

FILED

DEC 30 1981

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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JACQUELINE JEAN BISHOP and JACKIE RAYMOND BISHOP

Upon the Petition of)

JACQUELINE JEAN BISHOP,)

Petitioner-Appellant,)

Filed December 30, 1981

And Concerning)

JACKIE RAYMOND BISHOP,)

Respondent-Appellee.)

1-344
2-66164

Appeal from Polk District Court - Rodney J. Ryan, Judge.

Petitioner-wife appeals from economic provisions of the decree dissolving her marriage to respondent-husband asserting that the property division was inequitable, that she should have been awarded additional alimony, and requesting attorney's fees.
AFFIRMED AS MODIFIED.

Michael J. Gailligan and William J. Hornbostel of James and Galligan, Des Moines, Iowa, for petitioner-appellant.

Carl V. Nielson of Sutton and Nielson, Altoona, Iowa, for respondent-appellee.

Submitted to Snell, Carter and Johnson, JJ. Oxberger, C.J., and Donielson, J., take no part.

Petitioner-wife, Jacqueline Jean Bishop, appeals from economic provisions of the decree dissolving her marriage to respondent-husband, Jackie Raymond Bishop. She asserts that the property division was inequitable and that she should have been awarded additional alimony. She also requests attorney's fees, both for the trial below and for this appeal. We affirm with modification.

Petitioner and respondent were married July 29, 1959, and are the parents of a daughter, now an adult. Neither party brought substantial assets to the marriage. Their early housing arrangements were substandard. Respondent's parents eventually gave them one acre of land onto which they moved a \$300 house with no indoor plumbing. Water had to be carried from a neighbor's, but gradually, with much hard work from both petitioner and respondent, as well as friends, the home was improved. At time of trial the parties agreed that the house had a value of \$38,000 with a net worth, after payment of the mortgage and selling costs, of about \$23,000.

Respondent has a high school education, a real estate license, and had worked 19-1/2 years at a Ford plant until it closed in 1973. He is currently a member of the Polk County Board of Supervisors with a gross income of \$26,353 per year. Petitioner, with an 11th grade education, stayed home for seven years and thereafter has been employed outside the home, usually on the "graveyard" shift. She has held various unskilled jobs and, at time of trial, was employed in a printing-related job requiring substantial physical exertion with a gross annual income of \$12,745. Both parties have contributed to social security, but respondent is currently contributing to IPERS and will also be eligible to receive \$620 each month at age 55 from his Ford pension plan. At trial time, petitioner was 42 and experiencing some arthritic and back problems; respondent was 48 and in generally good health. The record is clear that both parties worked extremely hard during the marriage at income-producing work, at domestic chores, and at substantial amounts of political campaigning, first through UAW activities, and then at respondent's own campaigns, as well as for those of other county candidates.

Trial court ordered the parties' house to be sold with 55% of the net proceeds to be given to petitioner and 45% to respondent. Petitioner was allowed to keep the house if she chose, but in order to do so was to assume the mortgage payments and pay respondent \$10,000 as his share of the equity by October 1985. Petitioner was awarded \$150 in alimony for five years. Petitioner was ordered to assume 45% of the couple's

debts, respondent 55%, although the court did not set the dollar amount to be paid by either. Each party was to be responsible for individual attorney's fees.

On this appeal petitioner urges us to consider the difference in earning ability of the two parties and to make what she believes to be a more equitable division of assets and a fairer award of alimony. She argues that the trial court virtually ignored her contributions and sacrifices to the marriage, did not consider her inferior income level and increasing physical problems, and neither took into consideration, nor made any division of, respondent's IPERS and Ford retirement benefits. She requests a greater award of alimony, a realignment of debt that is based more realistically on her ability to pay debts, and an equitable share in the Ford retirement benefits that respondent will realize.

I. Scope of Review. Our review is *de novo*. Iowa R. App. P. 4. We will examine the entire record and determine anew those rights on issues properly presented. In re Marriage of Horstmann, 263 N.W.2d 885, 888 (Iowa 1978) (quoting In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974)). We give weight to the trial court's findings, especially as to credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

II. Division of Property. A correct division of property is one that is equitable under the circumstances. Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976); In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975). Although frequently an equal division of assets is made, there is no mechanical rule that dictates this result. In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980); In re Marriage of Conley, 284 N.W.2d 220, 223 (Iowa 1979). The relevant factors to be considered are delineated in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), modified as to fault in In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972), and essentially as codified at section 598.21(1), The Code. When reviewing a challenged economic division, we consider the entire decree as an integrated whole. In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976).

In applying these criteria to the division of property, we conclude that trial court divided the property equitably under the circumstances of this case, with the exception of the debt allocation. The division of the net proceeds from the couple's house, their principal asset, reflects the hard work expended by both of them in turning the property into an asset. Allowing petitioner a slightly larger share than respondent also takes into consideration the provisions of the decree as a whole, and further reflects in part the difference between the parties' income levels.

The division of debts, however, appears to have a disparate impact on the financial status of each party. Petitioner's net income every two weeks is \$359.10, while respondent's is \$620.48. Given petitioner's documented living expenses in the record, assigning her 45% of the couple's debts is more than she is able to pay. Therefore, we order respondent to be responsible for all debts the couple incurred prior to their separation in May 1979. Each is to be responsible for individual debts thereafter, and respondent is to reimburse petitioner for any amounts on those pre-May 1979 debts that she has already paid.

III. Alimony. Trial court awarded petitioner \$150 a month in alimony for five years. On this appeal she asks for \$300 each month until September 1982 to allow respondent to pay debts of the parties, and then asks for \$400 each month thereafter. Allocations for alimony, support, and property have different purposes, but the court can consider how the property has been divided in assessing the needs and resources of the parties in fixing alimony. In re Marriage of Peterson, 227 N.W.2d 139, 142 (Iowa 1975). The proper amount of alimony to be awarded in a particular case is to be based upon the relative need and resources of the parties. In re Marriage of Beeb, 214 N.W.2d 170, 175 (Iowa 1974).

Balancing petitioner's need against both parties' resources, we conclude the trial court's award of \$150 a month is inadequate. It reflects neither the differences between their incomes nor the contributions in time and effort given by petitioner to aid respondent in reaching the financial position he now enjoys. Petitioner has no other educational background or skills that will help her achieve a higher income level than she presently possesses. The record also indicates that she may not always be able to perform the kind of physical labor in which she is now engaged. Respondent, on the other hand, has a real estate license, a substantially higher paying job, and will eventually receive benefits from both IPERS and Ford, as well as social security. Petitioner has only social security for protection.

Consequently, we order respondent to pay \$300 a month in permanent alimony. This alimony award is retroactive to December 1980, and is in effect until petitioner remarries or either party dies.

IV. Attorney's Fees. Petitioner requested and was denied attorney's fees at trial. On appeal, she renews her request for attorney's fees for trial and also asks for fees on this appeal. The trial court has considerable discretion in awarding such fees at

trial and we find no abuse in this case. Further, since petitioner's attorney has filed no application for allowing fees with this court, we make no award on appeal. Costs of this appeal are assessed against respondent.

AFFIRMED AS MODIFIED.