FILED
MAR 31 1980
IOWA SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF WAYNE R. THORNTON AND MARY M. THORNTON

UPON THE PETITION OF)
WAYNE R. THORNTON,) Filed March 31, 1980
Petitioner-Appellant,)
AND CONCERNING)
MARY M. THORNTON,) 0-57
Respondent-Appellee.) 2-63426

Appeal from Greene District Court - Albert L. Habhab, Judge.

Petitioner appeals the economic provisions of the decree dissolving his marriage to respondent. AFFIRMED AS MODIFIED.

Richard Winders of Cudahy Law Firm, P.C., Jefferson, Iowa, for petitioner-appellant.

Michael F. Mumma of Reading, Pauley, Horak & Mumma, Jefferson, Iowa, for respondent-appellee.

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

PER CURIAM

Petitioner, Wayne Thornton, appeals the economic provisions of the decree dissolving his marriage to respondent, Mary Thornton. We affirm with modification.

Wayne and Shirley were married May 15, 1949. Two daughters were born of the marriage, each now of legal age and self-sufficient. The decree dissolving their marriage was entered March 20, 1979. The trial court awarded Wayne the following marital property: certificates of deposit and his checking account, valued at $18,622.43; a 1978 Datsun pickup truck, valued at $5,000; a lot in Bull Shoals, Arkansas, valued at $4,000 with an incumbrance of $470; and thirty-two shares of Brenton Bank stock, valued at $560. Wayne was also awarded the right to receive the remaining $157.73 monthly payments on a $9,622.05 balance owing on a real estate installment contract. The trial court awarded Mary the remaining marital property, consisting of the couple's residence property, valued from between $21,000 to $23,000; three certificates of deposit, a savings account, and her checking account, valued at $1,377; and a 1976 Chevrolet automobile, valued at $3,500 with an incumbrance of $1,800. Additionally, Mary was awarded the couple's household furniture, valued from between $3,000 to $4,000, but she was ordered to pay Wayne $1,750 for his share of these furnishings. The trial court considered making an award of alimony to Wayne but declined to make such an award in light of its disparate property award.

On appeal, Wayne contends the division of the marital property was inequitable. 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 in In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972). In reviewing the evidence presented, we give weight to the trial court's findings 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 twenty-nine years. Neither party brought substantial assets into the marriage, although Wayne testified that he had an automobile and a few hundred dollars. Through their joint efforts, the parties were able to accumulate the real and personal property disposed of by the decree.

At the time of trial, Mary was age forty-eight and enjoyed good health. The record indicates she is an officer in the Jefferson State Bank and manages the Bank's drive-in facility. Mary's monthly salary as of January 1, 1979 is $700 and her net

monthly income is $524.[1] Additionally, she receives a year-end bonus, which in 1978 was $500.

Wayne was age fifty-one at the time of trial. The evidence indicates he became completely and permanently disabled by heart disease[2] in 1974, and, as a result, is unable to engage in any gainful employment. Wayne's monthly income consists of Social Security payments of $304 and the interest[3] from his certificates of deposit. Additionally, Wayne was awarded the right to receive a $157.73 monthly payment on a real estate installment contract until May 22, 1985, when the balance owing is finally paid off.

The trial court awarded the marital assets, excluding the balance of the real estate installment contract,[4] to the parties in substantially equal shares.[5] It is Wayne's contention that he should have been awarded additional property. While we agree that the trial court's division of the marital property does not adequately provide for Wayne's future support, this is not the test of an equitable property settlement. Awarding additional property to Wayne would result in an inequitable property division while still failing to adequately provide for his future needs. We therefore decline to disturb trial court's property division. We do modify the decree, however, by ordering Mary to pay alimony to Wayne in the sum of $1.00 annually.

AFFIRMED AS MODIFIED.

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[1] In addition to her deductions for federal taxes, state taxes, and FICA, Mary has monthly deductions of $22 for various types of insurance coverage and $17 for her retirement plan.

[2] The trial court's findings stated: "[Wayne] has had at least three myocardial infarctions and a coronary artery bypass. He continues to have angina pectoris and has peripheral vascular insufficiency to the legs." The testimony of Dr. Larry L. Marshall, an expert witness, substantiates these findings.

[3] Wayne testified the certificates of deposit pay 7-1/2% annual interest.

[4] We feel a more realistic comparison of each parties' financial circumstances after their dissolution is given by considering the periodic installment payments as if they were an award of support, rather than as a "sum certain" to be included in Wayne's property award. If we were to make a comparison of the parties' property awards, including the balance of the installment contract, the discounted "present value" of the $9,662.05 balance still owing would have to be considered. Of course, any periodic payment such as child support or alimony could be discounted and the present value used in a property award type of analysis, but then our consideration of the different purposes behind each type of award would be precluded.

[5] Using the trial court's valuations, which do not take into account the household furniture, Wayne received property valued at $27,712.43 and Mary received property valued at $25,077.00.