IN THE COURT OF APPEALS OF IOWA

No. 2-1060 / 12-0037
Filed March 13, 2013

IN RE THE MARRIAGE OF MELINDA B. ENGELBRECHT AND MARK H. ENGELBRECHT

Upon the Petition of
MELINDA B. ENGELBRECHT,
Petitioner-Appellee,

And Concerning
MARK H. ENGELBRECHT,
Respondent-Appellant.

Appeal from the Iowa District Court for Buchanan County, George L. Stigler, Judge.

Mark Engelbrecht appeals from the property distribution and alimony provisions of the decree dissolving his marriage to Melinda Engelbrecht. **AFFIRMED AS MODIFIED.**

Steven H. Lytle and Ryan G. Koopmans of Nyemaster Goode, P.C., Des Moines, for appellant.

Carolyn J. Beyer of Beyer Law Firm, P.C., Iowa City, for appellee.

Heard by Vogel, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.

Mark Engelbrecht appeals from the property distribution and alimony provisions of the decree dissolving his marriage to Melinda Engelbrecht. We strike the equalization payment, but otherwise affirm the property distribution and support provisions of the decree.

I. Background Facts and Proceedings.

We set out the following facts as found by the trial court, which are fully supported by our review of the record:

> Melinda Berniece Engelbrecht and Mark Howard Engelbrecht were married March 5, 1977. This is a first marriage for both. They separated in February 2008. The marriage produced six children: . . . . The children whose welfare may be affected by this controversy are [a son] (in terms of a postsecondary education subsidy) and [a daughter], who is a minor. The marriage has irretrievably broken down and there is no reasonable likelihood it can be preserved. They have been married 33 years.
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> Melinda was born [in 1958] and grew up Melinda Bernice Frieden on a 152.6-acre farm near West Union (hereinafter the "Frieden Farm"). She graduated high school in 1976, and has no formal education beyond that. She was 19 at the time of the marriage. She is presently 52 years of age and operates a quilting business. Her health is good.
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> Mark Howard Engelbrecht was born [in 1952] and is 58 years of age. He has a Bachelor of Science degree from the University of Maryland in animal and dairy science. His health is good. His lifetime goal was always to be a farmer. Since 1979, he has been employed by Farm Credit Services.
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> . . .
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> In 1976, shortly before the marriage, Mark purchased a farm in State College, Pennsylvania, (hereinafter the "Rose Farm"). The purchase left Mark heavily in debt. Other than the Rose Farm, neither party brought anything of significant value to the marriage. After the marriage, the parties lived in West Union. Shortly thereafter, the parties moved to Mark's hometown, Linthicum Heights, Maryland, because they had an opportunity to purchase, from his parents, the house in which Mark grew up.
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> The parties sold this home, and in 1978 moved to a farm in State College, Pennsylvania down the road from the Rose Farm

(hereinafter the "Persia Farm"). The Persia Farm was in two side-by-side parcels, Mark and Melinda purchased one parcel, and Mark's parents purchased the other as an investment (hereinafter the "State College Farm"). Mark's parents never lived on their parcel or farmed it. Their first child was born shortly before the move to the Persia Farm.

The parties moved from the Persia Farm in 1979 to Cedar Rapids and purchased a home. In 1980 they purchased a dairy farm near Elgin, Iowa (hereinafter the "Goose Ranch"), on contract. They sold the Rose Farm, the Persia Farm, and their Cedar Rapids home in order to buy the Goose Ranch.

During this period, [their second child] was born. Melinda stayed home with the children and was responsible for the cooking, cleaning, laundry, shopping, and child care. She also helped with the milking and the other farm chores, and managed the family finances and bookkeeping.

Given the farm economy of the 1980s, despite their combined efforts, Mark and Melinda failed. In 1981 they sold a portion of the Goose Ranch that included the homestead, and returned to Maryland. The remainder of the Goose Ranch was sold on contract. The buyer defaulted on the contract, and as a consequence, Mark and Melinda were forced to default in turn. At this point, Mark and Melinda lost any material wealth they had accumulated.

Upon returning to Maryland, the parties purchased a home in Chestertown, in July 1982, with a $20,000 down payment given them by Mark's parents, paid as $10,000 to Mark and $10,000 to Melinda. Mark and Melinda held title to the property jointly. They had a $30,000 mortgage. The parties updated and improved the house.

In 1984, the parties bought another home in Chestertown. They used the proceeds from the sale of the first Chestertown home to purchase the second. They held title to the second home also in joint tenancy. In addition to homemaking, child care, and house remodeling projects, Melinda babysat in order to earn extra money for the family. In 1985, Melinda went to work at a local discount store to increase the family income. Joshua was in private school, and additional funds were needed.

Since the inception of the marriage, the parties have deposited all funds in a joint bank account. Mark's salary, any farm rent or any other income, inheritances, or gifts, Melinda's earnings from babysitting, and Melinda's wages, were placed in one account and used for general family purposes.

In February 1985, Mark's father died, and Mark's mother came into possession of their joint holdings. Mark's mother also had property from her family of origin. She began a course of giving gifts to her children, their spouses, and her grandchildren.

For example, in 1985, she gave Mark stock valued at $3,304.52, and $5,000 in cash, and gave Melinda cash of $5,000 and a truck valued at $3,049.85. Over the years, she gave both parties stock. Some was in Melinda's name, some was in both parties' names, and some was in Mark's name.

In 1985, at Mark's urging, his mother purchased a 133-acre farm in Maryland, from sellers named Fernwalt (hereinafter the "Fernwalt Farm''). The Fernwalt Farm had not been in the Engelbrecht family, and the Engelbrecht family had no other connection with the sellers. Mark chose the farm, negotiated all of the terms of the agreement, and made all of the financial arrangements. His intention was to again become a farmer. On February 10, 1986, Mark's mother gifted the 133-acre farm solely to Mark.

The purchase of the Fernwalt Farm included an option to buy an additional 23 acres. In order to exercise that option, in 1986, Mark's mother gave Melinda $10,000 in cash, and gave Mark $200 in cash and her State College Farm, then valued at $92,741.41. His mother instructed the parties to sell the State College Farm and give a portion of the proceeds ($40,000) to Mark's sister, Mary, and Mary's husband, to keep things fair with respect to gifting. The parties equally divided the $40,000, and Mark gave $10,000 to Mary and $10,000 to her husband. Melinda also gave $10,000 to Mary and $10,000 to Mary's husband. The gift to Mark shown as $92,741.41 on the gift tax return was $52,741.41. The remaining proceeds were used to exercise the option to buy the additional 23 acres of the Fernwalt Farm. Title to the Fernwalt Farm was in Mark's name alone, because Mark insisted Melinda not be included on the deed. The closing of the purchase of the additional 23 acres occurred December 22,1987.

The parties decided to build a new home on the Fernwalt Farm. In January 1987, the parties sold their second Chestertown home and used most of the proceeds to build the house. In 1987, Margaret gave $10,000 to Melinda. Those funds also were used to build the house. Margaret's gift tax return for 1987 shows a gift to Mark of $210,179.90. That figure represents payments on the Fernwalt Farm, $300,000, minus the mortgage of $89,820.10. In 1988, Mark received a small ($11,494.88) inheritance from his aunt. The money was used to complete the house.

The parties had a mortgage on the Fernwalt Farm of approximately $150,000. They moved into the new house before it was finished, and completed the work themselves. Together, they did flooring, trim work, painting, tiling, and other finish work. Mark continued to work at Farm Credit, and Melinda continued with her household responsibilities. They rented the land to a local farmer. The parties continued to deposit their funds in a joint account which they used for all expenses, including the mortgage.

Around the same time, Melinda left her job at the discount store, and began baking to earn extra money. She sold baked goods at the local farmers market. She produced bread, pies, rolls, sticky buns, loaf cakes, cheesecakes, and more. Melinda and the children raised chickens and sold the eggs at the farmers market as well. Three children, [. . .], were born during the parties' time in Maryland. By this time, the parties had five children.

For a variety of reasons, the parties decided to return to Iowa. Melinda's father had had a stroke and was placed in a nursing home, and Melinda's mother needed to sell the farm. Rather than sell the Frieden Farm to a stranger, Melinda's mother made a gift arrangement with Melinda to give Melinda the farm with the understanding that Melinda would give her mother gifts in exchange. The intention of Melinda's parents was to give the family farm to Melinda. In 1989, Melinda's parents prepared a deed to Melinda, but when Mark found out the deed was in Melinda's name alone, he insisted his name be added. The value of the Frieden Farm was $160,000. Melinda's mother had already received the cash rent of $10,300 for the year, and kept it. Melinda and Mark transferred stock to Melinda's mother valued at $9,000. The parties agreed to give Melinda's mother $40,700. The total gift to Melinda and Mark was $100,000.

Around the same time, the parties sold approximately 91 acres of the Fernwalt Farm in Maryland for $275,310 in a section 1031 IRS exchange of property. The parcel was exchanged for a farm in Fayette County, Iowa, purchased from a seller named Lahey (hereinafter the "Lahey Farm"). Title to the Lahey Farm was held in Mark's name alone. In 1991, they sold the remaining approximately 65 acres and the house on the Fernwalt Farm for $400,000 in a 1031 exchange. The parcel was exchanged for two farms in Buchanan County, Iowa, the current homestead (hereinafter the "Haines Farm") and a 75.5-acre farm (hereinafter the "Allen Farm"). Mark and Melinda hold titles to the Haines Farm and the Allen Farm jointly.

The parties built a new house on the Haines Farm. They moved into the home before it was finished, and again, Mark and Melinda did tile work, laid the hardwood floors, installed trim, did other finish work, and landscaped the property. Their younger child, J.M., was born in 1998 in Iowa.

In 2004, the parties purchased a 78.5-acre farm in Buchanan County, Iowa (hereinafter the "Glass Farm"), financing the entire purchase. Mark and Melinda hold title to the Glass Farm jointly. In 2006, they purchased 100.7 acres from a seller named Hunt, again employing a 1031 exchange, of 40 acres of the Lahey Farm, and assuming debt for the balance of the purchase price. The parties had a comprehensive mortgage of $850,000 securing all of the Buchanan County real estate. Both parties were obligated on the

note and mortgage, but Melinda's name is not on the Hunt Farm deed.

The parties own six farms: (1) the Frieden Farm, (2) the Glass Farm, (3) the Lahey Farm, (4) the Haines Farm, (5) the Allen Farm, and (6) the Hunt Farm.

A. *The Frieden Farm*

The Frieden Farm consists of 152.6 acres of land located in Fayette County immediately outside the city of West Union. It is Melinda's family's farm.

In the late 1980s, Melinda's father suffered a stroke which left him incapacitated and unable to farm. Melinda's mother determine to make a $100,000 gift of the farm to Melinda and had her lawyer draft a warranty deed conveying title to the farm solely to Melinda. Mark and Melinda were at this point again living in Iowa. Mark felt betrayed because he thought the Friedens had made representations to him that one day the Frieden Farm would be his. He testified this was one of the reasons he agreed to come back to Iowa to live. At Mark's strong insistence, the warranty deed was revised to include Mark on the deed. Exhibit 13-1, the warranty deed, which contains both Melinda and Mark's names as grantees, reflects the addition of Mark's name out-of-typed-alignment with Melinda's name. This clearly establishes the truthfulness of the view that Melinda's parents did not initially desire to make Mark a co-donee of their farm, but did so only at his demand.

The warranty deed is dated December 1, 1989. Exhibit 13-2, dated May 13, 1990, establishes the 1990 value of the Frieden Farm as $160,000, the $100,000 gift plus $9000 in stock from both Melinda and Mark, the retention of the $10,300 farm rent for 1990 by Melinda's mother plus a $40,700 balance due to Melinda's mother. The balance was paid in full on December 21, 1999, by Melinda and Mark out of family earnings.

Melinda's appraiser states the present value of the Frieden Farm to be $709,400. Mark's expert places the farm's value at $696,700. The difference is essentially de minimus.

The court finds the value of the Frieden Farm to be $709,400.

Mark asserts an interest in the farm, inclusive of its appreciated value, through the inclusion of his name as a co-donee. He claims an interest in the Frieden Farm at the same time he denies Melinda any interest in any of his gifted or inherited property.

Melinda agrees the Frieden Farm is marital property.

B. *The Glass Farm*

The Glass Farm consists of approximately 78.5 acres of bare farmland located about three miles southeast of the city of Lamont in Buchanan County. It was acquired by the parties in late 2004.

It was acquired through 100% financing. Both Mark and Melinda acknowledge it to be marital property.

Melinda's expert values the Glass Farm at $375,000. Mark's expert values the land at $342,900. The court sets the value at $375,000.

C. The Lahey Farm

The Lahey Farm consists of approximately 149.2 acres of bare ground farmland and is located between the cities of West Union and Hawkeye in Fayette County. Originally, it consisted of approximately 195 acres. On May 1, 2006, Mark sold 40+ acres to be able to buy the Hunt Farm.

The Lahey Farm was acquired on May 23, 1990. Title is held solely in Mark's name. It was acquired for $285,000 in a section 1031 IRS exchange for 91 acres of the Fernwalt Farm in Maryland.

Melinda values the land at $672,600. Mark values the land at $632,500. The court finds its value to be $672,600.

Mark claims sole ownership of the Lahey Farm because the land exchanged for it, a large portion of the Fernwalt Farm, represents a gift to him by his mother. Melinda also asserts an interest in the Lahey Farm.

D. The Haines Farm

The Haines Farm consists of approximately 96 acres of farmland outside of the city of Lamont in Buchanan County.

The property was acquired by the parties in 1991 for $134,600, in a section 1031 IRS exchange for the remaining approximately 65 acres of the Fernwalt Farm in Maryland. Title is held in both Melinda and Mark's name.

The Haines Farm is the family homestead and where the parties lived until the separation. On the land is located a home newly-constructed by the parties and Quilters Quarters, a business operated by Melinda.

Mark's expert values 90 acres of the land at $385,000, the home and acreage upon which it sits at an additional $302,000, and the .15 acres of land and the Quilters Quarters at an additional $337,258, for a total of $1,024,258.

Melinda values the Haines Farm at $880,000, 90+ acres at $397,000, the home and 3.8 acres on which it sits at $259,000, and Quilters Quarters and the land on which it sits at $224,000.

Mark seeks the entirety of the value of the Haines Farm, except Quilters Quarters, as his as having come from a section 1031 exchange of the Fernwalt Farm.

Melinda seeks an interest in the Haines Farm.

At Mark's direction, the Quilters Quarters building was unreasonably overbuilt for what was needed or desired by Melinda. Melinda no longer desires or needs the use of the building. The entirety of the Haines Farm inclusive of the 90 plus acres, the

> family homestead, and the Quilters Quarters building will be awarded to Mark and his valuation accepted.
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> *E. The Allen Farm*
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> The Allen Farm consists of approximately 75.5 acres of land 1.5 miles south of the city of Lamont in Buchanan County.
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> The Allen Farm was acquired September 11, 1991, at a cost of $128,000 in conjunction with a section 1031 IRS change of the remaining 65 acres of the Fernwalt Farm property that also resulted in the simultaneous acquisition of the Haines Farm. Title is held in both Mark and Melinda's names.
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> Melinda's expert values the farm at $347,000, while Mark's expert values the farm at $332,200. The court finds the value to be $347,000.
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> *F. The Hunt Farm*
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> The Hunt Farm consists of approximately 100.7 acres of bare farm ground located one mile west of the city of Winthrop in Buchanan County. Title is held solely in Mark's name. It was acquired April 18, 2006, at a cost of $340,000. Approximately 40 acres of the Lahey Farm was sold in a section 1031 exchange to partially acquire the property.
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> Melinda values the property at $466,000, while Mark values it at $459,000. He asserts $270,186 is marital property, and $189,314 is non-marital property. The court finds its value to be $466,000. Melinda asserts an interest in the property.

(Citations to the record omitted).

Trial was held on March 31, 2010, and the decree was filed on August 20, 2010. In the decree, the court awarded the parties joint legal custody of the child Janelle and ordered physical placement with Melinda, pursuant to the parties' agreement. The court found that child support was best reflected by Melinda's documentation and set child support at $1052 per month.

The court awarded spousal support to Melinda of $1500 per month until Melinda's death, Mark's death, or Melinda's remarriage.

Mark argued Melinda should share in none of the commingled gifts from his mother. The district court found Mark's position to be "patently inequitable":

> [T]he court is convinced Melinda enjoyed an independent, close relationship with Mark's mother. She took Melinda to all of

> Melinda's obstetrical appointments. The two women shared common interests in antiquing and collecting, and shopped for dolls and milk bottles together. Melinda sewed house dresses for Mark's mother and prepared Mark's mother's gift tax returns. Mark's mother was very generous to Melinda. She gave Melinda numerous gifts, and indicated, on occasions, that the gifts made to Mark were intended for Melinda as well.
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> Melinda made her own, separate contribution to the parties' economic welfare, which allowed Mark to preserve the property given to him. Melinda's services in the home, taking care of the children, improving the various properties, and contributing her earnings all contributed to the parties' economic welfare. In the early years of the marriage, Melinda babysat and worked at a discount store to add to the family coffers. She sold baked goods at the local farmer's market. She had six children and home-schooled five of them.
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> As a stay-at-home wife and mother, Melinda sacrificed her own advancement in the workplace for the family. Melinda's current earning capacity is substantially lower than Mark's as a result of this sacrifice. It would be plainly unfair to Melinda to have the farms set aside for Mark's exclusive enjoyment. It is inequitable that Mark placed certain farms in his name alone, but Melinda was required to sign the note and the mortgage securing the indebtedness.
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> Of enormous importance is that this is a marriage of long duration: 33 years. The parties were married March 5, 1977. The gifts at issue were realized in 1986 and 1987. Mark's inheritance was received in 1988. All funds were commingled and used to support the family. The original gifts are no longer distinguishable or recognizable.

Melinda was awarded the Frieden Farm valued at $709,400 and the Lahey Farm valued at $672,600; and Mark was awarded the Haines Farm valued at $1,024,258, the Glass Farm valued at $375,000, the Allen Farm valued at $347,000, and the Hunt Farm valued at $466,000. Mark was ordered to pay the debt against the real estate, which was valued at $736,284. The court found that "Mark leaves the marriage with farm real estate worth $2,212,258. Melinda leaves with $1,382,000 or $830,258 less than Mark." After deducting the debt on the real estate awarded to Mark from the difference, Melinda's award of real

estate had a value $93,974 less than the net value of the real estate awarded to Mark. The court ordered Mark to pay Melinda a real estate equalization award in the amount of $46,987.

The court gave a one-fourth interest in the stock (which was not valued in the decree) to Melinda, and a three-fourths interest to Mark. The total value of the stock was $409,524.32.[1]

Melinda was awarded a 1967 pick-up truck the parties agreed had no value, a 2005 Pontiac Grand Prix, and a 2010 Chevrolet Traverse subject to the $33,000 debt on the vehicle.

Mark was awarded a 1999 Chevrolet Lumina and a 2002 Chevrolet S-10 pick-up truck.

The court awarded each party the cash in their possession and all bank and financial accounts in their names. Each party also was awarded all of the household contents in his or her possession at the time of trial, except for certain enumerated items, which were specifically awarded but not individually valued.

Each party received all life insurance policies in his or her name. Melinda was awarded her IRAs and Mark was awarded his IRA account and his E*Trade IRA account (approximately $50,000). Melinda was awarded her Citizen's Bank IRA valued at $8449, and a Citizen's Bank ROTH IRA valued at $11,272 (about $19,500). Mark's 401k retirement plan valued at $515,753 was equally divided between the parties.

[1] Mark argues on appeal that the district court's finding that the stock was gifted means that the stock was not divided as marital property. The record belies this claim.

Melinda was awarded "the business of Quilter's Quarters including all equipment, inventory, and bank accounts," for which the court had "accept[ed] $229,809 as the value of Quilter's Quarters."

Mark was ordered to pay $10,000 of Melinda's attorney fees. Court costs were assessed one-half to each party.

Both parties filed Iowa Rule of Civil Procedure 1.904(2) motions. On March 3, 2011, Melinda filed a "Motion for Final Resolution," contending Mark had refused to transfer any of the disputed property to Melinda, including the stocks, the titles to the farms, the attorney fee award, and Melinda's share of Mark's 401k retirement account. A hearing was held April 19, 2011, on both parties' rule 1.904(2) motions and Melinda's motion for final resolution.

On December 19, 2011, the trial court overruled all motions, noting that Melinda's motion for final resolution would be better resolved by a rule to show cause. Anticipating an application for rule to show cause, the court scheduled a January 20, 2012 hearing. On December 21, Melinda filed an application for rule to show cause. Mark filed a notice of appeal before the January 20 hearing was held.

On appeal, Mark contends the property distribution is "grossly inequitable."[2] He also argues the trial court abused its discretion in awarding alimony and ordering him to pay $10,000 towards Melinda's attorney fees.

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[2] Our review has been more cumbersome than it should have been because the appendix submitted fails to include the name of the witness whose testimony is included, fails to bracket the transcript page number, and fails to indicate omissions of transcript pages with asterisks, all as required by our rules of appellate procedure. *See* Iowa R. App. P. 6.905(7)(c), (d), (e).

II. Scope and Standard of Review.

Our review in dissolution cases is de novo. Iowa R. App. P. 6.907; *In re Marriage of Fennelly*, 737 N.W.2d 97, 100 (Iowa 2007). We examine the entire record and determine anew the issues properly presented. *In re Marriage of Rhinehart*, 704 N.W.2d 677, 680 (Iowa 2005). We give weight to the factual findings of the district court, but are not bound by them. *In re Marriage of Geil*, 509 N.W.2d 738, 741 (Iowa 1993).

III. Property Division.

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. The second task is division of that property in an equitable manner according to the enumerated factors in Iowa Code section 598.21(5) (2009). *See id.* "Although an equal division is not required, it is generally recognized that equality is often most equitable." *Id.* (quoting *Rhinehart*, 704 N.W.2d at 683). 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).

In considering the equity of the district court's property distribution, we note that 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." *In re Marriage of Schriner*, 695 N.W.2d 493, 496 (Iowa 2005).

Gifted and inherited property is considered non-marital property. Section 598.21(6), however, contains a qualification to the gift and inheritance set-aside rule: "Property inherited by either party or gifts received by either party prior to or during the course of the marriage . . . is not subject to a property division . . . except upon a finding that refusal to divide the property is inequitable to the other party." Our supreme court has identified a number of factors for courts to consider in determining whether gifted or inherited property should be divided:

> (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)). *See In re Marriage McDermott*, ___ N.W.2d ___, 2013 WL 765316, *4 (Iowa 2013) ("Notwithstanding the classification of property as inherited or gifted, the court may still divide such an asset as marital property, where awarding the gift or inheritance to one spouse would be unjust.").

Further, in *Goodwin*, 606 N.W.2d at 319-20, our supreme court concluded that factors to consider in determining whether gifted or inherited property should

be subject to division included: the length of the marriage, the parties' contributions to the improvement of the property, whether the property served as the family home and provided a source of the family's livelihood, and whether the parties were able to support themselves after dissolution. The trial court found that in light of thirty-three years of marriage, raising six children and homeschooling many of them, helping on the farms, Melinda's close relationship with Mark's mother, Melinda's contribution of her inheritance to the family finances, and her numerous other contributions to the family, it would be "patently inequitable" not to divide the property.[3]

On appeal, "Mark does not challenge" the trial court's decision to divide the gifted property, but contends "the gift issue is relevant when considering the large disparity of assets awarded to Mark and Melinda." He comes to his conclusion of a "large disparity" because he disagrees with the district court's valuation of the Haines Farm.

The district court set out this table summarizing its award of the six farms:

MELINDA:		
	the Frieden Farm	$709,400
	the Lahey Farm	672,600
	TOTAL	$1,382,000

[3] In *Fennelly*, 737 N.W.2d at 102, the supreme court determined that the parties' premarital assets as well as the appreciation of such assets were subject to equal division upon dissolution of a nearly fifteen-year marriage, irrespective of parties' relative financial contributions to the marital standard of living, where "the parties' respective contributions to the marriage" did not justify "treating the parties differently." As observed by the *Fennelly* court:

> [M]arriage does not come with a ledger. Spouses agree to accept one another "for better or worse." Each person's total contributions to the marriage cannot be reduced to a dollar amount. Many contributions are incapable of calculation, such as love, support, and companionship. Financial matters must not be emphasized over the other contributions made to a marriage in determining an equitable distribution.

737 N.W.2d at 103 (internal citations omitted).

MARK:		
	the Haines Farm	$1,024,258
	the Glass Farm	375,000
	the Allen Farm	347,000
	the Hunt Farm	466,000
	TOTAL	$2,212,258

The district court stated it accepted Mark's expert's valuation of the Haines Farm, stating "Mark's expert value[d] ninety acres of the land at $385,000, the home and acreage upon which it sits at an additional $302,000, and the .15 acres of land and the Quilters Quarters at an additional $337,258, for a total of $1,024,258."

There is a problem with the district court's statement, however, because the "additional $337,258" figure used by Mark's expert Shannon Shaw, a certified business appraiser, was for the Quilter's Quarters *as a business*—not the building that formerly housed it.[4]

Mark's expert with respect to land valuations, Joel Kelmish, testified with respect to his appraisal of the Haines Farm as follows:

> Q. And Exhibit T, the—a six-acre parcel on the Haines Farm? A. Total of 302,000.
> Q. And then the remaining 93 acres of the Haines Farm? A. 385,000.

By reviewing Exhibit T, it is apparent that Klemish's appraisal of the Haines Farm was partitioned into the ninety-three acres of farmland and the six acres that included improvements, including the house and the structure that formerly housed the quilting business. Klemish opined the building that had housed the

[4] The appraisals of the business were based on the value of the inventory, since the business had never made a profit.

quilting business had a value of $50,000, which is included in his $302,000 overall appraisal of the six acres.

Melinda's expert with respect to land values was Clarence Meiergerd, who provided certified appraisals for all the farms. Meiergerd valued the Haines Farm at $880,000, which he broke down as follows: ninety-six acres of farmland at $397,000; the home and 3.8 acres on which it sits at $259,000; and the multipurpose building that formerly housed the quilting business and the .15 acres of land on which it sits at $224,000. Meiergerd testified that he and Klemish's appraisals of the Haines Farm were

> fairly close on the house value, but on the multipurpose building, there was a lot of difference.
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> And the main reason, I think, is because in his [Klemish's] narration, he indicated he compared it more like to a metal pole frame building, whereas I used it as actually like a house because of the structure and the composition of materials used to construct the building, and therefore there was a big difference in value between my appraisal and his opinion.

The multipurpose building on the Haines Farm that used to house the quilting business has a geothermal heat source, radiant in-floor heat, and a central vacuum system. It was built to be very energy efficient. There is a kitchen, a three-quarter bathroom, and a half-bath. To appraise it as a metal pole frame building undervalues the building. Upon our de novo review, we adopt Meiergerd's appraisal of the Haines Farm.[5]

Inserting Meiergerd's appraisal of the Haines Farm into the district court's table:

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[5] We note that the only instance in which the court accepted the valuation of Mark's experts was with respect to the Haines Farm, but its valuation mistakenly included the value of the quilting business, mostly inventory. In all other respects, the trial court found Melinda's expert witnesses' valuations more credible.

MELINDA:		
	the Frieden Farm	$709,400
	the Lahey Farm	672,600
	TOTAL	$1,382,000
MARK:		
	the Haines Farm	$880,000
	the Glass Farm	375,000
	the Allen Farm	347,000
	the Hunt Farm	466,000
	TOTAL	$2,068,000

Thus, rather than Mark "leav[ing] this marriage with farm real estate worth $2,212,258," as stated by the district court, we find he is leaving the marriage with farm real estate worth $2,068,000. Subtracting the farm debt he was assessed by the district court in the amount of $736,284, Mark was awarded farm assets with a net value of $1,331,716. This net figure is $50,284 less than the farm real estate assets awarded to Melinda.

Melinda argues that had the district court accepted her expert's valuation, the court would have awarded Mark an equalizing payment of one-half of that amount, or $25,142. But she contends this amount is "insignificant at best when considered in relation to the total value of the real estate" totaling $3.45 million. The equalization payment the court ordered Mark to pay was based upon its valuation of the Haines Farm that mistakenly included the value of the quilting business. We strike the equalization payment.

Mark also asks that this court modify the district court's decision to award the Lahey farm to Melinda. He requests we award him the Lahey Farm and award Melinda the Hunt Farm,[6] for which he will then be required to secure a

[6] Melinda has filed a motion to reopen the record in light of Mark's proposal that the Hunt Farm be transferred to her and the Lahey Farm be transferred to Mark. She contends

release of the existing mortgage. We have carefully considered the record and decline to amend the distribution of farm properties.

With respect to the Lahey and Hunt Farms, we note that it was Mark's attorney who pointed out in questioning Melinda's expert that the Lahey Farm and the Frieden Farm are closest in proximity to one another. And the Lahey and Frieden Farms awarded to Melinda are geographically separated from the farms awarded to Mark. This geographical separation decreases the possibility of the parties having to interact with one another in dealing with the farms. We note too that the farms awarded Melinda are unencumbered by the comprehensive mortgage, which allows for an easier transfer to Melinda. We affirm the district court's distribution of the farms.

Mark, however, contends that the overall property distribution results in Melinda receiving approximately $500,000 more than him. Mark's claim is based upon Mark's use of his expert's assigned value for the Haines Farm ($687,000), which is almost $200,000 less than the $880,000 value we have assigned to it, and more than $337,000 less than the district court's figure. Moreover, his calculation of the total assets awarded ignores the stock each party has been assigned, totaling in excess of $409,000, of which he received seventy-five percent.[7] We conclude that after striking the equalization payment, the resulting property distribution is equitable.

Mark has conveyed a portion of the Hunt Farm to Buchanan County for an easement. Mark responds that "its overall affect on the value of the Hunt Farm, the property distribution, and relief requested is negligible." The supreme court ordered the motion submitted with the appeal. Because we are not modifying the farmland distribution, we deny the motion to reopen the record.

[7] Mark has set out in his reply brief a table of the court's distribution of total assets, which purports to show Melinda receiving $542,072 more in assets than Mark, including the

IV. Alimony.

Mark argues the district court's analysis in relation to its award of alimony "is superficial, belies the facts, and runs contrary to Iowa law." He also argues that Melinda "can easily sustain her previous lifestyle on the farm rents and her income from Quilter's Quarters."

The district court wrote:

> Melinda is 52 years of age and has only a high school diploma. She has not worked enough outside the family home to earn social security benefits in her own name. She operates the Quilters Quarters which, since its inception, has been essentially nothing more than a source for the family to claim losses on its tax returns. In 2009, it is estimated Quilters Quarters had a profit of just over $900. In years past, the losses have been substantial. In 2009, Mark had an income of just under $100,000 from his employment at Farm Credit.

The district court extensively set out the statutory and case law concerning alimony and awarded spousal support to Melinda in the amount of $1500 per month. We do not disturb the award.

Alimony "is an allowance to the spouse in lieu of the legal obligation for support." *In re Marriage of Sjulin*, 431 N.W.2d 773, 775 (Iowa 1988). Alimony is not an absolute right; any form of alimony is within the discretion of the court. *In re Marriage of Ask*, 551 N.W.2d 643, 645 (Iowa 1996). The discretionary award of alimony is made after considering the factors listed in Iowa Code section

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value of Quilter's Quarters as a business in the amount of $229,809. However, Mark's table includes the district court's offsetting judgment, which we have amended. Mark's table also values the Haines Farm at $687,000, which we have valued at $880,000, and the table does not include the division of stock, which would add $307,143.24 to Mark"s side and $102,381.08 to Melinda's side. If we amend Mark's tables with these corrections and additions, Mark is awarded net assets of $1,973,382 and Melinda is awarded net assets of $2,023,718 for a difference of about $50,000. In view of the value of assets awarded, we find this difference de minimus and do not order an offsetting judgment.

598.21A(1). *Id.* "In a marriage of long duration, alimony can be used to compensate a spouse who leaves the marriage at a financial disadvantage, especially where the disparity in earning capacity is great." *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa Ct. App. 1998).

This is a lengthy marriage and Melinda is leaving the marriage with a limited earning capacity and almost no earning history. While she will receive rental income from the farmland awarded her, we note Mark will also receive farm rental income—more than Melinda. In addition, he will receive three times more in stock dividends, his salary, and his annual bonus. We affirm the award of alimony.

IV. Attorney Fees.

A. *Trial attorney fees*. The district court ordered Mark to pay $10,000 of Melinda's trial attorney fees. We review this award for an abuse of discretion. *In re Marriage of Sullins*, 715 N.W.2d 242, 255 (Iowa 2006). "Whether attorney fees should be awarded depends on the respective abilities of the parties to pay." *In re Marriage of Guyer*, 522 N.W.2d 818, 822 (Iowa 1994). Because Mark was making more money than Melinda at the time of trial and had access to all the farm rental income at that time, we cannot say the district court abused its discretion.

B. *Appellate attorney fees*. Melinda requests attorney fees for this appeal. Appellate attorney fees are not a matter of right, but rest in the court's discretion. *Sullins*, 715 N.W.2d at 255. We consider the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). In light of the

property distribution we affirm as modified, each party has the ability to pay his or her own appellate attorney fees, and we do not award appellate attorney fees to Melinda.

Costs are assessed to Mark.

AFFIRMED AS MODIFIED.