FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE MARRIAGE OF RONALD C. STACY
AND ELAINE F. STACY

Upon the Petition of )
**RONALD C. STACY,** )
Petitioner-Appellant, )
And Concerning )
**ELAINE F. STACY,** )
Respondent-Appellee. )

238

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Appeal from Iowa District Court for Pottawattamie County (No. DM 163D) - Leo Connolly, Judge.

Petitioner husband appeals from the decree dissolving the parties' marriage, asserting that the property division is inequitable. **AFFIRMED AS MODIFIED.**

Matthew J. Walsh of Council Bluffs for appellant.

Stephen L. Rosman of Finerty & Rosman, Council Bluffs, for appellee.

Considered by Oxberger, C.J., Donielson and Sackett, JJ.

**OXBERGER, C.J.**

This appeal concerns the economic provisions of a marriage dissolution. Petitioner Ronald Stacy appeals from the trial court's decree, asserting that the court divided the parties' marital assets in an inequitable manner. We affirm as modified.

Ronald and Elaine Stacy were married in 1943. They have three children, all of whom are now adults. During the marriage, Elaine worked primarily as a homemaker; she now works part-time as a seamstress and a product demonstrator. In addition, she has conducted a class in conjunction with Iowa Western Community College. Her gross income totals approximately $5,000.00 annually. Ronald is employed as a clerk at an auto parts business; his gross income is approximately $11,000.00 per year.

The decree dissolving the parties' marriage was entered in December of 1985. The trial court awarded Ronald the personal property then in his possession, his bed, desk, life insurance policy, and his checking account. The total value of these items was approximately $762.00. Elaine was awarded the parties' household goods and appliances, her life insurance policy, her bank account, the parties' 1978 automobile, and the unencumbered marital residence. The estimated value of these items totaled $40,397.00. Elaine was also instructed to pay $46.00 in marital debts. Further, Ronald was ordered to pay alimony of $50.00 per month and $250.00 of Elaine's attorney's fees.

The standard of review which we employ in an equitable proceeding such as this is de novo. Iowa R. App. P. 4. Thus, it is our responsibility to review the facts and the law, and to determine anew the rights of the parties where the issues have been properly presented and preserved. In re Marriage of Phipps, 379 N.W.2d 26, 27 (Iowa Ct. App. 1985). Although we give weight to the trial court's findings, particularly where the credibility of witnesses is implicated,

we are not bound by them. In the Marriage of Bornstein, 359 N.W.2d 500, 502 (Iowa Ct. App. 1984); Iowa R. App. P. 14(f)(7).

Our review of the trial court's division of the parties' marital assets is governed by well settled principles. The factors to be considered in ascertaining whether the trial court's determination was appropriate are set forth in Iowa Code section 598.21(1)(1985). The crucial inquiry upon review of a dissolution decree is whether the distribution is equitable given the particular circumstances of the case. In re Marriage of Wallace, 315 N.W.2d 827, 830 (Iowa Ct. App. 1980). We reject any rule based strictly upon a percentage division of the assets. In re Marriage of Lattig, 318 N.W.2d 811, 814 (Iowa Ct. App. 1982). Moreover, we are not required to attain a precisely equal division in property awards. In re Marriage of Anderson, 243 N.W.2d 562, 564 (Iowa 1976). Rather, the "division of property is based on each marital partner's right to a just and equitable share of the property accumulated as the result of their joint efforts." In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981). In addition, we note that the economic provisions of the decree are viewed together as an "integrated whole" rather than in isolation. In re Marriage of Behn, 385 N.W.2d 540, 543 (Iowa 1986).

The appellee contends that although the division of property appears inequitable when it is viewed in isolation, its fairness becomes apparent when the relatively small alimony award and the appellant's potential social security benefits are considered. In In re Marriage of Yates, 365 N.W.2d 49, 51 (Iowa Ct. App. 1985), we explicitly recognized that social security benefits may be considered in framing the financial portion of a dissolution decree. See also In re Marriage of Jones, 309 N.W.2d 457, 460 (Iowa 1981). Accordingly, we agree with the appellee's contention that the amount of the parties' future benefits is a proper factor for the trial court to examine. Similarly, we note that the

alimony award entered by the trial court is extremely low given the duration of the parties' marriage and the appellee's substantial contributions as a mother and a homemaker. See Iowa Code §598.21(3)(1985); In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972).

Nevertheless, we think that the trial court's division of the parties' assets is neither equitable nor justified by the criteria enumerated in section 598.21(1) of the Iowa Code. In arriving at this conclusion, we stress both parties' contributions to the acquisition of the home and to the well-being of their family. In addition, we note that both parties have a relatively modest income. In these circumstances, we do not think that the grossly disproportionate property division fashioned by the trial court is equitable. Consequently, we modify the decree to provide that the appellee should be allowed to occupy the home for a period of three years until the parties' social security benefits are receivable. At that time, the house should be sold and the equity therein divided evenly between the parties. See In re Marriage of Heinemann, 309 N.W.2d 151, 153 (Iowa Ct. App. 1981). Furthermore, we think that the appellee's alimony award should be increased to adequately reflect the amount of support to which she is entitled premised upon the factors set forth in Iowa Code section 598.21(3). See also In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972) (two considerations given substantial weight in the determination of alimony are the duration of the marriage and the ability of the spouse seeking support to engage in gainful employment); In re Marriage of Eastlund, 344 N.W.2d 276, 281 (Iowa Ct. App. 1983) (in ascertaining amount of alimony, court must consider earning capacities of each party, standard of living enjoyed, and ability to pay balanced against relative need.) Accordingly, we increase the appellee's alimony award to $100 per month until she remarries or dies.

In support of upholding the trial court's original distribution, the appellee has urged us to find the instant case indistinguishable from the supreme court's decision in In re Marriage of Reid, 212 N.W.2d 391 (Iowa 1973). In Reid, the court upheld the trial court's decree awarding the parties' home and nearly all of their personal property to the appellee. In so holding, the court observed that:

> [w]hile the disposition of the house and furniture is entirely in favor of the Petitioner, and that in some respects this is unjust, such injustice should be compensated for in the determination of the amount of support to be paid upon the part of the Respondent.

212 N.W.2d at 395.

We have carefully reviewed the Reid case, and find it factually distinct. In that case, the appellee was given custody of four children, ranging in age from seven to eleven. Furthermore, she was granted no alimony and only $70 per week for child support. By contrast, in the case at bar, the appellee has no child-rearing expenses, is employed, and been given an alimony award.

We similarly decline the appellee's invitation to extend our decision in In re Marriage of Orgren, 375 N.W.2d 710 (Iowa Ct. App. 1985). In Orgren, we recognized that a spouse's cohabitation was a "relevant factor" bearing upon that spouse's need for support. Id. at 712. The appellee urges us to apply a similar rationale in the instant case enabling us to find that the appellant's cohabitation reduces his living expenses thereby increasing his ability to pay alimony. The record, however, does not reveal the impact the cohabitation has had on the appellant's living expenses. Accordingly, we decline to accept the appellee's argument.

Finally, the appellee has requested that the appellant pay the attorney's fees and court costs incurred in correction with this appeal. Neither party, however, has submitted any information detailing the time or services for which

compensation is sought. As such, it is impossible for us to devise an equitable fee award. Therefore, we direct each party to pay his or her individual costs.

**AFFIRMED AS MODIFIED.**

Donielson, J. concurs; Sackett, J. concurs in part and dissents in part.

**SACKETT, J.** (concurring in part and dissenting in part)

I agree with the majority in their decision to modify the decree and permit Elaine to remain in the family home. I also agree with their decision to increase the award of alimony to Elaine. I cannot, however, concur with their decision to terminate the alimony if Elaine should remarry and I would provide the alimony not terminate on her remarriage. Elaine devoted 42 years to this marriage and assumed the majority of the custodial responsibility for the parties' three children. Because of these facts she obviously has been denied the opportunity for remunerative employment and career advancement. There is no justification for her losing alimony awarded for marital sacrifice on remarriage, nor is there any less reason for her to seek to become an economically productive person if she should remarry.

In all other respects, I concur with the majority.