FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF EARL DOUGLAS HUBBARD AND OPAL B. HUBBARD

Upon the Petition of)
EARL DOUGLAS HUBBARD,) Filed April 29, 1980
Petitioner-Appellee,)
And Concerning)
OPAL B. HUBBARD,) 0-67
2-63660
Respondent-Appellant.)

Appeal from Poweshiek District Court - Ira F. Morrison, Judge.

Respondent-wife appeals economic provisions of dissolution decree. - Affirmed as modified.

John F. Bierman, III, of Bierman, Bierman & Stewart, Grinnell, for respondent-appellant.

Vincent E. Johnson, Montezuma, for petitioner-appellee.

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

PER CURIAM

Respondent-wife Opal Hubbard appeals from the economic provisions of the decree dissolving the marriage between herself and Earl Hubbard. Opal asserts she should have been awarded alimony or more income-producing assets to allow her to meet her needs. In addition, she alleges she should be awarded additional attorney fees to those awarded at trial. We modify certain provisions and affirm the decree as modified.

Our review is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of fact, especially with regard to the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7). In reviewing a dissolution decree's property division and alimony provisions, we consider the factors stated in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except fault. In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972).

Earl and Opal were married on August 20, 1961. It was Earl's second marriage and Opal's fifth. Earl brought approximately $100,000 worth of assets into the marriage and Opal brought in approximately $7000. There were no children of the marriage. At the time of trial, Earl was 70 and Opal was 69. Earl was a veterinarian until 1969 when he retired. During the marriage, Earl twice underwent hospitalization for periods in excess of forty-five days. It is also apparent from the record that Earl had a problem with the abuse of amphetamines, although it is uncertain whether his drug problem and the hospitalizations were directly connected.

The trial court's property division and resultant income sources for the parties can be delineated as follows:

Assets

Earl		Opal	
Residence	$50,000		
1/2 Household goods	4,000	1/2 Household goods	$ 4,000
Automobile	2,700	Automobile	8,180
Cemetary lot	50	Cemetary lot	50
Bank accounts	648	Bank accounts	2,370
Installment contract	1,000	Assets removed from joint account after separation[1]	4,044
U. S. Bond	5,000	U. S. Note	5,000
Global Marine Notes	10,000	Clutier State Bank C.D.	8,000
D. H. Baldwin Bond	5,000	Des Moines Savings C.D.	11,000
Corporate Income Stock	5,000	Polk County C.D.'s	12,000
Gamble-Skogmo Bond	3,000		
U. S. Homes Bond	3,000		
Total	$89,398		$55,144

[1] Opal removed $14,300 from a joint savings account after the separation. She purchased a new car for $8,180 and $2,076 remains in the savings account. These figures

Monthly Income

Earl		Opal	
Social Security	$ 332,90	Social Security	$140.60
IPERS	97.70	Polk County C.D.'s	81.00
Civil Service	157.00	Des Moines SavingsC.D.	69.00
Northwestern Mutual	52.31	Clutier C.D.	50.00
John Hancock[2]	28.53	John Hancock[2]	28.53
U. S. Bond	34.00	U. S. Note	34.00
MONY	100.00	Grinnell State Bank - Savings	9.00
Global Marine Bond	70.00		
D.H. Baldwin Bond	38.00		
Corporate Income Bond	38.00		
Gamble-Skogmo Bond	25.00		
U. S. Homes Bond	25.00		
Installment Contract	7.00		
Totals	$1,005.44		$412.13

The trial court awarded no alimony. Both parties stated that their monthly needs required a monthly income of approximately $600. Opal contends that to meet her monthly needs, she should be awarded alimony or additional income-producing assets. We find that the granting of both requests is appropriate.

We conclude that the assets should be readjusted toward a more equal division to reach an equitable and just result in light of our application of the Schantz factors. In particular, the factors we found to be significant in reaching this conclusion were the length of the marriage, Opal's continued devotion in furtherance of a happy marriage exemplified by the companionship she provided both at home and while she accompanied Earl when he conducted his field work, as well as her steadfastness when Earl suffered poor health and had problems with amphetamine abuse. We also considered Opal's need in light of Earl's ability to pay. Consequently, we conclude Opal should be awarded the additional income-producing assets of the Global Marine notes valued at $10,000 and producing income of $70.00 per month and the U.S. Treasury Bond valued at $5,000 and producing income of $34.00 per month.

In addition, Opal should be awarded alimony. Whether an award of alimony, and, if allowed, the amount is just and equitable is a matter to be determined on an ad hoc basis under the facts of each case. Behrle v. Behrle, 228 N.W.2d 25, 27 (Iowa 1975). In light of the circumstances of this case and again considering the Schantz factors with

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are included in the table. The $4044 figure represents the amount of the $14,300 that was used for other miscellaneous expenditures.

[2] Earl testified that the John Hancock annuity could be divided equally between the parties and if that has not yet been done, we hereby order that the annuity payments be so divided.

an emphasis on those mentioned above, we find that Opal is entitled to alimony payments in the amount of $80 per month until either party dies or Opal remarries. With these modifications, the relative financial status of the parties appears like this:

Assets

Earl		Opal	
Residence	$50,000		
1/2 Household goods	4,000	1/2 Household Goods	$ 4,000
Automobile	2,700	Automobile	8,180
Cemetary lot	50	Cemetary lot	50
Bank accounts	648	Bank accounts	2,370
Installment contract	1,000	Assets removed from joint	
D. H. Baldwin Bond	5,000	account after separation	4,044
Corporate Income Stock	5,000	U. S. Note	5,000
Gamble-Skogmo Bond	3,000	U. S. Bond	5,000
U. S. Homes Bond	3,000	Global Marine Notes	10,000
		Clutier State Bank C.D.	8,000
		Des Moines Savings C.D.	11,000
		Polk County C.D.'s	12,500
Totals	$74,398		$70,144

Monthly Income

Earl		Opal	
Social Security	$332.90	Social Security	$140.60
IPERS	97.70	Polk County C.D.'s	81.00
Civil Service	157.00	Des Moines Savings C.D.	69.00
Northwestern Mutual	52.31	Clutier C.D.	50.00
John Hancock	28.53	John Hancock	28.53
MONY	100.00	Grinnell State Bank - Savings	9.00
D.H. Baldwin Bond	38.00	Global Marine Notes	70.00
Corporate Income Stock	38.00	U. S. Bond	34.00
Gamble-Skogmo Bond	25.00	U. S. Note	34.00
U. S. Homes Bond	25.00		
Installment Contract	7.00		
	901.44		516.13
Alimony	- 80.00		+ 80.00
Totals	$821.44		$596.13

The trial court awarded Opal $500 for her attorney fees incurred at trial. Opal contends this amount was insufficient. Attorney fees are not recoverable as a matter of right in a dissolution proceeding. Locke v. Locke, 263 N.W.2d 694, 696 (Iowa 1978); In re Marriage of Peterson, 227 N.W.2d 139, 142 (Iowa 1975). The elements to be considered in determining reasonable attorney fees are set out in In re Marriage of Jennerjohn, 203 N.W.2d 237, 245 (Iowa 1972) and In re Marriage of Jayne, 200 N.W.2d 532, 534 (Iowa 1972). The determinative factors are need and ability to pay. Locke, 263 N.W.2d at 696; In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977). The trial court has

considerable discretion in the allowance of attorney fees. Locke, 263 N.W.2d at 696; In re Marriage of Winegard, 257 N.W.2d 609, 618 (Iowa 1977). Applying these considerations to the case at bar, we cannot conclude that the trial court's award of attorney fees was inadequate. Costs are taxed to Earl.

AFFIRMED AS MODIFIED.

Johnson, J., and Oxberger, C.J., dissent.

JOHNSON, J. (dissenting)

I would affirm that portion of trial court's decree dividing the assets of the parties, but would award Opal alimony in the amount of $150.00 per month until her remarriage or the death of either party.

Oxberger, C.J., joins in this dissent.