FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF DONALD M. LeMAR AND BETTY C. LeMAR

Upon the Petition of	)	220
DONALD M. LeMAR,	)	
Petitioner-Appellant,	)	Filed March 23, 1988
And Concerning	)	
BETTY C. LeMAR,	)	7-599 87-451
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Muscatine County (No. 3203-184), Margaret S. Briles, Judge.

Petitioner husband appeals from the provisions of the decree of dissolution entered by the district court. **AFFIRMED AS MODIFIED.**

John C. Stevens of Lewis & Stevens, Muscatine, for petitioner-appellant.

David L. Scieszinski, Wilton, for respondent-appellee.

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

DONIELSON, J.

Petitioner husband appeals from the provisions of the decree of dissolution entered by the district court. We affirm as modified.

Petitioner Donald M. LeMar and respondent Betty C. LeMar were married in 1951. The parties separated on June 1, 1982, and a petition of dissolution was filed on January 5, 1984. The parties have three adult children. At the time of the hearing Donald was fifty-six years old, employed by the City of Muscatine, and earning $31,500 per year. Betty is fifty-three years old. She does office work for an insurance company and earns $15,000 per year. The district court divided the assets and awarded Betty $100 per week in alimony until Donald retires or reaches age sixty-five. After Donald's Rule of Civil Procedure 179(b) motion, the district court amended the decree to award Betty $75 per week in alimony.

Our scope of review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

I. The trial court found that Betty had been substantially disadvantaged by the marriage in that she devoted her time to the home and now was not able to have a higher paying job. Donald claims there was no evidence that Betty was substantially disadvantaged or would have had a different job if she had not married. Donald states that the marriage was an advantage to Betty because she shared his earnings.

We believe the trial court corrected any misinterpretation that may have resulted from its initial finding that Betty had been "substantially disadvantaged by the marriage" by clarification in its order and decree in response to Donald's Rule 179(b) motion for new trial or in the alternative, to modify decree. It is clear from the trial court's opinion that it took into consideration the dictates

of Iowa Code section 598.21(1)(c), which requires consideration of the contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care service, as well as section 598.21(1)(f), which requires consideration of work experience, absence from the job market, and custodial responsibilities. We thus find no error occurred with respect to this particular issue.

II. Donald claims the trial court erred in granting an excessive property settlement to Betty. Donald also argues that Betty should not be entitled to share in his future earnings and savings from the date she moved out of the marital home. He states that Betty went to live with another man and by doing so breached the marital contract. Donald wants the property to be valued as of the date of the separation and then divided.

We find the trial court properly rejected Donald's argument; the fault of either party is not to be considered in a marriage dissolution action. In re Marriage of Williams, 199 N.W.2d 339, 344 (Iowa 1972). We have reviewed the property division in accordance with those factors set forth in section 598.21(1). See In re Marriage of Hoak, 364 N.W.2d 185, 194 (Iowa 1985). We find the trial court's distribution of the property to be just and equitable and affirm it on appeal. We reject Donald's argument that the property should be divided equally.

III. Donald argues that the trial court erred in awarding alimony to Betty. Betty requested alimony for only five years. Donald states that the award of alimony is based on the assumption that he would continue to earn $31,500 per year until retirement, which the trial court knew was erroneous because he had motioned to reopen the case to present evidence of budget cuts in his department which he felt would result in reduced pay.

The payment of alimony must be determined in light of all the circumstances. In re Marriage of Bevers, 326 N.W.2d 896, 900 (Iowa 1982). When

determining the appropriateness of alimony, the trial court must consider the earning capacity of each party, present standards of living, and ability to pay balanced against the relative needs of the other. In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983). Iowa Code section 598.21(3) informs us that alimony is awarded out of fairness, according to the particular facts of each case. We think the trial court's award of alimony in this case was proper both as to amount and duration. The trial court noted in its ruling on Donald's Rule 179(b) motion that alimony shall terminate upon Betty's remarriage. We supplement this provision by adding that alimony shall also terminate upon Betty's cohabitation with another man.

IV. Donald lastly argues the trial court erred in declining to reopen the case. The court refused to reopen the case, stating that the decree could be modified if there was a substantial change in circumstances. Donald points out that the property division could not be changed. He asks for a new trial based on the evidence of the parties' earning capacity at the present time.

We find that the trial court did not abuse its wide discretion in reopening a case for reception of additional testimony. Sulter v. Freight Sales Co., 357 N.W.2d 38, 42 (Iowa App. 1984).

V. Betty requests attorney fees on appeal. In evaluating such a request, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). We order Donald to pay $500 toward Betty's appellate attorney fees.

AFFIRMED AS MODIFIED.

Schlegel, J., concurs; Oxberger, C.J., dissents.

OXBERGER, C.J. (dissenting)

I respectfully dissent. I would affirm the trial court.