

FILED
JAN 31 1978
CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF DARRYL H. CONSTANT and PATRICIA CONSTANT

Upon the Petition of	)	
DARRYL H. CONSTANT,	)	Filed January 31, 1978
	)	
Appellee,	)	
	)	
And Concerning	)	
	)	
PATRICIA J. CONSTANT,	)	
	)	365
	)	<u>2-60087</u>
Appellant.	)	

Appeal from Pottawattamie District Court - Leroy H. Johnson, Judge.

Respondent appeals property settlement and alimony provisions of dissolution decree. Petitioner cross-appeals from alimony award. Affirmed as modified.

Robert J. Laubenthal, of Smith, Peterson, Beckman & Willson, of Council Bluffs, for appellant.

Roderic A. Pearson, of Peters, Campbell & Pearson, of Council Bluffs, for appellee.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Respondent, Patricia J. Constant, appeals the property settlement and alimony provisions of the March 31, 1976, decree dissolving her ten year marriage to petitioner Darryl H. Constant. Darryl cross-appeals, claiming the lump sum alimony decreed is excessive. Our review is de novo. With respect to the economic determinations which we make in this case we apply the criteria set forth in *Schantz v. Schantz*, 163 N.W.2d 398, 405 (Iowa 1968), excluding consideration of fault. Precedent is of little value in making such determinations and each case must be decided on its own peculiar circumstances.

At the time of the decree Patricia was 39 years old and Darryl 35. There were no children born of the marriage. Darryl is a college graduate in reasonably good health, and is operator of and owner, with Patricia, of Underwood Feed and Supply, a sole proprietorship. Patricia quit school at age 15, is in good health, and through the years has continually held unskilled jobs in addition to caring for the home, farrowing pigs and raising cattle during this marriage.

The parties were married in 1966. At that time each possessed assets worth about \$2000. During the marriage each party received an inheritance, Patricia \$2000, Darryl \$7500. These inheritances were commingled with the parties' other assets. The net worth of the parties increased substantially during the ten year marriage. The trial court determined the parties' net worth to be \$118,183.30, awarded Patricia specific property valued at \$9525 and ordered Darryl to pay Patricia the sum of \$45,000, payable in installments and denominated as alimony. On appeal, we conclude that the \$45,000 which the trial court denominated as alimony should be designated as a property settlement and that alimony should be separately provided. We accordingly modify the decree as herein provided.

I. Property settlement. As property settlement Patricia shall receive the furniture, personal property, automobiles and post office building awarded to her under the original decree, valued at \$9525. Additionally, Darryl shall pay Patricia the sum of \$45,000 as follows: \$5000 to be paid within 90 days after the issuance of the procedendo in this cause; \$5000 to be paid annually thereafter on or before the anniversary date of the procedendo, for eight succeeding years, and until the remaining sum of \$40,000 has been paid. On the unpaid balance of this sum Darryl shall pay Patricia interest at the

rate of seven percent per annum from the date of the issuance of the procedendo. In the event that Darryl dies prior to making payment in full, as herein specified, all unpaid amounts shall remain an obligation of his estate, and payment thereof shall be accelerated so that all remaining payments are due six months after his death. All sums awarded Patricia as property settlement shall be secured by a lien on the real estate awarded Darryl under the decree.

II. Alimony. We conclude that the alimony provision of the decree should be deleted and in lieu thereof Darryl shall pay Patricia \$225 alimony each month until either party dies or Patricia remarries, said award to be retroactive to date of the original decree.

III. Attorney fees. The trial court's award of attorney fees in the court below is affirmed. Darryl shall pay the sum of \$1000 to apply upon Patricia's attorney fees on this appeal. Costs on appeal shall be assessed equally between the parties.

AFFIRMED AS MODIFIED.