

**IN THE COURT OF APPEALS OF IOWA**

No. 2-556 / 11-2029  
Filed September 6, 2012

**IN RE THE MARRIAGE OF JENNIFER V. RITCHIE  
AND ROBERT BRUCE RITCHIE**

**Upon the Petition of  
JENNIFER V. RITCHIE,**  
Petitioner-Appellant/Cross-Appellee,

**And Concerning  
ROBERT BRUCE RITCHIE,**  
Respondent-Appellee/Cross-Appellant.

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Appeal from the Iowa District Court for Washington County, Dan. F. Morrison, Judge.

Jennifer Ritchie appeals, and Robert Bruce Ritchie cross-appeals, from the economic provisions of the decree dissolving their marriage. **AFFIRMED AS MODIFIED.**

Lori L. Klockau of Bray & Klockau, P.L.C., Iowa City, for appellant.

Barbara A. Edmondson of Honohan, Epley, Braddock & Brenneman L.L.P., Washington, for appellee.

Considered by Vaitheswaran, P.J., and Doyle and Danilson, JJ.

**DOYLE, J.**

Jennifer Ritchie appeals, and Robert “Bruce” Ritchie cross-appeals, from the economic provisions of the decree dissolving their marriage. Their dispute centers on the district court’s inclusion of Jennifer’s substantial inheritance in the marital estate and its resulting decision to award Bruce all of his retirement accounts. Because we believe this division was inequitable in certain respects, we affirm the judgment of the district court as modified.

***I. Background Facts and Proceedings.***

Jennifer and Bruce were married in 1990. Both were employed in the biology department at the University of Iowa at the time, Jennifer as an hourly student employee and Bruce as an animal caretaker.

Bruce continued his employment with the department for the rest of the parties’ marriage, eventually attaining the title of facility manager. He earned \$48,229 gross in 2010 and expected to earn \$55,200 gross in 2011.

Though she did not finish her college degree, Jennifer remained employed by the department of biology as a secretary until her mother fell ill in March 2003. Jennifer took family leave to care for her. When she returned to work after her mother’s death in May of that year, she discovered that she had a new boss who was upset with her extended absence. With Bruce’s blessing, Jennifer quit her job in 2004 after receiving a substantial inheritance from her mother’s estate—a one-third interest in her mother’s \$307,200 home in Alabama and an IRA valued at \$333,727.97 in 2005. Her gross annual salary at the time of her departure from the department was \$35,863.

Jennifer remained unemployed for about a year, during which time the family lived off Bruce's income and withdrawals from her inherited IRA. She also used money from the IRA to help pay for her share of expenses associated with the home in Alabama, which she and her two sisters used for family vacations. Jennifer returned to the University of Iowa as a part-time secretary in 2006. She grossed \$21,410 from that employment in 2010. Jennifer also worked twenty hours per week at Hy-Vee for about eight dollars per hour.

Both Jennifer and Bruce contributed to retirement accounts through their employment with the university. Jennifer's defined contribution plan was worth \$78,563.38 at the end of June 2011, while Bruce had a defined contribution plan worth \$267,399.41 and a deferred annuity savings plan worth \$58,927.25, for a total of \$326,326.66. Bruce began contributing to the supplemental annuity in the late 1990s. He suffered a small stroke around the same time, from which he has never fully recovered. He also suffers from various muscular and skeletal problems, as well as chronic obstructive pulmonary disease. Despite these health problems, Bruce has remained fully employed, passing up a couple of opportunities for early retirement.

Jennifer filed a petition for dissolution in October 2010. By the time the petition came before the district court for trial the following year, the couple's two children were both adults. Their oldest child lived at home with Bruce, while their youngest planned on attending a community college to study culinary arts. From her mother's inheritance, Jennifer created two accounts under the Uniform Transfers to Minor Act (UTMA) for the children's expected college expenses.

Bruce also established "College Bound Funds" for the children using inheritances he received from his parents during the marriage.

Bruce's inheritance funded the couple's home purchases as well. The parties owned two homes located next door to each other at 80 West 2nd Street and 82 West 2nd Street. Bruce used part of his inheritance to pay off the mortgage on their first home at 82 West 2nd Street. When the house next door became available, he used other inherited funds to purchase that property. After separating, the parties sold the home at 82 West 2nd Street for about \$30,000, netting a profit of \$26,953.92. Jennifer and the parties' daughter moved out of the home at 80 West 2nd Street, leaving Bruce and their son there. That home was appraised at \$87,000, against which a total of \$61,292.33 is owed on two different mortgages. The parties agreed the home at 80 West 2nd Street should also be sold with the proceeds split between them.

Following the trial, the district court entered a decree dissolving the marriage and dividing the parties' property. The court included Jennifer's inheritance in the divisible estate and awarded her the following: one-half of the proceeds from the sale of the house at 82 West 2nd Street (\$13,476.96), one-half of the expected proceeds from the sale of the house at 80 West 2nd Street (\$12,854), the balance of her inherited IRA (\$298,034.18), her one-third inherited interest in the Alabama home (\$102,400), a 2011 Hyundai Sonata Jennifer purchased after separating from Bruce, valued at \$20,150, along with the \$17,705 owed on it, \$6151.75 in insurance proceeds from a car that was totaled in an accident, Jennifer's term life insurance policy through the university, two bank accounts totaling \$837.19, her defined contribution retirement plan

(\$78,563.38), and household goods valued at \$1750.<sup>1</sup> Jennifer was ordered to pay two credit cards in her name with balances totaling \$4633.43. Her net property award, including the value of her inherited property, was \$511,878.35.

Bruce was awarded the following property: one-half of the proceeds from the sale of the house at 82 West 2nd Street (\$13,476.96), one-half of the expected proceeds from the sale of the house at 80 West 2nd Street (\$12,854), a 2003 VW Golf (\$3950), a 1987 Dodge Ram (\$850), four insurance policies with cash values totaling \$50,381.41, a bank account worth \$408.21, his entire defined contribution plan and deferred annuity savings plan (\$326,326.66), and household goods valued at \$1750. Bruce was ordered to pay a credit card in his name with a balance of \$2069.48, as well as the mortgages owed on the home at 80 West 2nd Street, which he was living in, until its eventual sale. Bruce's net property award, excluding the mortgages on the home that would be satisfied after its anticipated sale, was \$407,927.60.

In awarding Bruce all of his retirement accounts, the court reasoned that "Jennifer is 15 years younger than [Bruce] and has time to increase her TIAA-CREF substantially as well as obtain full-time employment at the university. . . . [T]he court has given considerable weight to [Bruce's] need to retire and his desire to retire as soon as possible due to his health issues." The court further

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<sup>1</sup> The court also awarded Jennifer the children's UTMA accounts and Bruce the college bound funds, though at trial the court noted those accounts were gifts to the children and would not be included in the marital estate. We will accordingly exclude the value of these accounts from our consideration of the property awarded to the parties. See, e.g., *In re Marriage of Rosenfeld*, 668 N.W.2d 840, 844 (Iowa 2003) (stating when a transfer is made under the UTMA, "the donor relinquishes his or her title to the property" and the gift becomes irrevocable); see also *Drumheller v. Drumheller*, 972 A.2d 176, 195-96 (Vt. 2009) (noting funds transferred under Vermont's Uniform Gift to Minors Act "were property of the beneficiaries and not marital property" and questioning whether § 529 educational savings accounts would be treated similarly).

stated it did not set aside the approximately \$74,000 inheritance Bruce received during the parties' marriage to him because he was receiving his retirement accounts. As for the inclusion of Jennifer's inheritance in the marital estate, the court found:

Jennifer has been withdrawing funds from her inherited IRA, paying the taxes and penalties, and using a portion to cover expenses on a home in Alabama she owns with her two sisters. She claims she has put \$58,000 of her inherited money into the marriage. The court believes the \$58,000 is most likely income from the IRA. The parties simply did what most married people do; they used funds available to them to support the family without considering the source of the funds. These funds have been commingled and are not easily identifiable by the court. As stated by [Bruce], they lived beyond their means.

The court determined Jennifer was entitled to a small award of spousal support "to assist her until she is able to work fulltime or until [Bruce] retires." Bruce was accordingly ordered to pay Jennifer \$500 per month for five years, or until death of either party, Bruce's "full retirement," Jennifer's gross income exceeding \$36,000 per year, or Jennifer's remarriage. In no event, except death, was spousal support to cease before two years had passed.

Jennifer appeals, claiming the district court erred in including her inheritance in the marital estate and in failing to equally divide Bruce's retirement accounts.<sup>2</sup> Bruce cross-appeals, claiming the district court erred in ordering him to pay Jennifer spousal support.

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<sup>2</sup> Jennifer also claims the court erred in failing to "order both parties to provide for a postsecondary education subsidy for their adult children." We give short shrift to this issue, as the district court did impose a postsecondary education subsidy upon the parties after Jennifer filed a post-trial motion seeking such relief. The court adopted the language proposed by Jennifer in her motion, which is the same language she urges this court to impose on appeal. We decline to modify the decree to provide for a specific amount each party should pay, as Jennifer requests for the first time in her reply brief.

## **II. Discussion.**

We begin with principles familiar to all dissolution appeals involving the division of property and spousal support in our de novo review of this case. See Iowa R. App. P. 6.907; *In re Marriage of Fennelly*, 737 N.W.2d 97, 100 (Iowa 2007). Iowa is an equitable distribution state, which means 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.*

Keeping these principles in mind, we turn to Jennifer's claim that the property division was inequitable because the court included her inheritance in the marital estate and declined to divide Bruce's substantial retirement accounts.

### **A. Property Division.**

The first task in dividing property under our statutory distribution scheme is to determine the property subject to division. *In re Marriage of Schriener*, 695 N.W.2d 493, 496 (Iowa 2005). The second task is to divide this property in an equitable manner according to the factors set forth in Iowa Code section 598.21(5) (2009), as well as all other relevant factors determined by the court in a particular case. *Id.*

With respect to our first task, section 598.21(5) requires that "all property, except inherited property or gifts received or expected by one party" 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. *Id.*; 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. *Schriner*, 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 Bruce to refuse to include Jennifer's inheritance in the marital estate, we consider the following:

- “(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) (citations omitted).

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 201, 211 (Iowa 1982).

Though the district court did not make any express findings about these factors and its inclusion of Jennifer's inheritance in the marital estate, we believe the court approached its task in dividing the parties' property in a common sense manner. Bruce was almost sixty-one years old at the time of the trial and nearing retirement. He had suffered a stroke some years earlier and had various muscular and skeletal problems from work-related injuries, as well as chronic obstructive pulmonary disease. Jennifer, on the other hand, was only forty-five years old and in good health at the time of the trial. She was employed for all but one year of the marriage, yet routinely used funds from her inherited IRA to help make ends meet. Jennifer estimated she withdrew \$58,000 from her inherited IRA to pay for family expenses,<sup>3</sup> while Bruce believed it was closer to \$110,000 or so. *See, e.g., 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 district court implicitly found Jennifer was not entitled to any portion of Bruce's retirement accounts because of her inheritance, though the bulk of those accounts were accumulated during the twenty-one year marriage. We agree with

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<sup>3</sup> The district court found that amount was most likely income from the IRA. We find no reason to disagree with this finding, as the value of the account had only decreased by \$36,693.79 from December 2005 through June 2011. We also believe the court rightly declined to give either party credit for the amounts expended from their respective inheritances during the marriage. *See Fennelly*, 737 N.W.2d at 103 (“It is important to remember marriage does not come with a ledger.”).

the court that Jennifer's inherited IRA should be included in the marital estate because of the factors discussed above.<sup>4</sup> *Cf. Thomas*, 319 N.W.2d at 212 (excluding husband's inherited interest in family farm from the marital estate, despite the wife's contributions to the farm, because she was able to support and care for herself and had no special needs). But we do not agree with its decision to award Bruce all of his retirement accounts.

Although Bruce testified he wanted to retire in the near future, he declined to do so when early retirement packages were offered by the university. He testified that he was a highly valued employee in his department, with an administrator informing him, "Bruce, you don't need to bother applying [for early retirement] because we've already figured out that we'd have to hire two people to replace you so there is no cost savings." He received significant raises almost every year and expected those would continue as long as he was able to work, though he was unsure how long that would be. Bruce had accordingly begun planning for his retirement in the latter years of the parties' marriage, increasing his monthly contribution to the supplemental annuity from \$200 per month to \$300 or so.

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<sup>4</sup> We do not include the value of Jennifer's one-third interest in the Alabama home in the divisible estate as that asset, unlike the inherited IRA, did not contribute to a rise in the parties' standard of living. See *Goodwin*, 606 N.W.2d at 320-21 (setting aside inheritance to wife where, aside from purchase of a washer and dryer, it was not used to raise the parties' standard of living). Indeed, Jennifer had to routinely withdraw money from her inherited IRA to help maintain the home. See *id.* at 319 (noting a factor in including inherited property in the marital estate is the extent to which the other spouse contributed to its care, preservation, or improvement). She also testified that Bruce did not take vacations at the home with her or the children. *Cf. In re Marriage of Geil*, 509 N.W.2d 738, 741 (Iowa 1993) (concluding property inherited by the wife before and during the twenty-year marriage, which was used by the couple to invest in a farm that served as their homestead, should be equally divided). Finally, we note Bruce did not include the value of the home in his calculation of the court's property division on appeal, suggesting he agrees with Jennifer that it should have been set aside to her.

At the same time Bruce was adding to his retirement accounts, Jennifer was withdrawing money from the inherited IRA to pay for family expenses. Bruce asserts these were her expenses alone, as she was living outside the family's means. Regardless, he shared in the benefit of Jennifer's inheritance, most apparently by the additional amounts he was able to contribute to his supplemental annuity. We do not think it is equitable to entirely foreclose Jennifer from sharing in this asset because of her inheritance. We accordingly modify the decree to award Jennifer one-half of the deferred annuity savings plan, valued at \$58,927.25 at the time of the trial.

Although this modification results in Jennifer receiving a slightly larger portion of the parties' assets when her inherited IRA is considered, we repeat the oft-quoted maxim that an equitable division does not necessarily mean an equal division, especially when inherited property is involved. *See Hazen*, 778 N.W.2d at 59; *see also In re Marriage of Muelhaupt*, 439 N.W.2d 656, 660 (Iowa 1989) (holding that although inherited stock should be included in division of assets, an equal distribution of the stock was not required).

**B. Spousal Support.**

We next consider the district court's award of spousal support to Jennifer. In his cross-appeal, Bruce asserts this award was unnecessary because Jennifer "has substantial assets, including inherited property, and sufficient employment." We do not agree.

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. *Thomas*, 319 N.W.2d at 212.

After examining these factors, we find the district court's limited award of spousal support to Jennifer was equitable because of the length of this marriage and the disparity in the parties' earnings. See *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997) (noting a substantial disparity in earnings and earning capacity is enough to warrant an award of spousal support); see also *Kurtz*, 561 N.W.2d at 388 (stating that even though "our review is de novo, we accord the trial court considerable latitude" in deciding whether to award spousal support).

#### **IV. Conclusion.**

Upon our de novo review, we affirm the district court's award of spousal support to Jennifer but modify the property division to award her one-half of Bruce's deferred annuity savings plan.

Costs of this appeal are assessed one-half to each party.

**AFFIRMED AS MODIFIED.**