

IN THE COURT OF APPEALS OF IOWA

No. 1-519 / 91-263

FILED

MAY 23 1992

CLERK SUPREME COURT

IN RE THE MARRIAGE OF WILLIAM D. SCHINKEL AND SAUNDRA KAY
SCHINKEL

Upon the Petition of

WILLIAM D. SCHINKEL,

Appellant,

And Concerning

SAUNDRA KAY SCHINKEL,

Appellee.

850

Appeal from the Iowa District Court for Mahaska County,
James P. Rielly, Judge.

William challenges the economic provisions of the
parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Michael F. Lacey, Jr. and Janice M. Herfkens of
Patterson, Lorentzen, Duffield, Timmons, Irish, Becker &
Ordway, Des Moines, for appellant.

Robert W. Conrad, Knoxville, and Michael P. Brice,
Oskaloosa, for appellee.

Considered by Donielson, P.J., and Schlegel and Hayden,
JJ.

HAYDEN, J.

William and Sandra Schinkel were married on June 7, 1963, shortly after each graduated from high school. The parties have two children who are adults not affected by this dissolution. The parties lived in rural Mahaska County during the marriage.

William was forty-five years old at the time of the trial. He had been engaged in farming, but lately most of his income has come from his construction business. He digs ponds, terraces, and sewer lagoons for other farmers. William had net income of \$33,357 in 1987, \$21,680 in 1988, and \$42,410 in 1989. However, his income dropped in 1990. The district court found he purposely decreased his income in 1990 in order to avoid paying alimony.

Sandra was forty-six years old at the time of the trial. She did not work outside the home during most of the marriage. The parties separated in 1990, and Sandra moved to Oskaloosa. She is currently a program director with the Mahaska County Diamond Shelter organization, which is a home for mentally handicapped people. Her monthly net income is \$677.25. She is also attending classes to obtain an associate degree in administration.

The district court awarded William the farm and construction business assets and almost all of the debt. He was ordered to pay Sandra a property settlement of \$8,896 in order to equalize the property distribution. The court divided the parties' property equally between them,

based on the fact they had been married for twenty-seven years. The court ordered William to pay Sandra alimony of \$500 per month until she should die or remarry. William was ordered to pay \$1,000 towards Sandra's attorney fees. William now appeals.

Our scope of review in dissolution cases is de novo. In re Marriage of Craig, 462 N.W.2d 692, 693 (Iowa App. 1990). While not bound by the trial court's determination of factual findings, we will give them considerable weight, especially when considering the credibility of witnesses. Id.

William contends the alimony obligation imposed upon him by the district court is excessive. He believes Sandra only needs rehabilitative alimony for five years while she is attending school part-time. He claims Sandra currently has an earning capacity of \$10,000 per year, and this will increase once she graduates. William also disputes the district court's finding he purposely decreased his income in 1990 in order to avoid paying alimony.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. In re Marriage of Whelchel, 476 N.W.2d 104, 110 (Iowa App. 1991). Alimony is an allowance to an ex-spouse in lieu of a legal obligation to support that person. In re Marriage of Oler, 451 N.W.2d 9, 13 (Iowa App. 1989). When determining the appropriateness of alimony, the court should consider the

earning capacity of each party. Id. Also, the ability of the one spouse to pay should be balanced against the needs of the other spouse. Id.

We find the award of permanent alimony is justified in this case. Sandra was out of the job market for approximately twenty years and is at a substantial disadvantage reentering it at this time. However, we modify the decree to provide William's alimony obligation will terminate on Sandra's death or remarriage, or William's death.

William also disputes the award of a cash property settlement of \$8,896 to Sandra. He believes the district court did not consider the potential negative tax consequences to him. William's claims are based on an argument he will be forced to liquidate all of his construction, farm, and shop equipment in order to pay the property settlement.

The partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. In re Marriage of Russell, 473 N.W.2d 244, 246 (Iowa App. 1991). The Iowa courts do not require an equal division or percentage distribution. Id. The determining factor is what is fair and equitable in each particular circumstance. Id.

William was awarded assets valued at over \$221,000, and although he was also awarded substantial debt, we do not believe he will be forced to liquidate his construction,

farm, and shop equipment to pay the property settlement of \$8,896. We agree with the district court an equal property division was equitable here because this was a long-term marriage.

In summary, we affirm the district court, except we have modified William's alimony obligation to terminate upon Sandra's death or remarriage, or upon William's death. Costs of this appeal are assessed to William.

AFFIRMED AS MODIFIED.