

FILED

SEP 24 1985

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF CHYRL A. WALKER AND WILKIE L. WALKER

Upon the Petition of

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CHYRL A. WALKER,

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Petitioner-Appellee/
Cross-Appellant,

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Filed September 24, 1985

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And Concerning

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WILKIE L. WALKER,

)

5-377
84-1528

Respondent-Appellant/
Cross-Appellee.

)

Appeal from the Iowa District Court for Polk County - Luther T. Glanton,
Jr., Judge.

Respondent husband appeals from the economic provisions of the dissolution
decree. Petitioner wife cross-appeals requesting attorney fees. **AFFIRMED**
AS MODIFIED.

James E. Brick and Ann Marie Brick of Brick, Seckington, Bowers, Swartz
& Gentry, Des Moines, for respondent-appellant/cross-appellee.

Ronald L. Anderson and Barbara G. Barrett of Dickinson, Throckmorton,
Parker, Mannheimer & Raife, Des Moines, for petitioner-appellee/cross-appellant.

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

Petitioner Chyrl Walker and respondent Wilkie Walker were married in 1967. They have two children, Dee Ann, born in 1967, and Michael, born in 1973. Chyrl is thirty-nine years old and was not employed outside the home for the first thirteen years of the marriage. However, the last four years she has worked part-time at Drake University as a typist. She earns \$4.25 an hour and nets about \$60 every two weeks. Chyrl intends to enroll in a two-year legal assistant program at the area community college.

Wilkie is fifty-seven years old. He is a carpenter and the income from his carpentry work was expected to be \$12,000 in 1984.

The trial court awarded Chyrl custody of the parties' two children and directed Wilkie to pay child support of \$250 per child per month. Wilkie was also ordered to pay alimony of \$300 per month for two years. The parties had accumulated substantial property during the marriage; its value totaling over \$400,000 at the time of trial. The trial court awarded Chyrl 46% of the property and Wilkie 54% because Wilkie brought property into the marriage, and Chyrl received the majority of the liquid assets. The trial court directed the parties to pay their own attorney fees and half of the court costs.

On appeal, Wilkie asserts that (1) the trial court's alimony and child support awards are not supported by the evidence and (2) the property division is inequitable. On cross-appeal, Chyrl asserts that the trial court should have awarded her attorney fees. She also requests attorney fees on appeal.

Our review is de novo. In re Marriage of Deck, 342 N.W.2d 892, 894 (Iowa Ct. App. 1983). We give weight to the fact findings of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7).

Property Division. Iowa Code section 598.21(1) (1985) requires the court to equitably divide all property of the parties and lists criteria for consideration.

We reject any rule based on a percentage division of the assets. In re Marriage of Lattig, 318 N.W.2d 811, 814 (Iowa Ct. App. 1982). We are not bound to achieve a precisely equal division in property awards. In re Marriage of Anderson, 243 N.W.2d 562, 564 (Iowa 1976).

Wilkie contends that the property division is inequitable because the trial court based its allocation of property in the decree on inaccurate valuations. The parties stipulated at the pre-trial conference that the real estate appraisals done by Ben Sapp would be considered the fair market value for the purpose of dividing the assets. The trial court did not abide by this stipulation in its decree, but instead incorporated Chyrl's proposed settlement figures. There is no justification stated in the decree nor basis in the evidence for digressing from the stipulated values. Therefore, the property division of the decree is set forth below utilizing the appraisal values of the real estate.

WILKIE

<u>Asset</u>	<u>Net Value</u>
Hunter Avenue	\$ 47,500.00
17th Street	29,250.86
(AV 103,000 - E 73,749.14)	
½ Rittgers' Acres	4,971.745
½ (AV 35,000 - E 25,056.51)	
Tonka	11,321.33
(AV 33,000 - E 21,678.67)	
Wade Lot	6,000.00
Arkansas Lot	10,000.00
Johnson Property	1,712.08
Value of Real Estate	<u>110,756.01</u>
Other Property	48,788.89
TOTAL PROPERTY	<u>\$159,544.90</u>

CHYRL

<u>Asset</u>	<u>Net Value</u>
16th Place	\$ 29,693.81
(AV 73,000 - E 43,306.19)	
S.W. 1st	0
(AV 17,500 - E 20,915.24)	

S.W. 9th	17,977.76
(AV 63,800 - E 45,822.24)	
Forestdale	12,450.00
$\frac{1}{2}$ Rittger's Acres	4,971.745
Value of Real Estate	65,093.315
Other Property	102,039.54
TOTAL PROPERTY	\$167,132.85

AV = Appraised Value
E = Encumbrance

The trial court correctly acknowledged in its decree that Wilkie is entitled to a slightly larger share of marital assets. Wilkie owned some real estate, several automobiles, and had \$10,000 in savings when the parties were married. Given our adjustment in the property valuation, we award Wilkie the IDS stock which he had purchased soon after the parties were married with his \$10,000 of savings. The IDS stock was valued at \$21,299.55 at the time of trial. This modification allows Wilkie to receive \$180,844.45 in marital assets and Chyrl to receive \$145,833.30 in marital assets. The remainder of the trial court's property division is affirmed.

Alimony. Wilkie claims that the evidence does not support an alimony award of \$300 per month for two years. The basis for his claim is that his income for 1983 was only \$12,662 and he expected to earn only \$12,000 from his carpentry work in 1984.

The criteria to be considered in awarding alimony have been codified in Iowa Code section 598.21(3) (1985). The spouse with the lesser earning capacity is entitled to be supported, for a reasonable time, in a manner as closely resembling the standards existing during the marriage as possible. In re Marriage of Hayne, 334 N.W.2d 347, 351 (Iowa Ct. App. 1983).

The parties were married for seventeen years. Chyrl was primarily a homemaker throughout the marriage. She presently earns approximately \$120 a month from her part-time employment while her monthly expenses total more

than \$1,800 per month. Chyrl will also receive approximately \$7,000 annually in interest income from the assets awarded to her.

Wilkie's affidavit of financial status stated that his living expenses were well over \$2,000 a month. However, this affidavit was written before Chyrl was awarded custody of the children. It is not evident from the record exactly what Wilkie's expenses are when he is not responsible for the physical care of the children. We know that Wilkie no longer has the monthly \$400 house payment, but otherwise we can only determine that his expenses are less than stated.

We are aware of the recession's effect on the construction industry in recent years which resulted in the decline of Wilkie's earnings from \$38,000 in 1978 to \$12,000 in 1984. However, in light of the length of marriage, the disparity in the parties' earning capacities, and the substantial property awarded to Wilkie, we conclude that the alimony award is appropriate.

Child Support. Wilkie also contends that there should be a modification in the amount of child support awarded. He claims that \$250 per month per child is excessive. We must consider the factors enunciated in Iowa Code section 598.21(4) (1985) to determine the propriety of an award of child support.

Both parties have an obligation to support their children, but this obligation is not necessarily to be borne equally by them. It should be apportioned according to the fair ability of each to contribute. In re Marriage of Heineman, 309 N.W.2d 151, 153 (Iowa Ct. App. 1981).

The disparity between the financial positions of Chyrl and Wilkie indicates that Wilkie should provide the greater portion of support necessary for the children. We are confident that the amount awarded by the trial court will not be unduly burdensome to Wilkie.

Attorney Fees. The trial court is vested with considerable discretion in allowing attorney fees to be awarded in dissolution cases. In re Marriage

of Giles, 338 N.W.2d 544, 546 (Iowa 1983). In light of the property division, we find no error in the trial court's final decision that each party should pay their own attorney fees.

In evaluating a request for attorney fees on appeal, the court must consider the needs of the party making the request and the ability of the other to pay. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981). Here we find that each party shall be responsible for his or her own attorney's fees. Costs are assessed equally to the parties.

AFFIRMED AS MODIFIED.

Snell and Sackett, JJ., concur; Oxberger, C.J., dissents.

I would affirm the trial court.