**IN THE COURT OF APPEALS OF IOWA**

No. 8-526 / 07-1635
Filed August 13, 2008

**MARK BROWN,**
Petitioner-Appellee.

**vs.**

**DEBRA A. GEER-BROWN,**
Respondent-Appellant,

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Appeal from the Iowa District Court for Cerro Gordo County, Paul W. Riffel, Judge.

Debra Geer-Brown appeals, challenging the economic provisions of the decree dissolving her nearly twenty-year marriage to Mark Brown. **AFFIRMED AS MODIFIED AND REMANDED.**

James P. McGuire of McGuire Law Firm, P.C., Mason City, for appellant.

J. Mathew Anderson of Heiny, McManigal, Duffy, Stambaugh & Anderson, P.L.C., Mason City, for appellee.

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

**SACKETT, C.J.**

Debra Geer-Brown appeals, challenging the economic provisions of the decree dissolving her nearly twenty-year marriage to Mark Brown. We affirm as modified.

## I. SCOPE OF REVIEW.

Our review of the economic provisions of a divorce decree is de novo. Iowa R. App. P. 6.4. We examine the entire record and adjudicate anew the issues properly presented on appeal. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(*g*); *In re Marriage of Grady-Woods*, 577 N.W.2d 851, 852 (Iowa Ct. App. 1998). We approach this issue from a gender-neutral position avoiding sexual stereotypes. *In re Marriage of Pratt*, 489 N.W.2d 56, 58 (Iowa Ct. App. 1992); *see also In re Marriage of Bethke*, 484 N.W.2d 604, 608 (Iowa Ct. App. 1992).

## II. BACKGROUND.

Mark, who was born in 1955, and Debra, who was born in 1963, were married in November of 1989. They each brought assets to the marriage and prior to the marriage executed a prenuptial agreement.[1] They have five children

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[1] Throughout this opinion the words prenuptial, antenuptial, and premarital are used interchangeably as they all have the same definition. *See* Black's Law Dictionary 1220 (8th ed. 2004) (stating a prenuptial agreement is also termed as antenuptial or premarital); *see also* Iowa Code § 596.1 (2005) (defining "premarital agreement" as an agreement made in contemplation of marriage); Iowa Code § 598.21(1)(l), (3)(i) (stating the terms of an "antenuptial agreement" are to be considered in dividing property and ordering support payments in dissolution of marriage actions); *In re Marriage of Spiegel*,

born in June of 1990, March of 1992, June of 1994, September of 1995, and November of 1997. The children are in the parties' joint custody with Mark having physical care. Debra has substantial visitation and pays child support of $323 a month.

Mark started farming two years after graduating from high school. At the time of the dissolution hearing he was farming 2100 acres of land, all of which he rented. He does not own any farmland or other real estate. His income in prior years has averaged a little less than $40,000 a year. His net worth is primarily in farm implements, prepaid crop expense, and retirement accounts. He also carries substantial debt. His health is good.

Debra worked as a dental assistant before the marriage and for several years after she was married. Her annual income in the years preceding the dissolution averaged less than $6000. She suffers from mental and substance abuse related problems and currently does not have a driver's license. At the time of the dissolution she had lost her most recent job and was unemployed.

There is disagreement about, and we have difficulty in determining, the value of equities distributed to each party. As best we can determine we believe that Mark received about $288,000 in equities and Debra received equities worth about $56,000. Mark was ordered to pay Debra $40,000, and pay about $4800 of her debt and $3700 in attorney fees and court costs. This left Mark with equities of about $240,000 and Debra with $96,000.

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553 N.W.2d 309, 313-14 (Iowa 1996) (discussing the enforceability of "prenuptial agreements").

Mark also was ordered to pay Debra alimony of $1000 a month for three years and $500 a month until such time as he draws social security. The alimony was to terminate on Debra's remarriage or the death of either party.

**III. ECONOMIC PROVISIONS OF THE DECREE.**

Debra contends both the property distribution made to her and the alimony award are inadequate. She also contends the court should have ordered Mark to name her as a beneficiary under a life insurance policy to cover the balance of his spousal support in the event of his death.

Mark argues that in considering the parties' premarital agreement and the property he brought to the marriage and other factors, the economic provisions made for Debra are equitable. He further contends that her request for life insurance was not made at the district court level and was not preserved for appeal and it would be inequitable to require him to provide the insurance.

Before making an equitable distribution of assets in a dissolution, the court must determine all assets held in the name of either or both parties as well as the debts owed by either or both. *See In re Marriage of Brainard*, 523 N.W.2d 611, 616 (Iowa Ct. App. 1994). The assets should then be given their value as of the date of trial. *Locke v. Locke*, 246 N.W.2d 246, 252-53 (Iowa 1976); *In re Marriage of McLaughlin*, 526 N.W.2d 342, 344 (Iowa Ct. App. 1994). The assets and liabilities should then be equitably, not necessarily equally, divided after considering the criteria delineated in Iowa Code section 598.21(1). *In re Marriage of Dean*, 642 N.W.2d 321, 323 (Iowa Ct. App. 2002). In general, the division of property is based upon each marriage partner's right to a just and

equitable share of the property accumulated as a result of their joint efforts. *Id.* We consider the property division and alimony together in evaluating their individual sufficiency; they are neither made nor subject to evaluation in isolation from one another. *See In re Marriage of Earsa,* 480 N.W.2d 84, 85 (Iowa Ct. App. 1991); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa Ct. App. 1984). With these principles in mind we address the parties' challenges. Debra argues both that certain farm assets allocated to Mark were undervalued and that she should have more property.

**A. Valuation.**

Although our review is de novo, we will defer to the trial court when valuations are accompanied with supporting credibility findings or corroborating evidence. *In re Marriage of Vieth*, 591 N.W.2d 639, 640 (Iowa Ct. App. 1999). Where we find the value placed on a particular item of property by the district court to be well within the reasonable range of credible evidence, we will not disturb such valuation on appeal. *In re Marriage of Bare*, 203 N.W.2d 551, 554 (Iowa 1973); *In re Marriage of Driscoll*, 563 N.W.2d 640, 643 (Iowa Ct. App. 1997).

In determining the value of certain farm assets, we look to, as did the district court, the financial statements of the parties, and a balance sheet prepared with the assistance of personnel at the bank where Mark obtained financing. The balance sheet computed Mark's equities in the years 2002, 2004, 2005 and 2007. The four years showed a low of approximately $225,000 in January of 2002 and a high of approximately $305,000 in January of 2005 and

approximately $288,000[2] in March of 2007, the month in which the case was tried. The balance sheet values the farm machinery at $252,980. Both of the parties' affidavits of financial status valued the farm machinery at $242,480. The district court did not value the machinery separately but used the total assets amount from the balance sheet, which indicates the court accepted the $252,980 valuation of the machinery

Debra contends the district court did not properly consider depreciation in that the court did not reject the reduction of the market value of the machinery by accumulated depreciation and 2006 depreciation. We agree with Debra that at first glance the balance sheet may suggest that depreciation was subtracted from current market value. However, a review of the complete record clearly shows no merit to this argument. Mark and Debra both valued his farm machinery on their separate financial affidavits at $242,480, some $10,000 less than the value established by the district court. Not only did Debra in her financial affidavit appear to agree with the lower value, it does not appear that Debra asked the district court to address the issue she now presents to us.[3] Nor was the issue raised in a pretrial motion. The figure of $252,980 comes from a balance sheet prepared for banking purposes and there is no basis to support a finding that Mark undervalued his machinery there. The values of the machinery determined by the district court were well within the reasonable range of credible evidence, and we will not disturb such valuations on appeal. *Bare*, 203 N.W.2d at 554.

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[2] The actual numbers for 2007 are: $727,896 in assets minus $439,702 in liabilities, leaving $288,194 in total equities.

[3] Debra's brief does not reference where in the record this issue was called to the district court's attention at trial.

Debra also contends that the district court did not place a value on growing crops but acknowledges that the court did value prepaid crop expenses. This case was tried in March. Few Iowa crops are planted in March and Debra has not presented any evidence there were any planted at that time. The date of the dissolution trial is the only reasonable time when an assessment of the parties' net worth should be undertaken. *Locke*, 246 N.W.2d at 252. Under this record, the district court did not abuse its discretion in not valuing growing crops because there was not any evidence any existed. We affirm the district court on these issues.

**B. Property Division.**

We next look at the equity of the property division and to do so we consider the factors we are directed to consider under Iowa Code section 598.21. This has been a long-term marriage. Both parties are in good physical health, however Debra suffers from emotional and substance abuse problems. Mark has a higher earning capacity than does Debra. Debra is receiving spousal support which the district court increased in the first three years recognizing Debra needed assistance in entering the job force. The parties have both made contributions to homemaking and child care. It would appear early in the marriage the greater responsibilities for child care were Debra's yet Mark seems to have assumed substantial responsibility in later years. In addition to these factors, we also consider, as did the district court, the provisions of the

antenuptial agreement[4] made by the parties and the amount of property brought to the marriage by both parties.

At the time of the marriage the district court found, and we agree, that Debra had equities of $21,600 and Mark had equities of $204,144 as evidenced by the parties' premarital agreement entered into on November 9, 1989. We consider these two factors in assessing the equity of the division. *In re Marriage of Spiegel*, 553 N.W.2d 309, 313 (Iowa 1996). We do not, however, apply Iowa Code chapter 596 which governs premarital agreements as it only applies to premarital agreements executed on or after January 1, 1992. Iowa Code § 596.12.

In *Spiegel*, 553 N.W.2d at 313, the Iowa Supreme Court in addressing a prenuptial agreement made before 1992 said, "Iowa Code section 598.21(1) expressly permits the court to consider the provisions of a prenuptial agreement when deciding equitable property division issues." The court further noted that Iowa cases have long held prenuptial agreements are favored in the law because the purpose of such agreements is to "fix and determine the interest that the parties have respectively in the property of the other." *Spiegel*, 553 N.W.2d at 313 (citations omitted).

The terms of the premarital agreement here provided that each party should retain title and control of all property then owned or after acquired with or

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[4] The premarital agreement acknowledged the parties were aware of provisions in the 1989 Iowa Code that provided the court could consider an antenuptial agreement, a written agreement made by the parties in considering a property distribution, and the provisions of any antenuptial agreement in considering spousal support in a dissolution action.

from proceeds or earning from the property then owned as well as all increases and additions thereto. The agreement further provided in the event of dissolution of the marriage, jointly held or owned property or property acquired with joint monies should be deemed owned one-half by each party on the date of separation, the filing of the petition. There is no claim the agreement is not valid. An examination of it reveals both parties, among other things, acknowledged they had been fully advised of their legal right and obligations by independent counsel and that they had made a full disclosure.[5] A court should be reluctant to interfere with the power of persons contemplating marriage to agree upon, and to act in reliance upon, what they regard as an acceptable distribution scheme for their property. *Id.* at 315. We should not ignore the parties' expressed intent by proceeding to determine whether a prenuptial agreement was, in the court's view, reasonable at the time of its inception or the time of divorce. *Id*.

The district court valued the property held by Mark that would remain his if the agreement is enforced to be $199,604. The items he brought to the marriage were primarily farm machinery, the tools of Mark's trade, and a substantial portion of the items set aside to him represent farm machinery which he needs to continue farming. The premarital agreement and the fact Mark brought substantial property to the marriage combined with the other considerations justify a less than equal division of the assets of the parties.

However we do agree with Debra that she should leave the marriage with more. The two parties have $51,706 in retirement accounts. If we were to divide

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[5] The only challenge to the parties' disclosures was to Debra's in that she represented she held a $36,000 equity in a condominium unit which she did not have.

the accounts evenly each party would receive $25,853. The district court has given Debra her account in the amount of $830. The balance of the accounts was allocated to Mark. We modify to provide that the Putman IRA of Mark's shown in his financial statement as being in the amount of $25,180 should go to Debra and remand to the district court to consider the entry of a Qualified Domestic Relations Order if one is needed. In all other respects we affirm the property award made by the district court.

**C. Alimony.**

Debra contends she needs additional alimony. Alimony is an allowance to the former spouse in lieu of a legal obligation to support that person. *See In re Marriage of Gonzalez*, 561 N.W.2d 94, 99 (Iowa Ct. App.1997). When determining the appropriateness of alimony, we consider, (1) the earning capacity of each party, and (2) present standards of living and ability to pay, balanced against the relative needs of the other. *In re Marriage of Kurtt*, 561 N.W.2d 385, 387 (Iowa Ct. App. 1997); *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa Ct. App. 1994). Alimony is not an absolute right and instead, an award depends upon the circumstances of each particular case. *In re Marriage of Bell*, 576 N.W.2d 618, 622 (Iowa Ct. App. 1998). Many factors are considered in determining the appropriate amount of alimony to be awarded to a spouse. Iowa Code § 598.21(3); *In re Marriage of Siglin*, 555 N.W.2d 846, 850 (Iowa Ct. App. 1996). Alimony may be used to remedy the inequities in a marriage and to compensate a spouse who leaves the marriage at a financial disadvantage. *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993).

Mark has a modest income and the primary responsibility for providing for the monetary and custodial needs of the children. He provides health insurance for the children at a cost of $1000 a month. He does not have the ability to pay more alimony with the financial responsibility he has to the parties' children. Debra is employable and with the alimony being paid, should be able to be self-sustaining. We do not modify the decree to require Mark to make Debra the beneficiary of a life insurance policy to cover alimony payments in the event of Mark's death as this issue was not preserved for our review.

We affirm on this issue.

**D. Attorney Fees and Court Costs.**

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

**AFFIRMED AS MODIFIED AND REMANDED.**