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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JACK M. EVANS
AND JACQUELINE K. EVANS

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Upon the Petition of)
JACK M. EVANS,) Filed March 31, 1987
Petitioner-Appellant,)
And Concerning)
JACQUELINE K. EVANS,) 6-476 / 86-181
Respondent-Appellant.)

Appeal from Iowa District Court for Linn County (No. DM 12781-1184) - William L. Thomas, Judge.

Petitioner-husband appeals from the judgment and decree dissolving the parties' marriage, asserting that the trial court erred in requiring him to pay $500 per month in alimony for five years and in its division of the marital property. **AFFIRMED.**

Robert H. Laden and Timothy G. Pearson of Hyland, Laden & Pearson, P C , Des Moines, for petitioner-appellant.

Donald L. Carr II of Turner & Carr, Cedar Rapids, for respondent-appellee.

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

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OXBERGER, C.J.

In this appeal, petitioner Jack Evans challenges the economic provisions of the decree dissolving his thirteen-year marriage to respondent Jacqueline Evans. Jack has raised two issues for review: (1) that the trial court erred in ordering him to pay Jacqueline alimony of $500 per month for a period of five years; and (2) that the court divided the parties' marital assets in an allegedly inequitable manner. We affirm.

Initially, we note that our review of this equitable proceeding is de novo. Iowa R. App. P. 4. Accordingly, we review the facts and the law and determine the parties' rights anew where the issues have been properly presented and preserved. In re Marriage of Phipps, 379 N.W.2d 26, 27 (Iowa Ct. App. 1985). We are not bound by the trial court's findings of fact, but we do give them weight, particularly where the credibility of witnesses is implicated. In re Marriage of Bornstein, 359 N.W.2d 500, 502 (Iowa Ct. App. 1984).

Jack's first assignment of error is that the alimony award devised by the trial court is excessive both in amount and duration. Our analysis of this contention must begin with a brief recital of the basic principles governing the granting of alimony. Although alimony and property rights are closely related, they are distinguishable and have differing purposes. In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981). The division of marital property is based upon each partner's right to a just and equitable share of the property accumulated as a result of their joint efforts. Id. By contrast, alimony is an allowance for support given to the party with a lesser earning capacity. In re Marriage of Hayne, 334 N.W.2d 347, 351 (Iowa Ct. App. 1983). The criteria governing the provision of alimony are set forth in section 598.21(3) of the Iowa Code. When determining the appropriateness of alimony, we must 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 Estlund, 344 N.W.2d 276, 281 (Iowa Ct. App. 1983). Finally, we review all of the economic aspects of the decree as an integrated whole, and not in isolation, in order to determine whether the decree is just and equitable. In re Marriage of Bornstein, 359 N.W.2d at 503.

We have carefully scrutinized the record in light of the principles set forth above and the criteria listed in section 598.21(3) of the Code. Having done so, we conclude that the trial court's alimony award was proper both as to amount and duration.

The record discloses that Jack and Jacqueline were married in 1972. Although no children were born of the marriage, they each have one child, both of whom have now attained majority, from prior marriages. Jack and Jacqueline were separated in 1985 after thirteen years of marriage. At the time of the trial, they were ages 43 and 45 respectively. Jack has a high school education and has been employed for several years as a premise service consultant with AT&T. His annual salary at the time of the trial was approximately $40,000. By contrast, Jacqueline has received no formal education after the seventh grade. Throughout the marriage, however, she was employed as a marine mechanic and earned approximately $5.00 per hour. In 1981, she opened her own outboard motor repair shop. The record reflects that over the last four years, "Jackie's Shop" has generally operated at a loss or at only a slight profit. At the time of the trial, Jacqueline's returns from the business revealed a net income of $1,001.85 for the 1985 year.

At trial, Jacqueline estimated that she needed about five years to make her business profitable. Accordingly, the trial court held that she was entitled to alimony of $500 per month for a period of five years. Jack's principal argument in challenging this award is that the trial court failed to consider the possibility that he might be laid off in the future. We find no error in the trial court's decree.

The court premised its decision upon Jack's current income level. There is nothing in the record indicating that Jack's job had definitely been placed in jeopardy; Jack himself testified that he had only been told that his job may be in jeopardy. He additionally testified that he would likely be placed in another position if his job was terminated, and that in any event, he would receive his current salary for one year after his termination. In these circumstances, we think that had the trial court taken the possibility of Jack being laid off into account, its decision would have been purely speculative. See In re Marriage of Heineman, 309 N.W.2d 151, 152 (Iowa Ct. App. 1981) (support obligations should be determined with reference to amount of income actually earned rather than that which is purely speculative in nature).

Similarly, we find no merit in Jack's contention that the alimony award exceeds Jacqueline's needs. The record discloses that Jacqueline's estimated monthly expenses exceed $1,000. Jack has presented no contrary evidence, and accordingly, we adhere to the trial court's finding adopting this figure. Although Jack argues that Jacqueline could make more in her business if she worked a greater number of hours, he has again failed to present any evidence supporting his contention. On the contrary, Jacqueline testified and the trial court found that given the state of the economy, "it is highly unlikely that her earning capacity will ever approach that of [Jack's]". Moreover, we agree with the trial court's conclusion that Jacqueline's limited education and her age reduce her employment opportunities. See In re Marriage of Hitchcock, 309 N.W.2d at 437; Iowa Code § 598.21(3)(1985). In these circumstances, we find no error in the alimony award fashioned by the trial court. It properly provides Jacqueline with the necessary amount of support until she can reasonably be expected to support herself at a suitable standard of living, and does not unduly burden Jack. Accordingly, we affirm.

Jack also argues that the property division made by the trial court is inequitable. The principles governing the division of a marital couple's assets are familiar and well established. The factors we consider in reviewing the district court's division are set forth in Iowa Code section 598.21(1). Our critical inquiry is whether the division was equitable in the peculiar circumstances of the case. In re Marriage of Wallace, 315 N.W.2d 827, 830 (Iowa Ct. App. 1980).

Jack contends that the trial court's division is inequitable because the court awarded Jacqueline net assets of approximately $42,000 while Jack's net award totaled only $20,000. Initially, we disagree with Jack's calculation because he has failed to include the amount of his pension, which the trial court awarded exclusively to him. In its decree, the court explicitly noted that the pension was sizable, approximating in excess of $1,000 per month. Jack maintains that the pension should not be included because it will not be realized until he is age 65. In In re Marriage of Byall, 353 N.W.2d 103, 106 (Iowa Ct. App. 1984), however, we explicitly noted that the present value of a pension plan is a relevant consideration in dividing marital property. If we consider the $20,000 stipulated value of the pension plan, the property division is much closer than Jack contends.

Jack additionally argues that the trial court failed to properly calculate the value of Jacqueline's tools. Jacqueline estimated the value of her tools at approximately $1,500; Jack maintains that the value of the tools is in excess of $15,000. In support of this assertion, Jack contends that his estimation is more accurate because his figure is derived from the inventory value of the equipment purchased each year for Jackie's shop less the amount of depreciation. In response to the disparate values assigned by the parties, the trial court explicitly determined that, after considering all of the testimony, Jacqueline's estimation should be given more weight. In reaching this conclusion, the court noted that Jacqueline was much more experienced in her field, and that the fair market

value of the tools, not the difference between the inventory and depreciation, was in issue. We agree. We think that the $1,500 value assigned to the tools is within the permissible range of the evidence, and consequently, we decline from disturbing this figure. See In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973).

After recalculating the amount of assets and liabilities awarded to each party in light of the above, we find that Jacqueline received assets of $91,280 and liabilities of approximately $50,000, yielding a net award of approximately $41,280; in comparison, Jack received assets of $44,615, liabilities of $5,520, leaving a new award of $39,095.[1] We think that this award is equitable. Moreover, we agree with the trial court that any inherent disparity is necessary in order to compensate Jacqueline for her depressed earning potential. Furthermore, we think that the trial court's allotment of the parties' liabilities underscores the fairness of the decree; although Jacqueline has received a greater share of the assets, she is left assuming most of the marital debt. By contrast, Jack received a smaller amount of assets but is nearly debt-free. In these circumstances, we conclude that the decree is equitably tailored to suit the needs of each party, and we affirm.

Finally, Jacqueline has requested that Jack be required to pay the attorney's fees and costs which she incurred in connection with this appeal. In evaluating this request, we consider both the needs of the requesting party and the ability of the other party to pay. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981). We have done so, and conclude that the costs of this appeal

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[1]These calculations include the value of Jack's pension plan, the $1,500 value of Jacqueline's tools, and the clarifications made by the trial court in its ruling entered in response to the parties' 179(b) motions.

should be taxed to Jack, but that both parties are capable of paying their individual attorney's fees.

AFFIRMED.