

IN THE COURT OF APPEALS OF IOWA

FILED

MAY 31 1988

CLERK SUPREME COURT

IN RE THE MARRIAGE OF BETTY G. HARNEY AND JAMES J. HARNEY

Upon the Petition of	)	102
BETTY G. HARNEY,	)	
Petitioner-Appellee,	)	Filed May 31, 1988
And Concerning	)	
JAMES J. HARNEY,	)	<u>8-193</u>
Respondent-Appellant.	)	87-503

Appeal from the Iowa District Court for Dallas County (No. 2396),
Jerrold W. Jordan, Judge.

Respondent-appellant appeals from a dissolution decree, challenging the
division of property and the award of alimony to the wife. **AFFIRMED.**

Charles A. Coppola of Coppola, Coppola & Clark, West Des Moines, for
respondent-appellant.

Dan Stamatelos and Kimberly McCandless of Stamatelos, Kenyon &
McCandless, Des Moines, for petitioner-appellee.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ.

PER CURIAM

The husband appeals from a dissolution decree, challenging the division of property and the award of alimony to the wife. We affirm.

The parties were married in 1959. Both are presently in their mid-forties. Their two surviving children are adults. Two other children were killed in a 1977 car accident; Betty suffered a permanent back injury in the same accident.

James is a skilled carpenter who owns and operates his own construction company. During the 1970s, the company did a substantial volume of business, but in recent years the company has fallen on hard times and has lost a great deal of money. The company absorbed \$100,000 contributed by Betty after she received a judgment stemming from the 1977 car accident. James contends the company now has no net value. Betty contends the company owns equipment and assets worth perhaps \$30,000; she also contends the company gives James a potential for a high income if times improve. She argues that in the meantime James could earn good wages as a union carpenter or a machine operator if he chose to do so.

The district court awarded Betty the parties' house, which was valued at \$70,000 to \$75,000 and was free of encumbrances. The court also awarded Betty furniture, household goods, and a car. James was awarded all the assets of his construction company, subject to all its debts. He also received vehicles and personal property. There were no substantial savings to divide. James was ordered to pay Betty alimony of \$500 per month for five years.

James has appealed from the dissolution decree, challenging the division of property and the award of alimony.

Our scope of review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the district court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We will not interfere with the discretion

of the district court unless such discretion is abused when the decree fails to do equity. Norenberg v. Norenberg, 168 N.W.2d 794, 797 (Iowa 1969).

Iowa Code section 598.21(1) sets forth those factors to consider in evaluating a property division. Section 598.21(3) sets forth the factors to consider in determining whether to award alimony. Property division and alimony must be considered together. In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984).

Applying the foregoing principles of law to the evidence in this case, we find the property distribution and alimony award made at the district court level were equitable. The parties were married for twenty-eight years. Betty contributed \$100,000 to the construction business. Betty has a GED and works as a clerk in a card shop. She spent most of the marriage raising the children. Although James is not currently employed, he has more avenues from which to draw to obtain income: he can make \$9 per hour as a carpenter or \$13 per hour as a union carpenter; he can rent his CAT for \$40 per hour; he has bought land and developed subdivisions; he has built and remodeled homes; he has performed CAT work; and he has been a general contractor. James testified he "beat the bushes for two weeks trying to find something to do" (emphasis added).

The district court was "not satisfied with the value as contained in the Respondent's financial statement nor with the appraisals as to the fair market value of the specific items of property owned by the company." The record discloses that in response to Betty's request for documents, James's accountant was unable to produce certain payroll records, bank statements, cancelled checks, and information about accounts payable, contracts, and jobs in progress relative to the construction company. Nothing in regard to the construction company in 1986 was produced. The accountant did not determine if certain company expenses were business or personal because an audit was not performed. In

fact, alimony paid to Betty in 1985 was disguised as wages. James testified he placed higher valuations on the property in 1984 to "look good to get bonded." James now states the property is worth \$30,000 less than it was listed one year before. James's friend, Herb Crees, submitted the appraisals of the company equipment. James testified as follows:

Q. So you do a lot of business with Herb? A. We're good buddies.

Q. Did you tell him how much you wanted the appraisal for?

A. You bet.

Q. What was the appraisal for? A. To bring to court.

Q. For your divorce. A. Yeah.

James also testified he had lied under oath on a prior occasion concerning a diamond ring. The foregoing evidence reflects adversely upon James's credibility.

We also note that Betty had to file a contempt action to get James to pay for the propane gas and telephone bills in the home as well as the temporary alimony in accordance with the temporary order. However, James was able to provide at no charge to his girlfriend extensive remodeling of her home. We trust another contempt action will not be required to carry out the terms of the decree.

We find the district court did not abuse its discretion and hereby affirm the decision of the district court and find it to be equitable.

Betty requests attorney fees on appeal. In evaluating such a request, 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 trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa 1981). We order James to pay \$500 toward Betty's appellate attorney fees and order costs taxed to James.

AFFIRMED.