

FILED

APR 23 1986

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ELEANOR T. EDENS AND ROBERT E. EDENS

**UPON THE PETITION OF
ELEANOR T. EDENS,**

Petitioner/Appellant/Cross-Appellee,

**AND CONCERNING
ROBERT E. EDENS,**

Respondent/Appellee/Cross-Appellant.

)
) Filed April 23,
) 1986

) 5-684
) 84-1917

Appeal from the Iowa District Court for Clinton County (No. CD 8606),
David J. Sohr, Judge.

The petitioner appeals from the trial court's denial of an award of alimony,
from the property division, and from denial of an award to her of attorneys fees.
AFFIRMED AS MODIFIED.

James D. Bruhn of Shaff, Farwell & Senneff, Clinton, for
petitioner/appellant/cross-appellee.

Michael J. Koury, Jr., and Jack E. Dusthimer of Goebel & Koury, Davenport,
for respondent/appellee/cross-appellant.

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

11/10/85

OXBERGER, C.J.

The petitioner appeals from the trial court's denial of an award of alimony, from the property division, and from denial of an award to her of attorneys fees. The respondent cross-appeals, contending child support should have been awarded, and that the property award was inequitable. We affirm as modified.

The parties divorced after twenty-four years of marriage. The respondent was awarded custody of the parties two minor children, Rhonda, aged seventeen at the time of trial, and Jennifer, aged fifteen at trial. The parties also have an adult child.

The petitioner, Eleanor, has a high school education and has been employed throughout the marriage. She currently earns \$9460 per year as a clerical worker. The respondent, Robert, was discharged from the Air Force soon after the parties were married and he attended college for five years while Eleanor supported the family. He now has a degree in civil engineering and is employed as a civil engineer with an annual salary of \$35,000.

Each party contends the property award was inequitable. The parties had several investments, including real estate in Wisconsin, which was awarded to Eleanor. She says this property produces monthly income of \$320, but the mortgage, taxes, insurance, and other expenses of the property total \$550 per month. She wants this property given to Robert, and instead she says it would be proper to give her a cash award. The parties also dispute several valuations of the property. The court did not specify a value for the property of the parties, except for the Wisconsin real estate which it found to be valued at \$55,000 to \$60,000. Eleanor says the proper figure to use is \$54,400, the figure given by Robert's appraiser, despite the fact that her appraiser indicated the property was worth \$72,000, and she stated at trial its value was \$69,900. We find the court's figure of \$55,000 reflects its assessment of the value based upon its decision

as to the credibility of the witnesses. While we review the facts here de novo, we give weight to the trial court findings, especially where the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7). We accept the court's finding on this point.

Eleanor says the total net assets awarded her are worth \$43,656, and that Robert's net worth after the property division is \$45,506. The trial court found that Eleanor was receiving more assets than Robert. Eleanor reaches her conclusion by using figures provided during trial, and including a value of \$3150 for a 1981 Chevette awarded to Robert, \$550 for a color television he was also awarded, \$8000 in a promissory note owed to Robert, along with \$5000 worth of furniture purchased from a joint marital fund. Robert says that the 1981 Chevette should not be included in the figures because, although title to the car is in his name, the automobile is in Ohio with one of the parties' daughters, and she makes all payments on the vehicle. He says in reality the car belongs to her and contends the court's statements recognize this. He also says the television is one and one-half years old and should not be assigned its new value of \$550. Robert claims he will never see a return on the promissory note because the business to which he loaned money failed. Finally, he says that consideration should also be given to the decreased value of the furniture he bought.

We find that the 1981 Chevette should not be included in the assets awarded to Robert. The record does not show any serious dispute to his contention that the automobile belongs to the daughter. We agree that all the evidence shows Robert will never be repaid any of the money loaned to his friend to start a business. We do not agree, however, that the \$5000 in furniture should show a lesser value because of depreciation. Robert bought this property with marital funds belonging to the parties for his own personal use. We also agree there is no evidence to show a decline in value of the television set. The only figure

presented to the court was the original price of \$550 and Robert admits his figure of \$400 is just a guess.

We further find that Robert should be awarded the Wisconsin property since he will be in a better position to manage the expenses in excess of the income the property generates. Instead, we find that Eleanor should be awarded a cash settlement in lieu of this property. Accordingly, we find the property division should be made as follows:

<u>Eleanor</u>		<u>Robert</u>	
<u>Assets</u>			
Cash Award	\$16,037.00	1982 Honda	\$7,000.00
Trust	2,287.00	MoPeds	380.00
1978 Honda	1,600.00	Life Insurance	5,020.00
Moped	195.00	IRA	2,447.71
Thrift Certificate	11,549.00	Profit Sharing	6,740.00
Venture Fund	4,044.00	Boat	600.00
Note	1,000.00	Guns	2,155.00
Tax Refund	199.00	Venture Fund	4,044.00
Furniture	<u>2,340.00</u>	Household goods	2,395.00
		Furniture	5,000.00
		Wis. Property	<u>55,000.00</u>
	\$39,256.00		<u>\$91,331.71</u>
<u>Liabilities</u>			
	-0-	Wis. Property	\$33,963.00
		Cash Award	16,037.00
		Attorneys	700.00
<u>Net Worth</u>			
	\$39,256.00		\$40,631.71

We find this nearly equal division to be equitable in light of the contributions made by each party to acquiring the assets and in considering the other factors set out at section 598.21(1) of the Code. The \$16,037 cash award to Eleanor shall be made over a three-year period, with \$5371 due 90 days from the filing of the procedendo of this opinion, and \$5333 due May 1, 1987, and on May 1, 1988. Interest shall accrue on the unpaid balance at the rate of ten percent per annum from the date first payment is due.

Robert argues that Eleanor is not entitled to alimony because of the liquidity of the assets awarded to her in the property division. While we do consider the property award when determining whether alimony should be paid, pursuant to section 598.21(3)(c), the purpose of awarding alimony is to provide for a spouse's obligation to support the other spouse, while property divisions are made in order to equitably award the property acquired through the efforts of both parties. Knipfer v. Knipfer, 259 Iowa 347, 353, 140 N.W.2d 143 (1966). Considering the disparities in income of the parties, we find that it would be equitable to provide for alimony. We consider the property award, that no child support is awarded, and other factors codified at section 598.21(3) of the Code. We hold that Robert should pay \$250 per month in alimony.

When determining a child support award, we consider the property award, alimony award, and other factors at section 598.21(4) of the Code. Robert says he will be facing considerable expenses with the girls since they need orthodontic treatment and the youngest daughter wants to go to medical school. Eleanor has been awarded assets which are liquid, but she will still be living on an income which is one-third of Robert's, even considering the alimony award. In balancing these factors, we agree with the trial court that no child support should be awarded.

We also agree with the trial court that in considering the needs of the requesting party and the ability of the other party to pay, each party should pay their own attorneys fees. Locke v. Locke, 263 N.W.2d 694, 696 (Iowa 1978). In addition to these factors, we note the results on appeal when deciding whether to make an award of appellate attorneys fees. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981). We find that Robert shall contribute \$600 towards Eleanor's attorneys fees incurred on appeal.

AFFIRMED AS MODIFIED.