

**IN THE COURT OF APPEALS OF IOWA**

No. 8-368 / 07-1817

Filed May 29, 2008

**IN RE THE MARRIAGE OF LISA A. FRANCIS-HOYLE AND DOUGLAS E. HOYLE**

**Upon the Petition of  
LISA A. FRANCIS-HOYLE,**  
Petitioner-Appellee,

**And Concerning  
DOUGLAS E. HOYLE,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Scott County, Patrick J. Madden,  
Judge.

Douglas E. Hoyle appeals challenging certain economic provisions of the  
decree dissolving his twenty-four year marriage to Lisa A. Francis-Hoyle.

**AFFIRMED AS MODIFIED.**

Arthur L. Buzzell, Davenport, for appellant.

Catherine Cartee and Jennie L. Clausen of Cartee & Clausen Law Firm,  
P.C., Davenport, for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

**SACKETT, C.J.**

Douglas E. Hoyle appeals, challenging certain economic provisions of the decree dissolving his twenty-four year marriage to Lisa A. Francis-Hoyle. Douglas contends the district court should not have allocated \$30,000 from his inheritance to Lisa and should not have awarded Lisa alimony and tuition assistance. We affirm as modified.

**I. SCOPE OF REVIEW.**

Because this is a dissolution case, the scope of review is de novo. Iowa R. App. P. 6.4; *In re Marriage of Schriener*, 695 N.W.2d 493, 495-96 (Iowa 2005). We decide the issues raised on appeal anew, giving weight to the trial court's factual findings, especially with respect to the credibility of the witnesses. *In re Marriage of Witten*, 672 N.W.2d 768, 773 (Iowa 2003).

**II. BACKGROUND.**

Lisa, born in 1962, and Douglas, born in 1954, were married in May of 1983. At the time of the marriage Lisa had completed her sophomore year of college and Douglas had finished his undergraduate education. During the marriage Lisa received a Bachelor of Science degree in art education and Douglas gained a Ph.D. in higher education administration. The parties contributed to each other's education as well as their own. Lisa taught after receiving her degree and Douglas held several different positions.

A daughter was born to the couple in 1996. When the child was about two years old Lisa removed herself from the work force. At the time of the dissolution she was doing substitute teaching and had an income of about \$8000 annually. The district court found she could earn \$30,000 annually. Douglas has been

employed outside the home throughout the marriage. At the time of the dissolution he was employed as Vice Chancellor of Institutional Effectiveness at Palmer College of Chiropractic, earning about \$160,000 annually.

The parties, to their credit, reached an agreement as to child custody, child support, and the division of most assets. The child was put in the parties' joint physical custody and the parties agreed on a schedule as to how she would move between their homes. Douglas agreed to pay child support to Lisa of \$1,080.97 a month, maintain health and dental insurance on the child unless health insurance was not available to him without cost, and pay eighty-five percent of uncovered medical expenses with Lisa paying the balance. Douglas was given the exemption for the child as long as his child support was current as of February 1 of the year following the year in which he would claim the child. If Lisa became employed full-time there was a provision that the exemption would be alternated between the parties.

The parties did not agree to the division of some \$138,766, though they did agree it represented an inheritance that Douglas received during the marriage. They also disagreed on whether spousal support should be awarded, and if awarded, the amount and duration of it as well as whether Douglas had responsibility to pay Lisa's attorney fees for amounts exceeding \$5000.

The district court found the disputed inheritance had come to Douglas alone. The court noted the parties agreed that \$16,646 recently received by Douglas from his aunt should be set aside to him. The court found the controversy was over some \$122,130 that Douglas received from his mother's estate in 2004. The court noted this money was immediately placed in a joint

account with Lisa and used to purchase a lake home held in joint tenancy with Lisa, and when the lake home was sold at a \$50,000 profit, the funds were placed in joint accounts. The district court concluded Douglas's mother would not have intended for funds from her estate to go directly to Lisa. Douglas's mother's will, which was placed in evidence, basically provided that Douglas's share should go in trust and if he were not living, it would go to Lisa if she was married to Douglas at the time of his death. But if Lisa was not married to Douglas at his death, the share should go to the surviving issue of Douglas per stirpes. The will further provided the proceeds in the trust could be distributed on the death of Douglas's mother, and this is what apparently happened.

The district court determined the fact that the property was put in joint tenancy was not controlling. We agree. Whether the inheritances or gifts were placed in joint ownership is not controlling. *In re Marriage of Wertz*, 492 N.W.2d 711, 714 (Iowa Ct. App. 1992). The court then went on to find that setting the entire amount aside to Douglas would not result in an equitable division of the parties' assets and Lisa needed to receive part of the inherited money to achieve equity between the parties. The court reasoned the couple had lived conservatively and saved for their retirement and both were responsible financially. The court noted the standard of living they maintained was below the level they would have been allowed thereby, increasing their assets. The court then determined Lisa should have \$30,000 of the inherited funds, finding it may

assist her in obtaining more reliable transportation, and noting Lisa may have to sell the marital home if she wishes to continue to live within her means.<sup>1</sup>

In awarding alimony the court considered that both parties obtained further education during the marriage and the parties agreed that Lisa would stay home to care for their daughter. It also considered that Lisa wants to return to college to earn a general education teacher's certificate to provide more opportunity for full-time employment as a teacher, and to obtain the certification she will expend about \$36,000 for four semesters of education. The court then awarded Lisa \$2500 a month alimony and provided, in addition, Douglas should pay Lisa up to \$8000 a semester for four semesters to satisfy her education costs to obtain certification, noting Lisa should be responsible for her gas and parking fees. To obtain the award Lisa was obligated to attend school within the two years following the decree and Douglas's obligation was limited to two consecutive years only if the classes for the first year began within two years of the date of the entry of the decree.

### **III. ECONOMIC PROVISIONS OF DECREE.**

Douglas's challenges are to the economic provisions of the decree. Our review of the alimony issue and the inherited property issue, to a more limited extent, cannot be considered in isolation but must be considered together with the property division. See *In re Marriage of O'Rourke*, 547 N.W.2d 864, 866 (Iowa Ct. App. 1996) ("We consider property division and alimony together in

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<sup>1</sup> In responding to an Iowa Rule of Civil Procedure 1.904(2) motion the court specifically said, "The court's decision that it was not equitable to Lisa or [the parties' child] to set aside all inherited property to [Douglas] is a reflection of the Court's concern [Lisa] either is or soon will be in need of a new vehicle for transportation purposes."

evaluating their individual sufficiency.”). Consequently our review is complicated by the fact that while the parties agreed on the division of substantial assets and pension interests, they failed to provide to us their position as to the equities awarded each party in their agreed property division. Furthermore, the district court did not make any findings as to the value of the property received by each party as a result of their stipulation.

We have attempted to reconcile to the best of our ability the ultimate result of the agreed division of assets excluding the inherited property. Based on the values established by the parties it appears that Douglas received a net value of about \$320,000 and Lisa received a net value of \$382,000. With this in mind we look at Douglas’s challenge to the alimony award.<sup>2</sup>

#### **IV. ALIMONY.**

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Eastman*, 538 N.W.2d 874, 876 (Iowa Ct. App. 1995). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21A(1) (Supp. 2005). *See In re Marriage of Sychra*, 552 N.W.2d 907, 908 (Iowa Ct. App. 1996). In addition to the property division we consider the length of the marriage, the age and health of the parties, the parties’ earning capacities, the levels of education,

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<sup>2</sup> In general, Iowa courts do not require an equal division of the property in dissolution of marriage cases. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa Ct. App. 1991). The determining factor is what is fair and equitable in each circumstance. *Id.* An equitable distribution of the parties’ property must be made according to the criteria set forth in Iowa Code section 598.21(5) (Supp. 2005). *See In re Marriage of Goodwin*, 606 N.W.2d 315, 319 (Iowa 2000). Although an equal division is not necessary, it should nevertheless be a general goal of trial courts to make the division of property approximately equal. *In re Marriage of Conley*, 284 N.W.2d 220, 223 (Iowa 1979).

and the likelihood the party seeking alimony will be self-supporting at a standard of living comparable to the one enjoyed during the marriage. *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa Ct. App. 1998). We are also allowed to consider the amount of child support ordered under the decree when determining if spousal support is to be awarded and, if so, the appropriate amount of the award. *In re Marriage of Will*, 489 N.W.2d 394, 400 (Iowa 1992).

Douglas contends that Lisa should not have been awarded alimony and the alimony award is too much and should terminate on his death. We cannot say that the alimony award is excessive. We recognize Lisa has a good education, is relatively young, and their daughter is maturing and obviously becoming more self-sufficient. However, she has been out of the work force to care for the parties' child and obviously will need assistance in re-establishing herself in the work force. Douglas has a greater income and at this point a great deal more potential for earning than does Lisa. We affirm the alimony award but do order that it terminate at Douglas's death. Lisa has benefits from an award of property accumulated during the marriage. We consider not only Douglas's income but also the availability of his inheritance in assessing the alimony award. Also, we note that Douglas continues to assume joint care for the parties' child and will have expenses for her care. The alimony meets the definition in part of being both traditional and rehabilitative.

We strike however the provision for payment of tuition. We also add the provision that the alimony shall terminate at Douglas's death should he die before reaching sixty-five years of age. Alimony is an allowance to the former spouse in lieu of a legal obligation to support that person. *See In re Marriage of*

*Hitchcock*, 309 N.W.2d 432, 437 (Iowa 1981); *In re Marriage of Van Ryswyk*, 492 N.W.2d 728, 731 (Iowa Ct. App. 1992). The duty to support does not survive death. See *Hitchcock*, 309 N.W.2d at 438; *Van Ryswyk*, 492 N.W.2d at 731.

## V. INHERITED PROPERTY.

Iowa is an equitable distribution state. *Schriner*, 695 N.W.2d at 496. The court divides 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.* All property of the marriage that exists at the time of the divorce, other than gifts and inheritances to one spouse, is divisible property. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006).

In determining whether it was equitable for the district court to award Lisa a portion of Douglas's inheritance 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 319, 320 (Iowa 2000).

We agree with Douglas that few of the factors enumerated support a division of his recent inheritance from his mother who specifically excluded Lisa from the trust she established if she were not married to Douglas. Lisa did benefit from the inheritance and she shares in the \$50,000 the parties made on



selling the lake home which was purchased with the inheritance. While we do not necessarily agree with the district court that the money is necessary for Lisa to have reliable transportation, we do not see that the award was inequitable and we affirm it.

We affirm the alimony award but modify it to provide that it also terminates on Douglas's death should he die before sixty-five years of age. We strike the provision requiring Douglas to pay \$8000 a semester for four semesters. We affirm the division of Douglas's inherited property.

We award no attorney fees. Costs on appeal are taxed one half to each party.

**AFFIRMED AS MODIFIED.**