

IN THE COURT OF APPEALS OF IOWA

No. 2-1023 / 11-2064
Filed February 13, 2013

**IN RE THE MARRIAGE OF BRYAN CHRISTOPHER BOYD
AND TAMMY JEAN BOYD**

**Upon the Petition of
BRYAN CHRISTOPHER BOYD,**
Petitioner-Appellee,

**And Concerning
TAMMY JEAN BOYD,**
Respondent-Appellant.

Appeal from the Iowa District Court for Boone County, Carl D. Baker,
Judge.

Tammy Boyd appeals from the economic provisions of the decree
dissolving her marriage to Bryan Boyd. **AFFIRMED AS MODIFIED.**

Leslie Babich and Kodi A. Brotherson of Babich Goldman, P.C., Des
Moines, for appellant.

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

Considered by Doyle, P.J., and Mullins and Bower, JJ.

DOYLE, P.J.

Tammy Boyd appeals from the economic provisions of the decree dissolving her twenty-one-year marriage to Bryan Boyd. She challenges the district court's handling of a large tract of farmland inherited by Bryan during the marriage, as well as the court's failure to award her more spousal support and trial attorney fees. We believe equity demands Tammy be awarded a portion of the appreciation in value of the farmland. Further, we find the award of spousal support was too low. We modify the decree accordingly.

I. Background Facts and Proceedings.

Bryan and Tammy Boyd were married for the first time in 1990. They divorced in September 1995, reconciled, and remarried two months later. They have two children together, only one of whom is still a minor.

Bryan filed a petition to dissolve his second marriage to Tammy in September 2010. Prior to the October 2011 trial on the petition, the parties agreed to share joint legal custody and physical care of their minor child. They disagreed on the division of their property, spousal support, and attorney fees.

For much of the parties' marriage, forty-two-year old Bryan was employed by a corporation as a department manager. He left that employment in June 2010 amid talks of cutbacks and took a job with a different corporation as a production manager. His current gross annual salary is \$72,000, plus a discretionary maximum annual bonus of \$6000. Bryan is reimbursed by his employer for the monthly cost of his family health insurance premiums. He also recently started contributing to an IRA after cashing out a 401(k) account from his prior employment.

Tammy, who was also forty-two years old at the time of the trial, was employed by Iowa State University as a secretary from 1989 until 2002. During her last full year of employment there, she grossed \$28,963 and contributed to a retirement account, which was valued at \$88,118 at the time of the trial. Tammy testified she quit her job at Iowa State in order to devote more time to the couple's school-age children. She subsequently secured part-time employment as a teacher at a preschool, where she expected to gross \$5460 in 2011. Tammy planned to quit this job and attend school full-time to obtain a degree in elementary education. She testified that she would not be able to work while going to school because she suffers from diabetes, which is worsened by stress. She also suffers from asthma, hyperthyroidism, and depression, though she considered herself to be in good health. Her estimated monthly medical expenses total between \$750 and \$800.¹

The parties' views of their lifestyle during the marriage differed. Bryan testified they lived paycheck to paycheck, while Tammy said they enjoyed a "[d]ecent middle class" way of life. After remarrying in 1995, the parties had a mobile home repossessed by the bank and a house that was foreclosed on. Tammy filed for bankruptcy in 2002. Bryan did not join in the bankruptcy because of an inheritance he received from his grandfather in 1995.

¹ Tammy testified she was on a COBRA policy from Bryan's former employment at a monthly cost of \$462. She did not believe that would continue after the divorce, however. Tammy accordingly applied for health insurance through Wellmark but was denied. She did qualify for insurance through the Iowa Comprehensive Health Association with a monthly premium cost of \$549.74, plus additional out-of-pocket expenses totaling \$200 or so each month. Without health insurance, Tammy estimated her monthly medical expenses would be \$800.

Bryan's grandfather left him approximately 346 acres of farmland, which included a home, several outbuildings, and grain bins. About 216 acres were rentable cropland, and the remaining portion was timber, buildings, and the homesite. Bryan's grandmother held a life estate in the property until her death in 2004. After she passed away, Bryan and Tammy decided to move into the forty-year-old house on the farm. They secured a loan on the previously debt-free property to finance their renovation of the house and pay inheritance taxes of \$53,700. They also used loan proceeds to purchase a vehicle for Tammy, as well as furniture and appliances for the house. The farm was appraised at \$770,000 in October 2004. Bryan makes annual payments of \$31,110 out of the \$42,055 in yearly cash rent he receives for the farmland. \$339,883 was still owed on the loan at the time of trial. The land, house, and buildings were appraised at approximately \$2,428,000 as of October 2011.

In its decree dissolving the parties' marriage, the district court set the inherited property aside to Bryan and denied Tammy's request for a \$500,000 cash equalization payment. The court reasoned that although Tammy agreed

Bryan should retain the farm as his separate property . . . she is, in effect, requesting that the Court order Bryan to incur further debt on the farm or sell a portion of the farm in order to pay her \$500,000. The financial circumstances of the parties are such that there is no other way that Bryan could pay Tammy \$500,000. Tammy makes the indirect argument that the farm or a portion thereof should in fact be regarded as marital property given the amount of money that she seeks. The farm is not marital property and shall be awarded to Bryan. Aside from the farm inherited by Bryan, the parties own personal property valued at approximately \$160,000. Over half of this amount is Tammy's TIAA-CREF account valued at \$88,000 which she will receive.

This Court concludes that Bryan shall pay Tammy the sum of \$25,000 as a lump sum property settlement payable within 90 days after the filing of this decree.

The court further ordered Bryan to pay Tammy \$500 per month in spousal support for forty-eight months, in addition to his \$600 monthly child support payment for the parties' fifteen-year-old child. Bryan was also ordered to contribute \$5000 towards Tammy's \$29,000 in trial attorney fees. Tammy appeals.

II. Discussion.

We begin our de novo review with principles familiar to all dissolution appeals involving the division of property and spousal support. See Iowa R. App. 6.907; *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). Iowa is an equitable distribution state, meaning the partners in a marriage that is to be dissolved are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Hazen*, 778 N.W.2d 55, 59 (Iowa Ct. App. 2009). We do not require an equal division or percentage distribution. *Id.* The determining factor is instead what is fair and equitable in each particular circumstance. *Id.* Property division and spousal support should be considered together in evaluating their individual sufficiency. *Id.*

These general principles guide our resolution of the first issue presented for our review—whether the district court erred in denying Tammy's request for a \$500,000 property settlement to compensate her for the value of Bryan's retained inheritance?

A. Property Division.

Iowa Code section 598.21(5) (2009) requires "all property, except inherited property or gifts received or expected by one party" to be equitably divided between the parties. Inherited property, the category of excluded

property we are concerned with in this case, is normally awarded to the individual spouse who owns the property, independent from the equitable distribution process. *In re Marriage of Schriener*, 695 N.W.2d 493, 496 (Iowa 2005); see also Iowa Code § 598.21(6). This exclusion is not absolute, however. Section 598.21(6) creates a unique hybrid system that permits the court to divide inherited property if equity so demands. *Schriener*, 695 N.W.2d at 496. The statute provides:

Property inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage.

Iowa Code § 598.21(6).

In determining whether it would be inequitable to Tammy to refuse to include Bryan's inheritance in the marital estate, 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) (quoting *In re Marriage of Muelhaupt*, 439 N.W.2d 656, 659 (Iowa 1989)). In addition to the *Muelhaupt* factors, we also consider the length of the marriage, the amount of

time the property was held after it was devised, and whether the parties enjoyed a substantial rise in their standard of living as the result of the inheritance. *Id.* at 319-20; *see also In re Marriage of Thomas*, 319 N.W.2d 209, 211 (Iowa 1982).

Tammy argues that given “the long-term nature of the parties’ marriage and the lack of any significant net worth other than the real property inherited by Bryan which substantially increased in value during the parties’ marriage, [she] should have been awarded a greater property settlement.” To avoid injustice, we agree that Tammy should be awarded a portion of the appreciation in value of Bryan’s inheritance.

With respect to the first five factors identified above, two are worthy of mention here. Tammy did contribute some toward the improvement of the farm home, which served as the family homestead the last third of the marriage. Additionally, Tammy does have special needs as a result of her medical conditions. Tammy is a Type I diabetic, which requires her to wear an insulin pump and check her blood sugar levels often throughout the day. She testified, however, that her diabetes does not affect her ability to work. Tammy also suffers from asthma, hyperthyroidism, and depression, all of which are treated with medication. But, the district court found, and we agree, that Tammy is capable of maintaining full-time employment despite these medical problems.

As for the remaining factors, we note that this was a long-term marriage of twenty-one years and the parties benefited from the inheritance the last seven years of the marriage. *See In re Marriage of Wallace*, 315 N.W.2d 827, 831 (Iowa Ct. App. 1981) (“[A]s time goes on, the benefits of such property are enjoyed by the married couple; it is both natural and proper for the expectations

of the other spouse to rise accordingly.”). The inheritance did contribute to a substantial rise in the parties’ standard of living, at least as to their living accommodations and vehicles, albeit achieved through the incurrence of a sizeable amount of debt against the farm. This is tempered by our consideration of Bryan’s testimony that even though Tammy worked part-time during the marriage, she kept her income separate from his, which he deposited into a joint account and used to make payments on the loan encumbering the farm.

Tammy asserts she is entitled to a portion of the appreciated value of the farmland which, given the recent rise in farmland values, is substantial.² She argues that “[a]side from the improvements to the home . . . neither party has done anything to increase the value of the farmland and timberland. It is simply fortuitous that the land appreciated in value more than threefold since Bryan’s grandmother’s life estate ended in 2004.” That the appreciation in the inheritance was fortuitous does not automatically entitle Tammy to share in it. As we said in *In re Marriage of Richards*, 439 N.W.2d 876, 882 (Iowa Ct. App. 1989), an equitable distribution of the appreciated value of inherited property “should be a function of tangible contributions and not the mere existence of the marital relationship.” See also *In re Marriage of Friedman*, 466 N.W.2d 689, 693 (Iowa 1991) (the appreciated value of assets may be divided, however, where

² When the property was first appraised in 2004 for the parties’ loan, it was valued at \$2149 per acre. A 2008 appraisal set the per acre value at \$4495. By January 2011, the per acre value had increased to \$6229. Less than a year later, in October 2011, the value of the farmland had risen once more to \$7028 per acre, resulting in a total value of \$2,427,820 for the cropland and timber. The house and some surrounding acres were valued at \$269,000.

the increase is due to the talent, time, and effort of the marital partners.). However, our supreme court has also stated it is not appropriate “when dividing property to emphasize *how* each asset appreciated – fortuitously versus laboriously – when the parties have been married for nearly fifteen years.” *In re Marriage of Fennelly*, 737 N.W.2d 97, 104 (Iowa 2007) (considering division of premarital property).

The district court’s property division leaves Bryan with a net worth of approximately \$2.1 million (93% of the property, including the farm) and Tammy with approximately \$151,200 (7% of the property). Given the length of the marriage, the housing situation to which Tammy had become accustomed, the fact that \$88,118 of Tammy’s property distribution is tied up in retirement funds, and the gross disparity in the ultimate property distribution ordered by the district court, we find that equity requires that the \$25,000 lump sum property settlement award to Tammy should be increased by \$175,000. The additional \$175,000 represents about 11% of the farm’s appreciation from 2004 to the time of trial. This modification results in Bryan receiving a net of \$1.925 million (86%) and Tammy a net of \$326,200 (14%). See *Thomas*, 319 N.W.2d at 212 (finding equitable a distribution of 82% of net worth to spouse who inherited real property). Bryan shall pay Tammy the additional \$175,000 property settlement in ten equal annual installments, with the first \$17,500 installment payable within ninety days after procedendo issues.

B. Spousal Support.

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. See *In re Marriage of Kurtt*, 561 N.W.2d 385, 387 (Iowa Ct. App. 1997). In determining whether to award spousal support, the district court must consider the factors set forth in Iowa Code section 598.21A(1), which include the length of the marriage, the age and physical health of the parties, and the distribution of property. A spouse's inheritance may also be taken into account. See *Thomas*, 319 N.W.2d at 212. We believe these factors necessitate a higher award of spousal support for Tammy in order to accomplish equity between the parties. See *In re Marriage of Schenkelberg*, ____ N.W.2d ____, ____, 2012 WL 5285412, at *4 (Iowa 2012) (noting that although the trial court "has considerable latitude when making an award of spousal support," its award may be disturbed "if it fails to do equity between the parties").

The parties were married for twenty-one years, the last nine of which Tammy worked only part-time in order to care for the couple's children. See *id.* (finding sixteen-year marriage merited support payments). She planned on quitting that employment in order to attend school full-time for two years, at a monthly cost of \$750. Upon obtaining her degree in elementary education, Tammy believed she could secure a teaching job with a starting salary of \$27,284. Even with this anticipated higher salary, Tammy would still have significant monthly medical expenses for her diabetes and other conditions. See *Goodwin*, 606 N.W.2d at 323 (noting wife's physical and mental conditions generate added expenses and make it unlikely that she will ever enjoy a level of income commensurate to that of her husband). While she was awarded a retirement account worth \$88,118, Tammy's expected social security benefits were much less than Bryan's. See *In re Marriage of Bethke*, 484 N.W.2d 604,

609 (Iowa Ct. App. 1992) (“We look to the presence or absence of social security benefits in analyzing the equity of the financial aspects of a dissolution.”).

Bryan, on the other hand, was in good health at the time of the trial and earned a gross annual salary of \$72,000, with anticipated annual bonuses of \$6000. See *Schenkelberg*, ____ N.W.2d at ____, 2012 WL 5285412, at *5 (“The comparative income of the spouses is another factor for the court to consider when evaluating an award of spousal support.”). He also earned income from the rental of his farmland. See *Thomas*, 319 N.W.2d at 212 (considering petitioner’s earning capacity, as well as his interest in inherited family farm, in modifying award of spousal support). Though he testified the expenses for the farm were more than he actually earned from it, we agree with Tammy that those expenses were inflated.³ And Bryan conceded on cross-examination that he was “severely under-renting” his cropland at \$185 per acre, as opposed to the \$356 per acre charged by some in his community. We accordingly agree with Tammy that Bryan will likely be able to charge a much higher rent for the cropland after his current tenants’ lease expires in 2013.

We believe the foregoing requires increasing the district court’s spousal support award to \$750 per month for two years in order to allow Tammy time to return to school and finish her degree. After the second year, we find spousal support should continue for an additional three years at \$500 per month so that she can secure a job, develop her earning capacity, and add to her retirement

³ For example, in calculating his net rental income from the farm, Bryan deducted \$4000 for “depreciation.” But on cross-examination, he acknowledged the only depreciated item on his 2010 tax return was the vehicle driven by and awarded to Tammy. He also acknowledged depreciation was not a cash expense.

funds. See *In re Marriage of Becker*, 756 N.W.2d 822, 827 (Iowa 2008). The award will terminate upon either's death, or Tammy's remarriage.

C. Attorney Fees.

Tammy finally claims the district court erred in ordering Bryan to pay only \$5000 of her \$29,000 in trial attorney fees. We find no abuse of discretion in this award, see *Sullins*, 715 N.W.2d at 255, given the parties' respective financial positions at the time the decree was entered. See *In re Marriage of Guyer*, 522 N.W.2d 818, 822 (Iowa 1994) ("Whether attorney fees should be awarded depends on the respective abilities of the parties to pay."). While Bryan earned more than Tammy, he also had greater expenses, including his spousal and child support obligations, and had paid his own attorney \$13,000.

However, we believe Tammy is entitled to an award of appellate attorney fees of \$2500. In arriving at our decision, we have considered the parties' needs, their ability to pay, and the relative merits of the appeal. See *Sullins*, 715 N.W.2d at 255.

IV. Conclusion.

We affirm the dissolution decree entered by the district court as modified. We accordingly modify the decree to increase the property settlement award to Tammy by \$175,000. Bryan shall pay Tammy the additional \$175,000 property settlement in ten equal annual installments, with the first \$17,500 installment payable within ninety days after procedendo issues. We also modify the decree to award Tammy \$750 in spousal support for two years, and then \$500 for an additional three years. We deny Tammy's request for a larger amount of trial attorney fees, but award her \$2500 in appellate attorney fees.

The costs of the appeal are assessed equally to each party.

AFFIRMED AS MODIFIED.