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CLERK SUPREME COURT

251

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF WENDT

Upon the Petition of)
THELMA M. WENDT,)
Petitioner-Appellee,)
And Concerning)
CLAUDE J. WENDT,)
Respondent-Appellant.)

Filed May 22, 1984

4-117
83-1194

Appeal from the Iowa District Court for Clinton County - R. K. Stohr, Judge.

Respondent appeals from the decree dissolving the parties' marriage. MODIFIED IN PART; REVERSED IN PART.

David H. Sivright, Jr., of Shaff, Farwell & Senneff, Clinton, Iowa, for respondent-appellant.

John P. Murphy of Holleran, Shaw, Murphy & Stoutner, Clinton, Iowa, for petitioner-appellee.

Considered by Donielson, P.J., and Snell and Hayden, JJ.

HAYDEN, J.

Respondent appeals from the decree dissolving the parties' marriage. He asserts that the trial court should have considered the value of petitioner's pension benefits as well as his own in making a property division and that the trial court should not have awarded petitioner alimony.

Our review of this action in equity is de novo. Iowa R. App. P. 4. While we are not bound by the findings of the trial court, we do give weight to them, especially where the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7).

I. Property Division. The criteria to be considered in arriving at an equitable property division are set forth in Iowa Code section 598.21(1). In this case the parties were married in 1950. Both parties worked outside the home throughout the marriage and contributed to the success of the marital unit. At the time of trial petitioner, Thelma Wendt, was fifty-three and respondent, Claude Wendt, was fifty-eight years of age. Both parties have high blood pressure and Thelma has sinus problems, but otherwise they are in good health. Claude is a retired postal worker whose sole source of income is a monthly pension of $1,101.49. Although Claude testified that he intended to look for a bartending job to supplement his income, at the time of trial he did not have any income other than the pension. Thelma is employed as a bookkeeper earning a net weekly salary of $178.

The parties stipulated to the disposition of virtually all of their assets; however, they disagreed as to the valuation of some of those assets. They also failed to agree on whether Claude should receive a cash settlement in return for Thelma receiving virtually all of the property.

The trial court divided the parties' property in accordance with the pretrial stipulation. Accepting Thelma's valuation of the assets and taking into account the debts assumed by the parties, Thelma received a net distribution of $88,950 and Claude received a net distribution of $2,266. Thelma's share includes a

$20,000 certificate of deposit which she inherited from her mother. Under Iowa Code section 598.21(2), this must be set aside for her, but it can be considered in assessing the fairness of the total settlement. Locke v. Locke, 246 N.W.2d 246, 252-53 (Iowa 1976). The trial court failed to award Claude any cash settlement on the grounds that the value of Claude's pension compensated for the difference between the value of the property awarded to each party. We believe the trial court's division is inequitable, and, therefore, we modify the decree on this issue.

When a marriage of considerable length is dissolved and both parties have contributed to the success of the family, an approximately equal division of assets is appropriate. In re Marriage of Conley, 284 N.W.2d 220, 222-23 (Iowa 1979). Under Iowa Code section 598.21(1)(i), the pension benefits of each party are to be considered in arriving at an equitable property division. While the trial court considered the value of Claude's pension from the United States Postal Service, it did not take into consideration Thelma's future entitlement to social security benefits, which is also a form of pension. See Locke v. Locke, 263 N.W.2d 694, 696 (Iowa 1978) (appeal after remand). Since both parties have worked throughout the marriage and both may be entitled to retirement benefits based on their contributions, the situation is more balanced than the trial court realized. See In re Marriage of Schissel, 292 N.W.2d 421, 427 (Iowa 1980).

Furthermore, the statute requires that pension rights be considered as one factor in arriving at an equitable division. It does not specify what weight should be given to each factor. We believe that the trial court placed undue emphasis on Claude's retirement benefits. This case is different from a situation where one party's interest in a pension fund, the benefits of which will not be realized until a future date, is valued and awarded to her, In re Marriage of Bevers, 326 N.W.2d 896, 900 (Iowa 1982), and In re Marriage of Schissel, 292 N.W.2d 421, 427 (Iowa 1980), or where periodic alimony is awarded to one party based on a percentage of the other party's present retirement pay. In re Marriage of Jones, 309 N.W.2d

457, 460-61 (Iowa 1981). In this case the court considered respondent's income, which is solely attributable to his pension, in arriving at its conclusion and then again considered the pension as an asset of considerable value, justifying an award of virtually all the other property to Thelma.

We believe that equity requires Claude to receive some asset from his thirty-year marriage other than his retirement pension. Therefore, we give him a $30,000 lien against the house which is to be paid by Thelma in annual installments of not less than $1,500, plus the accrued interest. Interest shall accrue at the rate of ten percent per annum on the unpaid balance from the date of the decree.

II. Alimony. The trial court awarded Thelma alimony of $100 per month. We have concluded that alimony to either party is not warranted in this case. Claude receives approximately $1,100 per month on which he does not pay income tax. However, as soon as his contribution to the pension is exhausted, which will be in about two years, tax deductions will be made from that amount. Thelma is receiving a net weekly salary of $178 or $767 per month. She also receives the interest from her inherited certificate of deposit. Since the incomes of the parties are fairly close, alimony is not appropriate. See In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976); In re Marriage of Peterson, 227 N.W.2d 139, 142 (Iowa 1975). The provision of the dissolution decree awarding Thelma alimony is reversed.

MODIFIED IN PART; REVERSED IN PART.