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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF SHIRLEY J. CRANE and CHARLES W. CRANE

Upon the Petition of	)	
SHIRLEY J. CRANE,	)	Filed February 5, 1980
Petitioner-Appellant,	)	
And Concerning	)	
CHARLES W. CRANE,	)	348 2-62121
Respondent-Appellee.	)	

Appeal from Cerro Gordo District Court - J. W. Frye, Judge.

Petitioner-wife appeals and respondent-husband cross-appeals from the economic provisions of the decree dissolving their marriage. AFFIRMED WITH MODIFICATION.

David M. Nelson of Nelsen & Folkers, Mason City, for petitioner-appellant.

M. Wayne Oltrogge of Clear Lake for respondent-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Petitioner-wife, Shirley Crane, appeals and respondent-husband, Charles Crane, cross-appeals from the economic provisions of the decree dissolving their marriage. We affirm with modification.

Charles and Shirley were married on February 13, 1974. It was the second marriage for both parties and each enjoyed good health. At the time of the marriage Charles and Shirley were ages 44 and 39 respectively. There were no children born of the marriage, although both had children from their previous marriages who were adults at the time the decree was entered.

At the time of marriage Shirley had her real estate sales license and was employed as an executive secretary-real estate sales person with Ris-Van Realty. She also owned a one-third interest in Ris-Van Realty. Her income from this venture was $17,106 for 1973, the year immediately preceeding her marriage to Charles. She owned her own home and had a total net worth of approximately $43,500,[1] all of which she contributed to the marriage.

Charles, at the time of marriage, was a vice-president with Clear Lake Federal Savings and Loan Association.[2] He owned a 40% partnership interest in Harbourage Development Co.[3] and owned a sizable interest in various apartment complexes.[4] He also owned Crane Insurance Agency and Anchor Realty. Charles' net worth before the marriage was approximately $280,800.[5]

The trial court awarded Shirley the following marital property: a residence that she had purchased for her parents, value $35,000, encumbrance $25,000; unit 302 of the Groharbour condominium, value $79,500, encumbrance $79,500; the Anchor Inn,[6] estimated value $150,000, estimated encumbrance $129,000; an undivided one-half

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1 This figure comes from a financial statement dated April 10, 1973, approximately ten months prior to her marriage to Charles.

2 Between the time of the marriage and the filing of the petition for dissolution, Clear Lake Federal changed its name to First Federal.

3 The Harbourage Development Co. was in the final construction stages of a condominium development and sales project during the period of the parties' marriage.

4 Charles owned a 40% partnership interest in 135 single bedroom rental units and 1 three-bedroom rental unit, and a 33-1/3% partnership interest in 16 single bedroom rental units.

5 This figure comes from a financial statement dated April 30, 1973, approximately nine and one-half months prior to his marriage to Shirley.

6 There was litigation over the property description of this property pending at the time of trial. The property was purchased in April of 1975 for $135,000, subject to a $108,000 encumbrance. Shirley testified she has since added $21,000 more encumbrance to the property. At the time of trial she had an offer of $150,000 for the property, pending the outcome of the litigation.

interest in the tri-plex apartment house, value $48,750, encumbrance $14,717; a 1977 Lincoln automobile, value $11,000; furnishings and equipment, value, $11,000; and lump sum alimony of $10,000. The trial court also awarded Shirley periodic alimony of $400 per month for 48 months. Charles was awarded the remaining marital property, which included the bulk of the parties' assets.[7]

On appeal, Shirley contends the trial court's division of the marital assets was inequitable and that she should have been awarded additional assets. Charles' cross-appeal asserts the division of marital assets was fair but contends the award of alimony was excessive. Our review is **de novo.** Iowa R. App. P. 4. In order to determine a fair and equitable division of the marital assets, we apply the guidelines of Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), as modified by In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972). Although alimony and the allocation of property rights have a different purpose, they are closely related in the matter of determining the amount to be allowed. Schantz, 163 N.W.2d 405. The question becomes whether the property award and alimony, when taken together, constitute an equitable award. In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975). In reviewing the evidence presented, we give weight to the trial court's finding of fact but we will not abdicate our function as a trier **de novo** on appeal. Iowa R. App. P. 14(f)(7).

The parties were married for just under four years. Although both parties entered the marriage in good health, during the course of the four years each party developed a health problem. Charles was involved in an ice-boating accident in December of 1975, which resulted in very severe head injuries.[8] Despite making good progress in his rehabilitation, he has not regained his previous level of mentation, speech or gait. As a result, Charles has been unable to perform the duties he used to at First Federal, which may jeopardize his future employment there.

Shirley suffers from a condition diagnosed as Crohn's Disease, for which she is periodically hospitalized. The disease, in Shirley's case an inflammation of the intestinal tract, manifests itself with internal hemorrhaging and anemia. This affliction

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[7] Charles conservatively estimated his net worth at $670,747.91 shortly before trial. Shirley claims this figure is much too low and fails to include his interest in unit 603 of the Pilot House condominium development. Shirley further claims the property awarded to Charles by the trial court had a net value in excess of $730,000, although she does not specify how this figure was calculated.

[8] As a result of this accident, Charles was in a coma for approximately four weeks. He was required to undergo an intensive rehabilitation program to improve his speech, vision and walking.

is presently incurable and medical testimony indicated it will become more disabling as time goes on. The evidence indicates that, as a result, Shirley has been unable to be in the realty office where she works with great regularity.

Despite the relatively short duration of the marriage, the evidence indicates Shirley has made substantial sacrifices, financial and otherwise, to the success of the marital relationship. Shortly after the parties were married, Shirley gave up her position with Ris-Van Realty and sold her one-third interest in the business because of a perceived conflict of interest with Charles' business endeavors. Testimony indicates she did not profit from this sale. After Charles' ice-boating accident, the evidence shows Shirley provided him with care and attention on a daily basis. She handled the extensive Crane business affairs during his rehabilitation. The evidence also indicates her assistance with the sale of the Crane Insurance Agency resulted in a substantial financial gain. As a result of her efforts on behalf of Charles after his accident, she was unable to devote much time or effort to her own career and, as a result, her income therefrom was substantially diminished.

Under these circumstances, we believe Shirley is entitled to a greater share of the parties' increase in net worth during the marriage. She has, as a result of a combination of ill-health and sacrificing her own career for the good of the marital relationship, been placed in a much less favorable position than she was in when the parties were married. Charles, although facing a somewhat uncertain future due to his present ill-health, is in relatively better financial position than is Shirley. We conclude, therefore, that Shirley should be awarded, in addition to the other property awarded to her by the trial court not herein affected, unit 13 in the "B" building of the Harbourage condominium, subject to any encumbrance thereon. On the other hand, Shirley shall not receive the one-half interest in the parties' triplex situated at 461-463 North Shore Drive which the trial court awarded her, or the furnishings contained in Harbourage unit 13B. These items are granted to Charles.

The trial court's award to Shirley of lump sum alimony is more properly characterized as additional property settlement. This cash award is increased to $60,000, payable over the next 12 years in annual installments of $5,000, plus interest at 9% per annum. The trial court's award of $400 per month periodic alimony for 48 months shall remain in effect.

Shirley also seeks attorney fees on this appeal. Without determining the amount her attorney may charge, we hold Charles shall pay $750 towards those fees. In re Marriage of Peterson, 227 N.W.2d 139, 142 (Iowa 1975).

Costs of this appeal are assessed to Charles.

AFFIRMED AS MODIFIED.