



IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF GALEN P. COOK and PHYLLIS L. COOK

Upon the Petition of	)	
GALEN P. COOK,	)	Filed September 9, 1977
	)	
Appellant,	)	
	)	
And Concerning	)	
	)	
PHYLLIS L. COOK,	)	190
	)	<u>2-59118</u>
Appellee.	)	

Appeal from Davis District Court - Arthur A. McGiverin, Judge.

Appeal from economic provisions of a dissolution decree. Affirmed as modified.

Harris and Pettit, of Bloomfield, for appellant.

Kenneth L. Keith, of Dull, Keith and Beaver, of Ottumwa, for appellee.

Submitted to Allbee, C.J., Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Petitioner, Galen Cook, appeals the property settlement effected by the decree dissolving his marriage to the respondent, Phyllis Cook.

Our review is de novo and with respect to the economic determinations which we make in this case we apply the criteria stated in *Schantz v. Schantz*, 163 N.W.2d 398, 405 (Iowa 1968) excluding considerations of fault. Precedent is of little value in making such determinations and each case must be determined on its own peculiar circumstances.

The parties were married for 30 years. The two children born of the marriage were adults at the time of trial. Galen who was 53 years old at the time of trial, had been a farmer until 1968 when he became a full-time employee of Bailey Typewriter Exchange, Inc., earning \$4.00 an hour. Galen was unemployed for the five months prior to trial because of a hip operation. He also complains of back and neck ailments which necessitated his retirement from active farming. He received \$30 per week from his employer while not working. In addition, he has received VA disability benefits each month since 1945 for incurable "jungle rot," the current stipend being \$77 per month.

Phyllis was 49 years old at the time of the trial. She was not employed outside the home until 1964. Since then she has been employed full-time by Union Carbide in Centerville, grossing \$131 per week. She takes medication daily for a nervous condition and has colitis, but she continues to work regularly.

Galen contends that the property settlement ordered by the court was inequitable, alleging he received property worth \$27,700 and Phyllis received property worth \$42,240. The record and the trial court's findings partially dispell this claimed disparity. The trial court attempted to effect a division of assets whereby Phyllis received property valued at approximately \$40,000 and Galen received property valued at approximately \$38,000. In addition to the assets valued at \$27,700 granted to Galen he was charged for approximately \$10,000 worth of assets transferred to third parties without Phyllis's permission. The figures relied upon by Galen to establish that Phyllis's property award has a value of \$42,000 refer to an employer's contributory savings plan not established to have any value at the time of trial. Accordingly we believe the trial court's findings as to the values received by the parties are supported by the evidence and should not be disturbed.

We deem one feature of the property division ordered by the trial court to be inequitable, however. This pertains to the rate at which the \$25,000 judgment awarded Galen is to be paid by Phyllis. The trial court's decree makes the judgment payable at the rate of \$1000 per year for 25 years. This renders an otherwise nearly equal property division substantially unequal because Phyllis has the immediate enjoyment of the assets awarded to her. We modify this portion of the trial court's decree to provide that said judgment (which bears interest at the rate of 7% per annum) shall be paid in full on or before January 22, 1978. As so modified, the decree is affirmed. Costs are taxed to Phyllis and no attorney fees are allowed on appeal.