

FILED

DEC 30 1981

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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JAMES E. KONGABLE AND PAULA K. KONGABLE

Upon the Petition of	)	
JAMES E. KONGABLE,	)	Filed December 30, 1981
Petitioner-Appellant,	)	
And Concerning	)	
PAULA K. KONGABLE,	)	1-390
	)	2-66665
Respondent-Appellee.	)	

Appeal from Black Hawk District Court - L. John Degnan, Judge.

Petitioner husband appeals from the economic provisions of the parties' dissolution decree, asserting that the property division was inequitable and that the wife should not have been awarded alimony or attorney's fees. AFFIRMED.

Michael M. Pedersen of Martin, Keith & Pedersen, Waterloo, for petitioner-appellant.

Joseph Nutting of Fulton, Frerichs, Nutting, Martin & Andres, Waterloo, for respondent-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

Petitioner husband appeals from the economic provisions of the parties' dissolution decree, asserting that the property division was inequitable and that the wife should not have been awarded alimony or attorney's fees. Respondent has requested that petitioner be ordered to pay her attorney's fees on appeal. Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. We affirm.

I.

The parties were married on November 12, 1977, and separated in June of 1980, without issue. At the time of their marriage, they lived in Missouri and both had relatively low paying jobs until petitioner obtained work at the John Deere Tractor Works in Waterloo, Iowa, as an apprentice tool and die maker. Respondent gave up her employment in Missouri and moved to Waterloo, Iowa, with petitioner. After the parties separated, respondent moved back to Missouri and was earning \$134.00 (gross) per week while petitioner remained in Waterloo, Iowa, earning over \$500.00 (gross) per week.

When the parties formally separated in June of 1980, they drafted a written agreement which designated which items of personal property each party would receive. The agreement also provided that the petitioner would occupy and make payments on the parties' house until the date of sale. They agreed the proceeds of the sale would be equally divided and that each party would have the option to buy out the other's equity in the house at any time. Petitioner also agreed to pay respondent \$160.00 per month alimony until her remarriage. The trial court's decree, entered on March 5, 1981, substantially conformed to the above agreement, but limited the award of alimony to a maximum of five years.

II.

Petitioner contends that the trial court's property division was inequitable because it was based upon an inequitable agreement entered into by the parties when they separated. We have closely examined the items awarded to each party by the agreement and find that the division was equitable. Respondent seems to receive more than half of the parties' personal property if the items are simply counted. However, both parties received approximately the same amount of major household items. Petitioner received a 1977 four-wheel drive pickup, a pool table, a roll top desk, a dining room set, encyclopedias, and a movie camera and projector. Respondent received a 1967 Mustang, a stereo, a color television, and a living room set. We find this was an

equitable property division and affirm the trial court.

III.

Petitioner asserts that the trial court's award of alimony to respondent was not justified. Petitioner cites Behrle v. Behrle, 228 N.W.2d 25 (Iowa 1975), and argues that since both parties are young and both exit this marriage of short duration with earning power, an award of alimony is not justified. We disagree. During the course of their marriage, petitioner's earning power significantly increased when the parties moved to Iowa to pursue his career objectives. He currently has a weekly gross income four times that of the respondent. Respondent's earning power remained stagnant during the marriage. The trial court's award of \$160.00 per month alimony for five years is necessary to assist respondent in becoming self-supporting.

We also affirm the trial court's award of \$750.00 in attorney's fees to respondent. Petitioner is ordered to pay \$500.00 of the attorney's fees respondent incurred due to this appeal and the costs of this appeal.

AFFIRMED.

All judges concur, except Oxberger, C.J., who dissents.

OXBERGER, C.J., (dissenting).

I dissent. I do not feel alimony is appropriate in this case. Mr. Kongable is 21 years old and Mrs. Kongable is 25 years old. They were married three years. Both Mr. and Mrs. Kongable were employed throughout the marriage. The marriage did not negatively affect either party's work capabilities.

The agreement of the parties was signed prior to Mr. Kongable obtaining a lawyer. As soon as he acquired a lawyer, Mr. Kongable repudiated the agreement. I would give no effect to the agreement.

Alimony is not designed to equalize the income of two people married for three years.