

FILED

OCT 27 1992

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-448 / 92-99

IN RE THE MARRIAGE OF JUDY F. FRITZ AND PETER P. FRITZ

Upon the Petition of

JUDY F. FRITZ,

Appellee,

And Concerning

PETER P. FRITZ,

Appellant.

Appeal from the Iowa District Court for Webster County,
Newt Draheim, Judge.

Husband appeals from the spousal support and economic
provisions of his dissolution decree. **AFFIRMED.**

William H. Habhab, Fort Dodge, for appellant.

Dan T. McGrevey, Fort Dodge, for appellee.

Considered by Donielson, P.J., and Hayden and Sackett,
JJ. Habhab, J., takes no part.

DONIELSON, P.J.

Peter Fritz appeals from the spousal support and economic provisions of his dissolution decree.

Judy and Peter Fritz were married in 1963. They have one adult son. Judy is forty-nine. Except for a three-year period during which Judy cared for her son, she maintained continuous employment during the marriage. She is currently employed at the Fort Dodge Medical Center and earns about \$1,438 per month. However, Judy was recently placed on probation. She has a profit sharing retirement plan with a vested account value of \$34,640 upon which she cannot draw until age sixty-five.

Peter is fifty-two. He maintained continuous full-time employment until 1981, when the plant at which he worked was closed. Since then, Peter has held several different jobs separated by periods of unemployment. In 1986, Peter was injured in an automobile accident. He sustained a shoulder injury, which required surgery. As a result of a settlement agreement pertaining to the this accident, Peter obtained an annuity currently worth about \$31,000.

Following his recovery from surgery, he has had difficulty finding work. He currently works on a part-time basis for a golf course. His net monthly income is about \$429. He also has a retirement plan which will pay him about \$112 per month at age sixty-five. The plan does not have a cash surrender value.

A dissolution of marriage decree was filed in December 1991. In the decree, the court awarded each party his or her own retirement plans. Judy was awarded the homestead. Peter was awarded a \$4,000 lien on the homestead and his coin collection. The court denied Peter's request for spousal support. The court also awarded each party the personal property in his or her possession.

Peter subsequently filed a 179(b) motion, requesting the court order the personal property to be divided equally between the parties. The court denied Peter's motion.

Peter now appeals. He challenges the economic provisions of the dissolution decree. He contends the district court should have awarded him alimony and failed to divide the marital assets equitably. Peter also requests attorney fees.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

I. Alimony. Peter first contends the district court should have awarded him alimony.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. In re Marriage

of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3). See In re Marriage of Hayne, 334 N.W.2d 347 (Iowa App. 1983). These factors include the length of the marriage, the age and health of the parties, the spouse's earning capacity, the feasibility of becoming self-supporting, the predissolution standard of living, and the tax consequences. Iowa Code § 598.21(3) (1991).

When determining the appropriateness of alimony, the court must consider "(1) the earning capacity of each party, and (2) present standards of living and ability to pay balanced against relative needs of the other." In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983) (citation omitted).

Here, Judy simply is not all that better off than Peter. Although both parties received substantial property settlements in the dissolution, they also have limited incomes and both are in relatively poor health. Judy is also on probation at her place of employment.

Peter has an annuity worth about \$31,000 and will receive payments from his retirement fund upon reaching age sixty-five. Although we recognize Peter's health is poor, he is presently employed seasonally as a manager of a golf course. We agree Peter can be self-supporting and should be encouraged to seek other part-time or seasonal

employment. We find the district court properly determined Peter was not entitled to spousal support.

II. Property Distribution. Peter next contends the district court's distribution of the property was inequitable and should be modified. Specifically, he argues the district court should have found the coin collection to be the property of the parties' son. He also contends the district court should have ordered the marital assets, including the homestead and the retirement plans, to be split equally between the parties. He also requests the household contents and furnishings be equally divided between the parties.

The distribution of the property of the parties should be that which is equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(1). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983). Iowa courts do not require an equal division or percentage distribution. In re Marriage of Russell, 473 N.W.2d 244, 246 (Iowa App. 1991).

A. Coin Collection. We first address the issue of whether the coin collection is property of Peter or of Joel, the parties' son.

After the commencement of the dissolution, Peter attempted to transfer the ownership of the coin collection to Joel. However, at trial, an affidavit signed by Joel was read into evidence. In this affidavit, Joel disavowed any possessory interest in this collection. In addition,

Peter testified he had added two coins to his collection since the commencement of the dissolution. This evidence strongly suggests the collection is the property of Peter. We find the district court properly found this collection belonged to Peter.

In its order, the district court assessed the coin collection's value to be \$20,000. At trial, Judy testified her valuation of \$20,000 was based on statements Peter had made to her regarding its value. We find the value placed on the coin collection by the district court to be well within the permissible range of evidence and will not disturb it on appeal. See In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973); In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984).

B. Other Marital Assets. Peter also challenges the district court's distribution of the marital assets and contends the assets should be divided "evenly" between the parties.

In the distribution, Peter was awarded a \$9,000 money market, a \$4,325 car, a \$7,000 life insurance policy, an annuity presently worth about \$31,000, and his coin collection. The total value of these assets is about \$71,325. Peter was also awarded his retirement fund. This retirement fund guarantees Peter about \$112 per month upon reaching age sixty-five.

Judy was awarded a \$20,000 money market, an \$8,000 car, and her IRA and retirement plan, worth about \$49,640. The

total value of these assets is about \$77,640. However, this amount includes the \$34,640 profit sharing plan upon which she may draw only on reaching age sixty-five. Noting Judy's poor health, the district court also awarded Judy the marital home, valued at \$25,000. However, recognizing Peter's contributions to the marital home, the court awarded Peter a lien of \$4,000.

This division, although not mathematically equal, is equitable. Each party was given his or her own retirement plans. Peter was given the annuity which was paid from the auto accident settlement money. Although the home was awarded to Judy, Peter received a share of its equitable value. The distribution of property does not have to be equal to be equitable. Russell, 473 N.W.2d at 246. We affirm the district court's distribution of the marital assets.

C. Household Contents. Peter also requests the court order the household contents and furnishings to be divided equally between the parties.

The district court assessed the value of the household furnishings to be \$2,000. We find the value placed on the furnishings by the trial court to be well within the permissible range of evidence and will not disturb this figure on appeal. See In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973); In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984). As Judy was awarded the

homestead, it makes sense and is equitable to award Judy the furnishings and contents of that homestead.

Furthermore, in light of the overall property distribution, it was not inequitable to award each party the personal property in his or her possession. We affirm the district court on this issue.

III. Appellate Attorney Fees. Peter also requests \$750.00 appellate attorney fees. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to 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 Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). After considering these factors, we deny Peter's request for attorney fees.

We determine any other issues the parties may have raised are either covered by this opinion or are without merit.

The costs of this appeal are taxed to Peter.

For all reasons stated, we affirm the judgment of the district court.

AFFIRMED.