FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ALBERT EDWARD MYERS, JR., AND MARJORIE LORRAINE MYERS

Filed August 29, 1985

UPON THE PETITION OF
ALBERT EDWARD MYERS, JR.,

Petitioner-Appellant,

AND CONCERNING
MARJORIE LORRAINE MYERS,

Respondent-Appellant.

5-296
84-1389

Appeal from the Iowa District Court for Wapello County, Richard J. Vogel, Judge.

Petitioner-husband appeals from the property division and permanent alimony award made in the decree dissolving the parties' marriage. **AFFIRMED AS MODIFIED.**

David J. Hester of Johnson, Bauerle, Hester & Walter, Ottumwa, for petitioner-appellant.

Michael C. Vinyard of Vinyard & Curran, Ottumwa, for respondent-appellee.

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

Husband appeals the property and alimony awards of the parties' divorce decree. We affirm as modified.

Petitioner Albert Edward Myers, Jr, and respondent Marjorie Lorraine Myers were married in 1956. They have had eight children, one of whom was still a minor at the time of the dissolution decree. Albert is forty-six years old, he works at John Deere, earning about $24,000 per year. Marjorie is forty-five years old, she works at Jones' cafe, earning about $5200 a year.

The trial court awarded Marjorie custody of the parties' minor child and directed Albert to pay child support of $75 per week. The trial court directed Albert to pay permanent alimony of $50 per week until his child support obligation ended and then $100 per week, whether or not Marjorie remarried. The trial court awarded Albert the parties' house and personal property for a total of either $13,222 (according to Albert) or $26,672 (according to Marjorie). The trial court awarded Marjorie personal property valued at $1005 and a $7000 property settlement. The trial court directed Albert to pay debts of $13,310.24 and Marjorie to pay debts of $480. The trial court ordered each party to pay his or her own attorneys fees. Albert has appealed the property and alimony provisions.

The issue in dispute regarding the property division is the value that should be assigned to the home. In his financial statement Albert said the home was worth $20,000. He later changed this figure after consulting with a real estate agent. He now says it is worth no more than $8000 because of the depressed market in Eldon. He notes that although there were some improvements made on the home, it was purchased in 1970 for $5500 and still needs some repair. His expert witness did not appear, and instead Albert repeated his agent's quote of the market value, and presented a letter to the court from the agent. Albert says if his figures

are accepted regarding the value of the house, his resulting net worth is much lower than Marjorie's, and she is not entitled to the lump sum award.

Marjorie's attorney objected to the presentation of the letter as hearsay and not the best evidence available. The figure presented by the agent is based upon a "quick cash sale." Albert said he would only sell the house for cash and not on contract. No figures were presented as to what the house would sell for on contract. He also seriously doubted whether he could find a cash buyer for the house.

Our scope of review in this case is de novo. Iowa R. App. P. 4. However, we are to give weight to the trial court findings, especially where a determination of the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7). We believe this issue involves a decision by the court of the credibility of the witnesses. We find the court had good reason to accept the figure of $20,000, since Albert had already stipulated to that figure, his expert witness did not appear, and that witness based his decision upon a cash sale. Accordingly, we find no error in this part of the trial court's ruling and affirm the property award.

Albert also says the court erred in awarding alimony to Marjorie. In considering the various factors to be reviewed in determining an alimony award, as set out at section 598.21(3) of the Code, we note that Albert has a much better earning potential than Marjorie. Although he says she should become self-supporting at the standard to which she has become accustomed, there is considerable disparity in their incomes. In addition to an income of $24,000 earned in 1983, Albert was expected to earn $25,000 in 1984, a $100 bonus and either quarterly or semiannual cost-of-living adjustments. Albert also receives medical benefits and a retirement plan through which his employer could pay him in excess of $600 per month at the age of sixty-two.

Marjorie earns $2.00 per hour working forty-five hours a week. Her employer is seventy-three years old and has considered closing the cafe where she is employed. She has an eleventh-grade education with no special training or skills. The couple was married nearly thirty years at the time of the divorce.

Looking at all the factors set out at the Code, and the property division, we find it was equitable for the court to make the alimony award it ordered. However, we find the alimony should terminate if Marjorie remarries, cohabitates with an unrelated adult male, or dies. We so modify the alimony award, and affirm it in all other respects.

Marjorie requests contribution by Albert to her attorneys fees and costs on appeal. We look to Marjorie's needs, Albert's ability to pay, and the results on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981). Considering all these factors, particularly the disparate incomes of the parties, we hold Albert shall pay $540 of Marjorie's fees and all of the costs.

AFFIRMED AS MODIFIED.