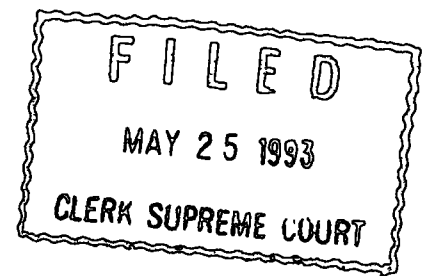


IN THE COURT OF APPEALS OF IOWA

No. 2-542 / 92-303



IN RE THE MARRIAGE OF BETTY JEAN NEUMANN AND
KENNETH CARL NEUMANN

Upon the Petition of

BETTY JEAN NEUMANN,

Appellee,

And Concerning

KENNETH CARL NEUMANN,

Appellant.

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Appeal from the Iowa District Court for Crawford
County, Gary E. Wenell, Judge.

The husband appeals certain economic provisions of the
district court's dissolution decree. **AFFIRMED AS MODIFIED.**

Thomas E. Gustafson of the Gustafson Law Firm, Denison,
for appellant.

Thomas R. Eller of Eller, Brink & Sexton, Denison, for
appellee.

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

PER CURIAM 000454

Betty and Kenneth Neumann were married on November 6, 1965. They have one child, who is now an adult, and is not affected by the terms of the dissolution decree.

Betty was born on December 30, 1930, and she was sixty-one years old at the time of the dissolution hearing. Betty is employed as a sales clerk at a farm supply store in Denison, Iowa. Her income is about \$9,880 and she has net income of about \$650 per month. Betty suffers from an eye disease; she is blind in one eye and has deteriorating vision in her other eye.

Kenneth was born on May 28, 1939, and he was fifty-two years old at the time of the dissolution hearing. Kenneth was employed as a service station attendant at an Exxon station in Seattle, Washington. His income is about \$10,400 and he has net income of about \$730 per month. Kenneth has had a heart problem involving a clogged heart valve. He was not seeing a physician at the time of the hearing.

The parties borrowed \$25,404 from Ida County State Bank in January 1990. They purchased a Chevrolet conversion van in April 1990 with \$19,076 of that amount. The parties used \$904 for credit life insurance, \$3,461 to pay off a Dodge pickup, and \$1,962 to pay off a business debt. The bank obtained a security interest in the van and pickup, and a mortgage on the parties' house, which had been

unencumbered. The parties were required to pay \$563 each month on the debt.

Betty and Kenneth separated on February 8, 1991. At that time Kenneth quit his job at Cal-Car Service Company, where he earned \$19,450 in 1990. Kenneth took the van and moved to Seattle. The district court entered a temporary order on May 22, 1991, ordering Kenneth to make the payments on the van or to immediately surrender it to the bank. Kenneth did not make payments on the van, and it was later repossessed and sold for \$12,500. The amount of \$10,579 remained unpaid on the debt.

The district court entered its dissolution decree on January 27, 1992. The court divided the parties' property to give Betty the house, the pickup, her life insurance policies, and household goods. These assets had a value of about \$60,000. Betty was ordered to pay \$7,000 towards the debt to the bank. Kenneth was awarded his pension fund, life insurance policies, and property in his possession. These assets had a value of about \$8,000. Kenneth was ordered to pay the remainder of the debt to the bank, \$3,579.

The court ordered Kenneth to pay alimony of \$1 per year. The court noted that Kenneth appeared to be unable to make any support payments for Betty, and thus the court awarded Betty an increased property settlement. Kenneth was ordered to pay \$500 towards Betty's attorney fees. Kenneth has appealed.

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I. Our review in this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992).

II. Kenneth contends the property distribution was not equitable to him. He believes the house should be sold and the proceeds used to pay the debt to the bank. He asks that the remainder be divided equally between the parties. He points out that Betty received property worth about \$53,000, while he received property worth about \$4,421.

The partners in 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). We consider property division and alimony together in evaluating their individual sufficiency. Id. 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.

In this case the district court found Betty would be entitled to alimony, but awarded her a larger share of the property instead. The parties agreed the market value of the house is \$45,000. We determine Betty may occupy the house as long as she remains unmarried, maintains the home as her principal place of residence, or until her death,

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whichever occurs first. Upon the occurrence of any of the preceding events, the house should be sold and the net proceeds divided equally between the parties or their estate. If the property is held in joint tenancy, it is hereby terminated. We modify the dissolution decree to make this change.

III. Kenneth also contends that alimony was not appropriate in this case. He states that he and Betty have essentially the same amount of income. He asks us to eliminate the award of alimony of \$1 per year to Betty.

When determining the appropriateness of alimony, the court should consider the earning capacity of each party. In re Marriage of Oler, 451 N.W.2d 9, 13 (Iowa App. 1989). Also, the ability of the one spouse to pay should be balanced against the needs of the other spouse. Id.

Obviously the award of \$1 per year in alimony is a token amount. We find Kenneth has the ability to pay this amount. We affirm the award.

IV. Finally, Kenneth contends the court should not have required him to pay \$500 towards Betty's attorney fees. Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Hunt, 476 N.W.2d 99, 103 (Iowa App. 1991). To overturn an award the complaining party must show that the trial court abused its discretion. Id. We find no abuse of discretion here.

V. We affirm as modified. Costs of this appeal are assessed one-half to Kenneth and one-half to Betty.

AFFIRMED AS MODIFIED.