

715 N.W.2d 768
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In re Marriage of Soloski
 Iowa App.,2006.

(The Court's decision is referenced in a "Decisions Without Published Opinions" table in the North Western Reporter. See FI IA R 6.14(5) for rules regarding the use and citation of unpublished opinions.)

Court of Appeals of Iowa.

In re the MARRIAGE OF Mary C. SOLOSKI and John R. Soloski.
 Upon the Petition of Mary Catherine Soloski, Petitioner-Appellant,
 and Concerning John R. Soloski, Respondent-Appellee.
No. 05-0310.

March 15, 2006.


Background: Wife appealed from a judgment of the District Court, Johnson County, [Douglas S. Russell, J.](#), dissolving her marriage to husband, specifically the spousal support and property division provisions of the trial court's decree.

Holdings: The Court of Appeals, [Huitink, P.J.](#), held that:

- (1) trial court's alimony award was equitable in amount and duration;
- (2) trial court's decision to set aside both husband's gift from his father and wife's inheritance as separate property was inequitable; and
- (3) trial court did not abuse its discretion in denying wife's request for attorney fees.

Affirmed in part; reversed and remanded in part.

West Headnotes

[1] Divorce 134  **240(4)**


134 Divorce

134V Alimony, Allowances, and Disposition of Property

134k230 Permanent Alimony

134k240 Amount

134k240(4) k. Inadequacy of Sum Allowed. [Most Cited Cases](#)

Divorce 134  **247**

134 Divorce

134V Alimony, Allowances, and Disposition of Property

134k230 Permanent Alimony

134k247 k. Commencement and Termination. [Most Cited Cases](#)

Trial court's alimony award in dissolution of marriage proceeding, awarding wife \$3,000 per month until the first to occur among the husband's death, the wife's death or remarriage, or the husband's reaching the age of 65, was equitable in amount and duration; wife left the marriage with approximately \$1 million in assets and modest liabilities, she had a college degree and substantial employment, and the division of the parties' retirement and investment accounts, as well as wife's share of the proceeds following the liquidation of business, were sufficient to secure her retirement. [I.C.A. §](#)

598.21(3).

[2] Divorce 134 ↪ 252.3(3)

134 Divorce

134V Alimony, Allowances, and Disposition of Property

134k248 Disposition of Property

134k252.3 Particular Property or Interests and Mode of Allocation

134k252.3(3) k. Separate Property and Property Acquired Before Marriage. **Most Cited Cases**

Trial court's decision in dissolution of marriage proceeding to set aside both husband's \$219,095 gift from his father and wife's \$7,000 inheritance as separate properties was inequitable; the parties were married for nearly 30 years, and the money was commingled and used to support the parties' family. I.C.A. § 598.21(2).

[3] Divorce 134 ↪ 225

134 Divorce

134V Alimony, Allowances, and Disposition of Property

134k220 Allowance for Counsel Fees and Expenses

134k225 k. Defenses and Objections. **Most Cited Cases**

Trial court did not abuse its discretion in dissolution of marriage proceeding in denying wife's request that husband pay her attorney fees; both parties were receiving significant assets from the marriage.

Appeal from the Iowa District Court for Johnson County, **Douglas S. Russell**, Judge.

Mary Soloski appeals from the spousal support and property division provisions of the trial court's decree dissolving her marriage to John Soloski. AFFIRMED IN PART AND REVERSED AND REMANDED IN PART.

Maurine Braddock of Honohan, Eppley, Braddock & Brenneman, Iowa City, for appellant.

John Hayek and **Alison Werner Smith** of Hayek, Hayek, Brown, L.L.P., Iowa City, for appellee.

Heard by **HUITINK**, P.J., and **MAHAN** and **EISENHAUER**, JJ.

HUITINK, P.J.

I. Background Facts and Proceedings.

*1 John and Mary Soloski were married in 1974. They have two adult children whose interests are not implicated in these proceedings.

John is fifty-three. He was a member of the University of Iowa faculty from 1979 until 2001, when he joined the faculty at the University of Georgia. John's annual salary is \$182,000. His net monthly income is \$9,800. In addition to his salary, John receives medical, dental, and life insurance benefits and pension contributions.

Mary is also fifty-three. She has a bachelor's degree. Mary's employment experience since moving to Iowa City in 1974 includes retail sales, telephone operator, clerk for the Iowa Alumni Association, and teacher's assistant at a local elementary school. At the time this case was tried in 2004, Mary was employed by Protek Medical Supply. Her net monthly income at Protek is \$1,215. Mary does not receive medical insurance or other benefits from her employer. She estimates her monthly medical insurance premium to replace her coverage under John's policy will be \$350 per month.

In 1979 Mary inherited \$7,000 from her mother. She used the money to purchase furniture which she still owns. The re-

remainder of the money was divided with her siblings. In 1985 John received \$219,095 from the sale of stock given to him by his father in 1967. John used the money to make a down payment on the family home Mary occupies. The remainder was invested in Hawkeye Bay States (HBS), a real estate partnership including his father and brother. John subsequently bought out the other partners. In 1986 HBS purchased and renovated the Paul Helen Building in Iowa City. HBS's cost basis in the Paul Helen Building as of trial was \$1,732,716.

When John moved to Georgia in July 2001, Mary remained in Iowa City so their son could finish high school. Mary also assumed management of the Paul Helen Building, including collection and deposit of rental proceeds. John sent Mary \$1,600 a month to pay family living expenses. Beginning in 2002, Mary retained a portion of the Paul Helen Building proceeds for her own use. In 2002 she retained \$37,700; in 2003 she kept \$51,600. In addition, Mary used credit cards to pay family expenses, resulting in substantial account balances.

In May 2003 Mary filed a separate maintenance action. In his answer, John requested a dissolution of marriage. On December 15, 2003, the court ordered John to pay Mary \$4,000 per month temporary alimony. John was also ordered to maintain Mary's health insurance coverage and pay her automobile and homeowner's insurance.

In July 2003 HBS sold the Paul Helen Building for \$2.7 million to Moka Java, L.L.C. According to John's accountant, the taxable gain on the sale was \$2,219,309, resulting in a prospective \$455,998 income tax liability for John and Mary. After payment of settlement charges (\$8,884.20), bank debt (\$1,346,409.05), and repairs (\$13,679), HBS received \$1,252,257 net sale proceeds. In addition to the cash proceeds, HBS received a \$250,000 promissory note from Moka Java secured by a second mortgage on the Paul Helen Building.

*2 On the advice of John's accountant, the sale proceeds from the Paul Helen Building were used to fund a tax deferred like kind exchange for several properties in Georgia costing a total of \$5 million. The trial court determined the "net value" of HBS at the time of trial was \$1,369,946.

The fighting issues at trial included alimony, property division, and attorney fees. The court's December 20, 2004, decree awarded Mary \$3,000 per month alimony until the first of the following events: John dies, Mary dies or remarries, or John reaches the age of sixty-five. Mary's request for additional life insurance to secure John's alimony payments was denied. The trial court determined the net value of HBS was \$1,369,946 and ordered its liquidation and equal division of the net proceeds. The court further ordered that all of HBS's rental proceeds and interest on the "Moka Java Note" be divided equally. In addition, the court also set aside \$219,095 to John and \$7,000 to Mary as their separate gifted or inherited property. The court's decree includes the following property division:

ASSETS	JOHN	MARY
Homes		
Iowa City residence		\$350,000
Bogart, Georgia residence	\$230,000	
Vehicles		
1990 GMC (value \$2,705 to Drew Soloski)		
1997 Eagle Vision Sedan		3,690
2002 Toyota 4Runner SUV	22,330	
2003 BMW 5 Series 530i Sedan	40,120	

Household Goods		
Previously divided by agreement		
Art in Iowa City home	1/2	1/2
Train set (John's premarital asset)	(to John)	
Jewelry		
(John gifted to Mary-value \$8,000)		
Securities, Pensions, Retirement Funds		
TIAA-CREF (to be divided by QDRO)	386,897	220,427
Dain Rauscher IRA 1101-7736-6364		8,873
America's FUTURE Annuity	88,513	
Best of America II	8,595	
Synovus Securities, Inc.	25,496	
Synovus IRA	6,465	
AT & T retirement		10,150
IPERS	2,348	
Nationwide 403(b)-Northwest re- retirement (after payment of McGladrey statement)	1,370	1,370
Net value of Hawkeye Bay States, L.L.C. (after it is sold)	1/2	1/2
TOTAL ASSETS:	818,340	605,858
LIABILITIES	JOHN	MARY
AT & T VISA card		18,440
Chase Platinum VISA card		1,851
Discover card		9,020
Target		85
Sears		2,000
Kohl's		300
Von Mauer		50
American Express card	5,383	
BMW auto loan	37,500	
Taxes due on temporary alimony		10,750
TOTAL LIABILITIES	42,883	42,496
NET VALUES	JOHN	MARY

Net value of property received	775,457	563,362
Gift/Inheritance adjustment	219,095	7,000
Net value after adjustments	556,362	556,362
Estimated net value from HBS sale	460,874	460,874
Estimated Total Net Value to Each	1,017,236	1,017,236

The parties shall cooperate in the sale of Hawkeye Bay States, L .L.C., as soon as is practicable and shall cooperate in the execution of any necessary documents for this purpose. The debts of the corporation and the costs of the sale and any capital gains tax liabilities the parties may incur shall be paid from the proceeds of the sale. The net proceeds after payment of these items shall be divided equally between the parties.

*3 Mary's request for attorney fees was denied. On appeal, Mary raises the following issues:

- I. Whether the Trial Court's award of spousal support was equitable?
- II. Whether the court should have ordered the sale of the property owned by Hawkeye Bay States?
- III. Whether the trial court should have divided the rental proceeds and Moka Java Note payment pending the division of property?
- IV. Whether John should be credited with \$219,095 for a gift of Hycor Stock he received prior to marriage?
- V. Whether the amounts of the TIAA-CREF and Synovous awards should be corrected?
- VI Whether John should be ordered to pay Mary's attorney fees in the district court and appeal proceedings?

John voluntarily dismissed his cross-appeal.

II. Standard of Review.

Dissolution of marriage proceedings are equitable actions and are subject to de novo review. [Iowa R.App. P. 6.4](#); [In re Marriage of Kurtt](#), 561 N.W.2d 385, 387 (Iowa Ct.App.1997). "Although our review of the trial court's award is de novo, we accord the trial court considerable latitude in making this determination and will disturb the ruling only when there has been a failure to do equity." [In re Marriage of Spiegel](#), 553 N.W.2d 309, 319 (Iowa 1996) (citing [In re Marriage of Benson](#), 545 N.W.2d 252, 257 (Iowa 1996)). "We are not bound by the district court's findings of fact, but we do give them deference because the district court had the opportunity to view, firsthand, the demeanor of the witnesses when testifying." [Kurtt](#), 561 N.W.2d at 387.

III. Alimony.

[1] Alimony "is a stipend to a spouse in lieu of the other spouse's legal obligation for support." " [In re Marriage of Probasco](#), 676 N.W.2d 179, 184 (Iowa 2004) (citation omitted). It is not an absolute right; an award of alimony depends on the circumstances of the particular case. [In re Marriage of Anliker](#), 694 N.W.2d 535, 540 (Iowa 2005). Although we review the district court's award of alimony de novo, "we give that court considerable latitude in making this determination based on criteria in [section 598.21\(3\)](#)." *Id.* We will disturb the district court's alimony determination "only when there has been a failure to do equity." *Id.*

The district court may award alimony after considering the factors in [Iowa Code section 598.21\(3\) \(2003\)](#). [In re Marriage of Weinberger](#), 507 N.W.2d 733, 735 (Iowa Ct.App.1993). These factors include: (1) the length of the marriage, (2) the age and physical and emotional health of the parties, (3) the property distribution, (4) the educational level of the parties

at the time of the marriage and at the time the dissolution action is commenced, (5) the earning capacity of the party seeking alimony, and (6) the feasibility of the party seeking alimony becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. [Iowa Code § 598.21\(3\)\(a\)-\(f\)](#).

An alimony award will differ in amount and duration according to the purpose it is designed to serve. *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct.App.1997). Traditional or permanent alimony “is usually payable for life or for so long as the dependent is incapable of self-support.”*Id.* Its purpose “is to provide the receiving spouse with support comparable to what he or she would receive if the marriage continued.”*Id.*

*4 Based on our de novo review of the record, we find the trial court's alimony award is equitable in amount and duration. Mary leaves the marriage with approximately \$1 million in assets and modest liabilities. She has a college degree and substantial employment. Moreover, the division of the parties' retirement and investment accounts, as well as Mary's share of the proceeds following the liquidation of HBS, are sufficient to secure her retirement. We affirm on this issue.

Mary also demands that John maintain life insurance to secure his alimony obligations. *See, e.g., In re Marriage of Debler*, 459 N.W.2d 267, 270 (Iowa 1990); *Stackhouse v. Russell*, 447 N.W.2d 124, 125 (Iowa 1989). The record, however, fails to support her demands. John's alimony obligation terminates when he dies. *See, e.g., In re Marriage of Lytle*, 475 N.W.2d 11, 12 (Iowa Ct.App.1991) (no life insurance entitlement because obligation terminated on death of payor). Moreover, Mary has failed to show that John's alimony payments are insecure or that she is entitled to continuing alimony after John dies. We affirm on this issue.

IV. Property Division Issues.

The partners in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Dean*, 642 N.W.2d 321, 325 (Iowa Ct.App.2002). Iowa courts do not require an equal division or percentage distribution. *In re Marriage of Campbell*, 623 N.W.2d 585, 586 (Iowa Ct.App.2001). The determining factor is what is fair and equitable in each particular circumstance. *In re Marriage of Miller*, 552 N.W.2d 460, 463 (Iowa Ct.App.1996). The distribution should be made in consideration of the criteria codified in [Iowa Code section 598.21\(1\) \(2003\)](#).*Id.* We accord the trial court considerable latitude in resolving economic provisions of a dissolution decree and will disturb a ruling only when there has been a failure to do equity. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998).

Hawkeye Bay States.

In her reply brief, Mary concedes that the liquidation of HBS and equal division of the net proceeds is the most equitable resolution of the parties' conflicting claims concerning this asset. Although we have reservations about the resulting income tax liability, we nevertheless affirm on this issue.

The remaining question concerns the need to divide any excess revenues (including principle and interest on the Moka Java note) over operating expenses and debt service. In order to facilitate the division of any excess revenues, each party shall file an accounting of any receipts or disbursements by or on behalf of HBS beginning on July 1, 2001, through the date of final liquidation of HBS. In calculating each party's net share of the resulting proceeds, the court shall divide any excess revenues or deficits equally by debiting or crediting the party's respective share for the amount so determined. Any professional fees associated with the required accounting shall be shared equally by the parties. In all other respects, the trial court's division of the parties' interest in HBS is affirmed.

Gifted/Inherited Property.

*5 [2] All property, except inherited or gifted property, is subject to division. *In re Marriage of Schriener*, 695 N.W.2d 493, 496 (Iowa 2005). However, even inherited property and gifts received by one party may be divided if equity demands in light of the circumstances of a spouse or the children. Iowa Code § 598.21(2) (2003). Furthermore, “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 of the parties.” *Schriener*, 695 N.W.2d at 496 (citing *In re Marriage of Brainard*, 523 N.W.2d 611, 616 (Iowa Ct.App.1994)). The factors to consider in determining whether to divide inherited or gifted property include:

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. special contributions by the parties to their economic welfare to whatever extent those contributions preserve the property for either of them;
4. any special needs to 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 duration of the marriage is also a factor in determining whether to designate gifted or inherited property as assets of the marriage. *In re Marriage of Goodwin*, 606 N.W.2d 315, 320 (Iowa 2000). “Where the parties have enjoyed, over a length of time, a substantial rise in their standard of living as the result of gifts or inheritances, then any division of property should enable the parties to continue that lifestyle, even if that goal requires the division of gifted property.” *Id.* (citing *In re Marriage of Muelhaupt*, 439 N.W.2d 656, 659 (Iowa 1989)).

As noted earlier, John and Mary were married for nearly thirty years. The gifts and inheritance at issue were realized in 1979 and 1985. The money was commingled and used to support the parties' family. Moreover, both contributed to the management and improvement of HBS, as well as the parties' other investments. Under these circumstances, it would be inequitable to set aside either Mary's inheritance or John's gift as separate property. We accordingly modify the trial court's decree by including John's \$219,095 gift and Mary's \$7,000 inheritance in the property subject to division. We remand to the trial court for a redistribution of the parties' securities, pensions, or retirement funds necessary to accomplish an equal division of the parties' respective gift and inheritance.

TIAA-CREF and Synovous accounts.

The parties concede mathematical or scrivener's error in the trial court's division of the TIAA-CREF and Synovous accounts. Because our resolution of the foregoing issue requires a redistribution of these accounts, we defer to the trial court to correct those errors to insure an accurate valuation and equal division of the parties' property.

Attorney Fees.

*6 [3] Mary requests John pay her attorney fees because of the huge disparity in their incomes. The district court ordered that each party pay his or her own attorney fees. An award of trial attorney fees rests in the sound discretion of the trial court and will not be disturbed on appeal in the absence of an abuse of discretion. *In re Marriage of Romanelli*, 570 N.W.2d 761, 765 (Iowa 1997). Both parties are receiving significant assets. Therefore, we find the district court did not

abuse its discretion. We affirm.

Mary also requests appellate attorney fees. An award of appellate attorney fees is not a matter of right, but rests within the court's discretion. *Kurtz*, 561 N.W.2d at 389. We consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the district court's decision on appeal. *In re Marriage of Maher*, 596 N.W.2d 561, 568 (Iowa 1999). Both parties are able to pay their own attorney fees and costs shall be divided equally.

AFFIRMED IN PART AND REVERSED AND REMANDED IN PART.

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