage of Anliker*, 694 N.W.2d 535, 542 (Iowa 2005).

IV. Premarital Property

Premarital property is not set aside like gifted and inherited property. *Fennelly*, 737 N.W.2d at 102; *Miller*, 552 N.W.2d at 465. Iowa Code section 598.21(5) requires the court to divide “all property, except inherited property or gifts received by one party” equitably between the parties. “This broad declaration means the property included in the divisible estate *includes* not only property acquired during the marriage by one or both of the parties, but *property owned prior to the marriage by a party.*” *Schriner*, 695 N.W.2d at 496 (emphasis added); accord *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). Thus, the district court should not separate a premarital asset from the divisible estate and automatically award it to the spouse who owned it prior to the marriage. *Fennelly*, 737 N.W.2d at 102; *Sullins*, 715 N.W.2d at 247. Rather,

property brought into the marriage by a party is merely a factor among many to be considered under section 598.21(5). *Schriner*, 695 N.W.2d at 496. “This factor may justify full credit, but does not require it.” *Miller*, 552 N.W.2d at 465. Other factors under section 598.21(5) include the length of the marriage, contributions of each party to the marriage, the age and health of the parties, each party’s earning capacity, and any other factor the court may determine to be relevant to any given case. See *Fennelly*, 737 N.W.2d at 102. However, property owned prior to the marriage but received by gift constitutes gifted property not subject to division. See Iowa Code § 598.21(6).

In support of Scott’s contention that he should receive a greater credit for the property he brought into the marriage, Scott argues the trial court “ignored” a statutory factor.⁷ The record belies his claim. The district court wrote:

With but few exceptions, the court has incorporated the parties “agreement” as reflected by their Form Bs in not only establishing the value of their assets and liabilities, but also in dividing those assets and liabilities. In approving the parties’ agreement, the court has taken in to consideration the length of the marriage; the *property brought to the marriage by each party with the court concluding that it would be inequitable to set off to Scott any value for his premarital property*; the contribution of each party to the marriage, giving appropriate economic value to Alicia’s contribution in homemaking and childcare; the age and physical and emotional health of the parties; the earning capacity of each party, taking into consideration each party’s educational background, training, employment skills, and work experience; and the fact that Scott may someday be entitled to receive income he can use for the necessities of life thereby freeing up some of his personal income from farming to pay the case settlement to which the court has concluded she is entitled.

⁷ We also note that Scott’s appellate brief erroneously stated he brought “\$122,932 in equity in his farm land” to the marriage. His “total farm assets at that time were \$242,095,” and “the difference between assets and the liabilities” were \$122,932, but his farmland alone only had a value of \$68,000.

(Emphasis added.)

“Property may be ‘marital’ or ‘premarital,’ but it is all subject to division except for gifts and inherited property.” *Fennelly*, 737 N.W.2d at 104. Although the district court stated that it would be inequitable to set off to Scott any value for his premarital property prior to the division, Scott did receive one-half of the value of his \$122,932 in premarital farm equity by the equal division of the parties’ current net equity. Further, the district court properly awarded Scott all of his gifts and inherited property including all shares of Olson Land and Livestock Inc., some of which were gifted to Scott prior to the marriage.

The district court’s property division also awarded Alicia no assets and assigned debt of \$21,196 and awarded Scott \$1,253,593 in marital assets and assigned debt of \$805,889, a disparity of \$468,900. To make the division equitable, Scott was required to pay to Alicia the sum of \$234,450 via semiannual payments for fifteen years. We note the inherited and gifted property set aside to Scott was of significant value, in excess of \$2 million. Alicia’s request for \$1000 in monthly alimony for two years was also denied. Scott also benefitted by the rather lengthy payment schedule, fifteen years, to pay the equalization sum. Upon our review, we agree with Alicia that setting aside the property Scott brought to the marriage, in addition to the inherited and gifted property, prior to determining the equalization sum, would be inequitable to Alicia considering the relevant factors noted in section 598.21(5). We find no failure to do equity in the district court’s property distribution. See *Smith*, 573 N.W.2d at 926.

V. Attorney Fees

Alicia has requested appellate attorney fees in the amount of \$6624.14 and submitted an affidavit in support. Scott argues we should not award appellate attorney fees to Alicia. “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). Because Alicia was required to defend the district court’s decision on appeal and prevailed on all of the issues, we award appellate attorney fees of \$2000 to Alicia. See *id.* (noting “the relative merits of the appeal” is a factor to consider in awarding appellate attorney fees); *In re Marriage of Bornstein*, 359 N.W.2d 500, 504-05 (Iowa Ct. App. 1984) (awarding attorney fees to the party “obligated to defend the trial court’s decision on appeal”).

Costs on appeal are taxed to Scott.

AFFIRMED.