

FILED

MAY 30 1930

CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF PAUL E. CARRUTHERS & GUELDA A. CARRUTHERS

Upon the Petition of)

PAUL E. CARRUTHERS,)

Filed May 30, 1930

Petitioner-Appellee,)

And Concerning)

GUELDA A. CARRUTHERS,)

0-113
2-63409

Respondent-Appellant.)

Appeal from Wapello District Court - James Jenkins, Judge.

Respondent-wife appeals alimony provision and petitioner-husband cross-appeals property division of dissolution decree. - AFFIRMED AS MODIFIED.

John N. Moreland, Ottumwa, for respondent-appellant.

Bailey C. Webber, of Webber, Gaumer & Emanuel, Ottumwa, for petitioner-appellee.

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

PER CURIAM

Respondent-wife, Guelda Carruthers, appeals from the alimony provision, and petitioner-husband, Paul Carruthers, cross-appeals from the property division of the parties' dissolution decree. Guelda contends that she should have been awarded permanent alimony until her death or remarriage, rather than a declining amount over a five-year period. On cross-appeal, Paul contends the property division was inequitable. We modify the alimony provision and affirm the decree as modified.

Paul and Guelda were married on April 5, 1947. There were two children born of the marriage, however, both have attained adulthood and were not involved in the dissolution proceedings below. Paul, age fifty-one at the time of trial, is a utility lineman, earning a gross annual income of approximately \$20,000. Guelda, age fifty-two at the time of trial, received minimal training as a bookkeeper approximately thirty-five years ago. She has not worked to any significant extent for approximately thirty years. She has spent most of the marriage raising the parties' children and taking care of the home. In 1964, Paul and Guelda were involved in an automobile accident. As a result of that accident, Guelda suffered serious injuries, and obtained a settlement of approximately \$25,000. Paul testified at trial that he desired no part of the settlement money awarded to Guelda. Guelda's injuries from the accident have rendered her partially disabled and she would only be able to work twenty to thirty hours per week if she acquired employment.

The trial court attempted to divide the marital assets equally. The trial court awarded the major marital assets, including the marital home, and a boat and trailer, to Paul. Guelda was awarded a lump sum property settlement in the amount of \$29,650, representing one-half of the value of the major assets awarded to Paul. The trial court also allowed Guelda to retain the remainder of her accident settlement award, and divided the remaining miscellaneous assets as equally as possible between the parties. Guelda was awarded alimony for five years in declining amounts, to allow her the time to attain sufficient training to re-enter the job market after her thirty-year hiatus. Specifically, Paul was ordered to pay \$150 every other Monday for the first year, \$125 every other Monday for the second year, \$100 every other Monday for the third year, \$75 every other Monday for the fourth year, and \$50 every other Monday for the fifth year after which time alimony payments were to cease.

Our review is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of fact, but we are not bound by them. Iowa R. App. P. 14(f)(7). In reviewing the alimony and property divisions of a dissolution decree, we apply the factors enumerated 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).

I. Guelda contends that she should have been awarded permanent alimony until her death or remarriage, rather than the trial court's award of alimony in declining amounts over a five-year period. In light of the Schantz criteria that are particularly applicable to Guelda's contention, including Guelda's present physical health, her earning capacity, and the ability of Paul to pay balanced against Guelda's need, we conclude that Guelda is entitled to alimony in some form. We think the trial court's approach to the determination of an appropriate alimony award was proper in most respects. Despite her physical handicap, Guelda has a duty to help herself by seeking part-time employment within her capabilities, or by obtaining training and then seeking part-time employment. In re Marriage of Downing, 210 N.W.2d 436, 432 (Iowa 1973). Guelda's long absence from the job market requires an award of alimony for a period of time such that she can obtain the education and training necessary to re-enter the job market. See In re Marriage of Seidenfeld, 241 N.W.2d 881, 884 (Iowa 1976); In re Marriage of Beeh, 214 N.W.2d 170, 174-75 (Iowa 1974). We think the trial court's schedule of alimony payments adequately meets Guelda's need in this respect, however, since it is not contemplated that she will be able to work full-time, we believe an additional award of a more permanent nature is required. We conclude that Paul should pay alimony pursuant to the trial court's decree for the first four years. Thereafter, the fourth year's schedule of payments - \$75 every other Monday - shall continue until Guelda's death or remarriage.

II. On cross-appeal, Paul contends that the property division was inequitable. The primary basis for Paul's contention appears to be the award to Guelda of certain bonds that represent the remainder of her accident settlement. Since Paul testified at trial that he desired no part of the remaining proceeds of Guelda's accident settlement, he cannot legitimately claim a share of the bonds representing those proceeds on appeal. We have considered the trial court's property division in light of the applicable Schantz criteria. In light of those criteria, we find the property division to be equitable and

just, and decline to disturb it on appeal.

Costs are taxed to Paul.

AFFIRMED AS MODIFIED.