

IN THE COURT OF APPEALS OF IOWA

No. 7-373 / 06-1804

Filed July 12, 2007

**IN RE THE MARRIAGE OF LINDA MARIE KLAAS
AND DONALD J. KLAAS**

**Upon the Petition of
LINDA MARIE KLAAS,**
Petitioner-Appellee/Cross-Appellant,

**And Concerning
DONALD J. KLAAS,**
Respondent-Appellant/Cross-Appellee.

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

Donald Klaas appeals from the spousal support and property division provisions of the decree dissolving the parties' marriage. Linda Klaas cross-appeals from the property division provisions of the decree. **AFFIRMED AS MODIFIED.**

Barry S. Kaplan and Melissa A. Nine of Kaplan & Frese, L.L.P.,
Marshalltown, for appellant.

Curtis A. Ward of Ward & Robertson, Marshalltown, for appellee.

Considered by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

ZIMMER, J.

Donald Klaas appeals from the spousal support and property division provisions of the decree dissolving the parties' marriage. Linda Klaas cross-appeals from the property division provisions of the decree. We modify the district court's property division. The remainder of the court's decree is affirmed.

I. Background Facts and Proceedings.

Donald and Linda Klaas were married in 1976. Four children were born of this marriage, all of whom are now adults. Donald was the family's primary income provider. Although Linda occasionally obtained employment outside of the home, her primary role was as caretaker of the parties' children and residence.

Linda filed a petition for dissolution of marriage in November 2005. The petition came before the district court in October 2006. At the time of trial, Linda was fifty years old and employed part-time as an activities director at a nursing home where she earned ten dollars per hour. She was in good health, although during the dissolution proceedings she was hospitalized for two days for depression.

Donald was forty-eight years old, in good health, and employed as a supervisor by Lennox Industries at the time of trial. His annual salary at Lennox Industries was \$48,000, but in 2005 he earned \$65,442.72 due to overtime pay.¹ He also received approximately \$8000 from farm income per year.

¹ Donald earned \$62,284 in 2003 and \$59,094 in 2004 from his employment at Lennox Industries.

Donald's father died in 2004. He inherited the following from his father's estate: a one-third interest in a 242-acre farm; lake property in Canada valued at \$95,000; a Monsanto death benefit valued at \$44,080; an AG Edwards death benefit valued at \$30,755; and other IRAs valued at \$35,665. He withdrew approximately \$110,000 from the IRAs he inherited from his father. It appears the money Donald received from his father's estate has been largely exhausted on family expenses, credit card debt, and the purchase of a variety of vehicles and collectibles.

In a decree entered on November 3, 2006, the district court divided the parties' property and awarded Linda spousal support. The court did not include Donald's one-third interest in the farm in the division of property. Donald was awarded the lake property in Canada. He was also awarded all of the parties' tools, car parts, and vehicles, with the exception of a 2003 Dodge Durango. Linda was awarded the Durango and ordered to pay the debt associated with the vehicle. She was also awarded a CUNA IRA fund, IPERS fund, EE bonds, and one-half of Donald's profit-sharing plan.

The parties' marital residence was assessed at \$128,110 at the time of the trial, subject to first and second mortgages in the amount of \$109,075. The parties' other debt totaled approximately \$120,893 at the time of trial. They owed \$16,285 for their children's student loans and \$8577.92 in unpaid income tax due to the IRA withdrawals. Linda had approximately \$54,720.21 in credit card debt, while Donald owed \$26,759 on his credit cards. The court ordered that the marital residence be sold with the net proceeds applied to the parties' debt. Linda was allowed to remain in the home pending its sale, and Donald was

ordered to make the monthly mortgage payments. The court also ordered that the parties' collections of antique music boxes, players, dolls, and records, appraised at \$62,250, be sold at an auction and the proceeds divided equally. Donald was ordered to pay three-fourths of the remaining debt. He was further ordered to pay Linda \$1000 per month in spousal support until either party dies or Linda remarries. Finally, the court ordered Donald to pay Linda a property settlement of \$35,000.

Donald appeals, contending the district court erred in (1) including inherited property in the property division² and (2) awarding Linda permanent alimony. Linda cross-appeals, contending the district court erred in failing to award her the marital residence.³

II. Scope and Standard of Review.

Our scope of review is de novo. Iowa R. App. P. 6.4. Although not bound by the district court's factual findings, we give them weight, especially when assessing the credibility of witnesses. Iowa R. App. P. 6.14(6)(g).

III. Property Division.

In allocating the parties' assets and debts, the court strives to make a division that is fair and equitable under the circumstances. *In re Marriage of*

² To the extent Donald is challenging the value fixed by the district court for any items of property, his challenge is without merit. The court's valuations are within the permissible range of the evidence, and we decline to disturb them on appeal. See *In re Marriage of Vieth*, 591 N.W.2d 639, 640 (Iowa Ct. App. 1999).

³ Linda also contends the district court should have ordered that the "interest portion of the cash settlement . . . be included in the \$500 per month payments." The district court provided that the property settlement could be "paid in a lump sum, or Donald may pay this property settlement at the rate of \$500 per month . . . until paid in full. If Donald elects to pay the property settlement in monthly installments, he shall pay interest at the rate of 5 percent per annum." We find nothing inequitable in this provision.

Russell, 473 N.W.2d 244, 246 (Iowa Ct. App. 1991). Iowa courts do not require an equal division or percentage distribution; rather, the decisive factor is what is fair and equitable in each particular case. *Id.* In determining what division would be equitable, courts are guided by the criteria set forth in Iowa Code section 598.21(1) (2005). *In re Marriage of Goodwin*, 606 N.W.2d 315, 319 (Iowa 2000). This statute excludes from the court's property division "inherited property or gifts received by one party" unless the court finds exclusion of such property "is inequitable to the other party. . . ." Iowa Code § 598.21(1), (2); *Goodwin*, 606 N.W.2d at 319.

Donald argues the district court should not have included the lake property in Canada and the vehicles he purchased with proceeds from his father's estate or received as gifts from his parents⁴ in the division of property.⁵ In determining whether it would be inequitable to Linda to refuse to divide the property Donald inherited and received as gifts from his father, we consider the following factors:

(1) contributions of the parties toward the property, its care, preservation or improvement;

⁴ Donald purchased a 1940 Vauxhall, valued at \$5300, a Triumph TR7, valued at \$900, and a 1994 Mitsubishi 3000 GT, valued at \$12,000, with proceeds he inherited from his father's estate. He received a MGB sports car, valued at \$1500, and a Vanden Plas limousine, valued at \$500, as gifts from his parents. The parties also own a 1979 Triumph Spitfire, valued at \$2000. Donald does not assert the Spitfire was acquired through his inheritance or as a gift from his parents. Thus, the total value of the vehicles Donald purchased with money from his father's estate or received as gifts from his parents is \$20,200.

⁵ Donald additionally argues that "many of the collectibles in which Linda is to receive one-half the value were also items" he inherited. However, he does not specify which of the "collectibles" he claims he inherited. Nor does he attempt to place a value on them. A review of the record reveals that the couple bought the majority of their collections of antique music boxes, players, dolls, and records at auctions they attended throughout their marriage. We therefore reject this assignment of error.

(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 Thomas, 319 N.W.2d 209, 211 (Iowa 1982). The length of the marriage or the length of time the property was held after it was devised “may indirectly bear on the question for their effect on the listed factors.” *Id.*; see also *In re Marriage of Muelhaupt*, 439 N.W.2d 656, 659 (Iowa 1989).

We find equity does not favor the division of the lake property in Canada and the vehicles Donald purchased with money from his father’s estate or received as gifts from his parents. None of the first four factors are present in this case. Furthermore, we do not find “any other matter which would render it plainly unfair to” Linda to have the property credited to Donald.

The parties had been married twenty-nine years at the time of dissolution. Donald received the inheritance in 2004. The couple did not enjoy a substantial rise in their standard of living because of the inheritance. See *Goodwin*, 606 N.W.2d at 320 (finding no inequity in setting aside inherited property to the wife where her inheritance was not used to raise the parties’ standard of living). Instead, it appears Donald had to spend a significant portion of his inheritance on family expenses and the parties’ credit card debt during 2004 and 2005 while Linda remained unemployed. Moreover, the lake property in Canada was in Donald’s family before the parties were married. See *In re Marriage of Wallace*,

315 N.W.2d 827, 832 (Iowa Ct. App. 1981) (noting division of “[r]eal property that has been in the family of one of the parties prior to their marriage” should be divided only “as a last resort . . .”).

We therefore conclude the district court should have excluded the value of the lake property in Canada and the value of the inherited and gifted vehicles awarded to Donald from the property division. This action results in a total reduction of \$115,200 in the property awarded to him. The property settlement payment Donald was ordered to make to Linda should accordingly be reduced from \$35,000 to \$5,810.50.

In her cross-appeal, Linda requests that she be awarded the parties’ marital residence and the debt associated therewith. However, Linda testified she would not be able to afford the mortgage payments on the home. In addition, the parties accumulated a substantial amount of debt during their marriage. We find the district court’s order that the marital home be sold with the net proceeds applied to the parties’ debt to be fair and equitable under the circumstances.

IV. Spousal Support.

An award of spousal support is used as a means of compensating the party who leaves the marriage at a financial disadvantage, particularly where there is a large disparity in earnings. *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa Ct. App. 1998). It is a discretionary award, dependent upon each party’s earning capacity and present standard of living, as well as the ability to pay and the relative need for support. *In re Marriage of Bell*, 576 N.W.2d 618, 622 (Iowa Ct. App. 1998), *abrogated on other grounds by In re Marriage of*

Wendell, 581 N.W.2d 197, 200 (Iowa Ct. App. 1998). Courts are guided by section 598.21(3), which mandates consideration of a number of factors, such as the length of the marriage, the parties' ages and health, the earning capacity of the spouse seeking support, and that spouse's ability to become self-sufficient.

The property division and an award of spousal support should be considered together in evaluating the individual sufficiency of each. *In re Marriage of Earsa*, 480 N.W.2d 84, 85 (Iowa Ct. App. 1991). In a marriage of long duration, an award of spousal support and a substantially equal property division may be appropriate, especially where there is a great disparity in earning capacity. *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993).

In light of the foregoing considerations and the pertinent facts of this case, we believe Linda is entitled to a spousal support award. The particularly relevant factors here are the length of the marriage, the modified property division with the inherited property set aside to Donald, and the disparity in the parties' incomes. Further, a review of Linda's monthly expenses reveals she is not likely to become self-sufficient given her age and earning capacity.

We reject Donald's argument that spousal support is inappropriate due to Linda's alleged "shopping addiction," which he asserts resulted in a dissipation of marital assets. Iowa courts have recognized that conduct of a spouse that results in the loss or disposal of property that would otherwise be subject to division in a dissolution of marriage action may be considered in making an equitable distribution of the parties' property. *Bell*, 576 N.W.2d at 624 (concluding disparity in division equitable where, after the initiation of dissolution proceedings, husband spent marital assets gambling). However, we find it

inappropriate to apply this maxim under the particular circumstances of the present case.

Linda's spending habits are not the kind of "intentional dissipation of marital assets" that should be considered in determining whether an award of spousal support is appropriate. *Cf. In re Marriage of Olson*, 705 N.W.2d 312, 317 (Iowa 2005) (rejecting husband's argument that wife's gambling problem and credit card debt should be considered in making an alimony award) *with In re Marriage of Cerven*, 335 N.W.2d 143, 146 (Iowa 1983) (stating that "if the purpose of transferring one's assets prior to a dissolution of marriage is to protect oneself from future alimony payments, the court may look to the amount transferred in fixing alimony"). Linda is entitled to spousal support because of the factors set forth in section 598.21(3). Accordingly, we affirm the district court's spousal support award.

V. Conclusion.

We conclude the district court should have excluded the value of the lake property in Canada and the value of the inherited and gifted vehicles awarded to Donald from the property division. We therefore find the property settlement Donald was ordered to make to Linda should be reduced from \$35,000 to \$5,810.50. The remainder of the district court's decree is affirmed. Costs of appeal are assessed equally to the parties.

AFFIRMED AS MODIFIED.