

FILED

NOV 26 1985

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

**IN RE THE MARRIAGE OF JO ANN RUTH DE VRIES
AND SYBURN WILBUR DE VRIES**

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Upon the Petition of)

JO ANN RUTH DE VRIES,)

Petitioner-Appellant,)

Filed November 26, 1985

And Concerning)

SYBURN WILBUR DE VRIES,)

5-477

85-225

Respondent-Appellee.)

Appeal from the Iowa District Court for Marion County - M. C. Herrick,

Judge

Petitioner wife appeals from the decree dissolving the parties' marriage.

AFFIRMED

Fred J Kreykes, Pella, for petitioner-appellant.

James K Marvel and Steve A. Cotton of Marvel Law Office, Pella, for
respondent-appellee.

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

Petitioner wife appeals from the decree dissolving the parties' marriage asserting that the trial court should have awarded her alimony and required respondent husband to pay some portion of her attorney fees.

Petitioner Jo Ann Ruth De Vries and respondent Syburn Wilbur De Vries were married in 1955. They have two grown children. Jo Ann works at a Hy-Vee grocery store; she earns \$11,000 per year. Syburn works at Vermeer Sales and Service; he earns \$19,000 per year. Syburn also is entitled to receive income from a farm he rents and he also renders services to a friend who operates a furniture and drapery business. The compensation Syburn receives from these latter two activities is disputed.

The trial court awarded Jo Ann a car, a mo-ped, an IRA, her Hy-Vee retirement fund, and a \$33,137 property settlement in which she will receive a \$15,000 lump sum payment and the remainder will be paid in 60 monthly installments. The trial court awarded Syburn the parties' house, a car, a boat, an IRA, a life insurance policy, and some stock. The property division constituted a nearly equal division of the assets. The trial court denied Jo Ann's request for alimony and it directed the parties to pay their own attorney fees. Jo Ann has appealed.

Jo Ann contests the finding that alimony should not be awarded because she has a lower earning capacity than Syburn. She seeks monthly payments of \$600 until 1994.

I.

Our review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7). The alimony awarded is considered in conjunction with the property division. See In re Marriage of Conley, 284 N.W.2d 220, 223 (Iowa 1979); In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975). The relevant standard for this

case is that alimony is awarded according to each party's earning capacity, the present standard of living, and the relative needs of each party. See Iowa Code § 598.21(3); In re Marriage of Hitchcock, 309 N.W.2d 432, 436-37 (Iowa 1981). The parties differ on their disposable income and expenses.

A. Income. Jo Ann claims Syburn's disposable monthly income from all sources is \$1,200, while hers is \$248. Syburn claims his disposable monthly income is -\$72, while Jo Ann's is \$127. In determining net income, Jo Ann claims Syburn provides services to a furniture store which should be valued at \$333 per month and is entitled to receive \$542 per month in rental income from his farm. Syburn claims his evening services are gratuitous and that he does not ordinarily receive monetary compensation, but rather enjoys reduced prices on purchases from the store. As to the rental income, Syburn claims he has not received any payments in 1984 or 1985 from his tenant who is a relative. Jo Ann's net income is not disputed. We think Syburn's characterization of his net income provides an accurate assessment of his financial situation. We discount Jo Ann's claims accordingly.

B. Expenses. Syburn claims expenses of \$895 and a \$300 adjustment. Jo Ann submits his expenses should be \$300 less because he is deducting the expense of his IRA contribution and charitable contributions which are voluntary. Syburn also claims \$300 in adjustments for his monthly property settlement payment. Syburn further characterizes this same \$300 adjustment as income for Jo Ann. Syburn submits Jo Ann's expenses of \$986 are too high. He claims the \$316 food expense is exorbitant.

While Jo Ann raises meritorious claims regarding Syburn's expenses and adjustments, we hold that an alimony award is not warranted because his earning capacity does not sufficiently exceed Jo Ann's. Although some disparity in the parties' disposable income may exist, it is not of such a degree to merit

awarding alimony. Jo Ann has a net income of \$813 per month. She is 48 years old and healthy. While both parties' disposable income is subject to differing opinions, Jo Ann's needs are adequately addressed without awarding alimony. Syburn has an undisputed net monthly earnings of \$1,122 and contested expenses of \$895, Jo Ann's net earnings are \$813 with \$986 in disputed expenses.

II.

Jo Ann seeks \$2,000 in attorney fees. The primary consideration in awarding attorney fees in a dissolution proceeding is the resources of the parties. In re Marriage of Lattig, 318 N.W.2d 811, 817 (Iowa Ct. App. 1982). The court considers the resources of the party requesting such fees, the ability of the other party to pay, and whether the requesting party was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981).

After reviewing these criteria we decide not to award attorney fees. Jo Ann has an adequate income and Syburn is not in a better position to pay such expenses. The trial court's decision is affirmed.

AFFIRMED.