

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ELIZABETH ANN NEVSHEMAL
AND JOHN ANTHONY NEVSHEMAL

FILED

MAR 09 1988

CLERK SUPREME COURT

Upon the Petition of	)		285
ELIZABETH ANN NEVSHEMAL,	)	Filed March 9, 1988	
Petitioner-Appellee,	)		
And Concerning	)		
JOHN ANTHONY NEVSHEMAL,	)	<u>7-492</u>	
Respondent-Appellant.	)	87-177	

Appeal from the Iowa District Court for Muscatine County (D3719-1085),
Edward B. DeSilva, Jr.

Respondent husband appeals the decree dissolving the parties' marriage.
AFFIRMED AS MODIFIED.

J.W. Conway and Marie Prince-Cohen of Conway & Prince-Cohen,
Muscatine, for respondent-appellant.

Gary M. Lane of Wehr, Berger & Lane, Davenport, for petitioner-appellee.

Considered by Schlegel, P.J., and Hayden and Sackett, JJ.

PER CURIAM

Respondent husband appeals the decree dissolving the parties' marriage. He asserts that (1) the property division is inequitable, (2) the trial court should not have awarded petitioner wife alimony, (3) the trial court should not have awarded petitioner wife attorney fees, and (4) his child support award is excessive. Petitioner wife requests attorney fees on appeal. Our scope of review is de novo. Iowa R. App. P. 4. We affirm as modified.

Petitioner, Elizabeth Ann Nevshemal, and respondent, John Anthony Nevshemal, were married in 1966. They have five children: Christine, born in 1967; John Jr., born in 1968; Martin, born in 1969; Michael, born in 1973; and Joseph, born in 1976. During most of the marriage, Elizabeth took care of the parties' children and maintained the home. At the time of trial, she was working as a typesetter, with a net earning of \$688.44 per month. She is now forty-two years old. At the time of trial, John was employed as an associate professor at a university, with a net earning of \$1,958.36 per month. He also has income from stock dividends and consulting. John is now fifty-one years old.

In its dissolution decree, the trial court set up a joint custody arrangement with Elizabeth having physical care of John Jr., Martin, and Joseph, and John having physical care of Michael. The trial court ordered John to pay Elizabeth child support of sixty-five dollars per week per child, including Christine, the oldest, who is in college, and \$2,000 toward Elizabeth's attorney fees. The trial court ordered the parties' house sold and the net proceeds equally divided between the parties, subject to a lien in Elizabeth's favor for \$7,000, with ten percent interest from the date of the dissolution decree. The trial court awarded each party the personal property in his or her possession and the individual retirement accounts in his or her names. The trial court awarded Elizabeth a car,

some stock, and some bank accounts. The trial court awarded John a van, his pension fund, some stock, and some bank accounts. In ruling on posttrial motions, the trial court awarded Elizabeth \$100 per month alimony.

Our analysis of the property division is governed by whether the distribution is equitable under the specified facts of the particular case. In re Marriage of Bornstein, 359 N.W.2d 500, 503 (Iowa App. 1984). Factors to consider are set forth in section 598.21(1) of the Iowa Code. Viewing the facts before this court in light of these factors, we conclude that the trial court's distribution was fair and equitable. John's initial argument is that the proceeds from the sale of the homestead were not equitably divided due to a \$7,000 judgment lien awarded to Elizabeth which John was to pay from his share of the equity in the house. We believe that such a division was equitable in light of the court's award of the pension fund to John. The trial court noted that this manner of dividing the proceeds of the sale of the parties' house was meant to account for Elizabeth's substantial contribution in managing the home and raising the children. We therefore do not agree with John that the division was inequitable.

John also contends that the trial court erred in valuing the pension account at its full value, rather than discounting it to its present value. We see nothing wrong with the trial court's method of valuation. Although the practice of discounting retirement pensions to their present value has been approved of, it is not required in cases such as this where the pension is not divided between the parties. Although the trial court's property division was not equal, we hold that it was equitable. See In re Marriage of Conley, 284 N.W.2d 220, 223 (Iowa 1979) (in dividing property, equality need not be achieved with mathematical exactness).

The principles governing the award of alimony are found in section 598.21(3) of the Iowa Code. In this case, we believe the trial court correctly awarded

alimony to Elizabeth. She is relatively uneducated and without the significant job skills that are necessary to successfully enter the job market. Thus, she has a need for support. Furthermore, John's ability to pay, when balanced against Elizabeth's needs and earning capacity, justify the alimony awarded here.

John contends that the trial court's award of \$2,000 in attorney fees to Elizabeth was not proper. Attorney fees are not recoverable in a dissolution as a matter of right, but rest within the trial court's discretion and depend upon one spouse's financial needs and the other spouse's ability to satisfy them. Locke v. Locke, 263 N.W.2d 694, 696 (Iowa 1978). Considering John's ability to pay, we believe the trial court's award of \$2,000 for attorney fees to Elizabeth was proper and should be affirmed.

The factors governing an award of child support are set forth in Iowa Code section 598.21(4). We have considered the needs of the children as well as the financial resources of each parent and conclude that John's child support obligation should be modified to fifty dollars per week per child. This amount, when coupled with Elizabeth's resources, would be adequate to meet the needs and expenses of the children. Under the circumstances, the amount ordered by the trial court is excessive since after payment of the child support and alimony obligations.

Finally, Elizabeth requests that John pay her attorney fees incurred on this appeal. Factors to consider whether determining whether appellate attorney fees are appropriate include the parties' abilities to pay and the fact that the party requesting the award was obligated to defend the trial court's decision. In re Marriage of Stom, 226 N.W.2d 797, 800 (Iowa 1975). We hold that petitioner shall be allowed the sum of \$500 toward her attorney fees in connection with this appeal.

AFFIRMED AS MODIFIED.