FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF VERNAL E. HARING and VIVIAN V. HARING

Upon the Petition of)
VERNAL E. HARING,)
Petitioner-Appellee,)
and Concerning)
VIVIAN V. HARING,)
Respondent-Appellant.)

Filed November 19, 1979

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2-62863

Appeal from Clinton District Court - James R. Havercamp, Judge.

Wife appeals economic provisions of dissolution decree alleging inadequacy in trial court's division of property, award of alimony, and award of attorney fees at trial. AFFIRMED WITH MODIFICATIONS.

Gary J. Rolfes of Clinton and Simon W. Rasche, Jr., of Camanche, for respondent-appellant.

Richard W. Farwell of Shaff, Farwell & Senneff, Clinton, for petitioner-appellee.

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

Respondent-wife, Vivian V. Haring, appeals economic provisions of dissolution decree terminating her marriage to petitioner-husband, Vernal E. Haring. She alleges trial court's division of property, award of alimony, and award of attorney fees at trial are inadequate. We affirm with modifications.

Petitioner and respondent were married thirty-nine years. Five children were born of the marriage.[1] Petitioner, age 64 and a high school graduate, was self-employed as owner of an appliance business. His net profit from the business in 1977 was approximately $16,000. Respondent, age 57, with a ninth-grade education, was employed at a health care center as a nurses' aide, earning a minimum wage.[2] Her net pay was approximately $95 per week. Neither party was in good health. Respondent was suffering from diabetes, high blood pressure, and arthritis, which required routine doctor's care and medication. Petitioner was recovering from a heart attack which, upon doctor's orders, necessitated a reduced working schedule.

Trial court decreed petitioner pay respondent $75 per week alimony for eighteen months after entry of the decree, unless either party died earlier, and $300 toward attorney fees. Petitioner received all rights to the business and various other items of personal property. Respondent was awarded the parties' home and adjoining property, including a metal building, subject to petitioner's right of occupancy and use so long as he operates his appliance business. Petitioner was ordered to carry insurance on the metal building and be responsible for one-half the utilities in connection with the real estate awarded respondent. Respondent was to pay all real estate taxes.

I. Scope of Review. Appellate review of the economic provisions of a dissolution proceeding are **de novo.** Iowa R. App. P. 4; Zinger v. Zinger, 243 N.W.2d 639, 640 (Iowa 1976).

II. Property Distribution. Respondent alleges trial court's division of the parties' property was inequitable since her award of the residential property is subject to petitioner's occupancy and use of the metal building. Our review is governed by application of the criteria enunciated in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except fault. In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972).

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[1] Only Bradley M. Haring, age seventeen at time of trial, was a minor on the date of dissolution. Neither his custody nor support is at issue in this appeal.

[2] During the marriage, respondent was employed at other places for periods of short duration. Throughout most of the marriage, however, respondent remained home to care for the children.

Trial court attempted to divide the property equally. Due to petitioner's declining state of health and uncertain future with regard to the appliance business, allowing petitioner to use the building eases the financial strain under which he presently is working. We believe the award was equitable under these circumstances.

III. Alimony. Respondent claims trial court's award of alimony for eighteen months is inadequate in light of her future earning capacity, ill health and division of property. In determining propriety of an alimony award, we weigh the needs of the wife against the husband's resources and ability to pay. In re Marriage of Freese, 226 N.W.2d 800, 802 (Iowa 1975). As the record discloses, respondent is 57 and has a ninth grade education. During the marriage she acquired no marketable skills and is capable of earning only a minimum wage by doing menial labor. Petitioner, on the other hand, has successfully operated an appliance business with net profits ranging between $16,000 and $25,000 annually for the years 1975-1977. In view of these facts, we find petitioner should continue paying respondent $75 per week alimony until her remarriage or the death of either party. However, at this time, we cannot assess the parties' relative circumstances should petitioner retire, sell the appliance business or suffer additional health problems. Determination of the amount of alimony he must pay in the event such a contingency occurs more appropriately rests with trial court upon proper future application.

IV. Attorney Fees. Respondent also urges trial court's award of $300 attorney fees for her trial counsel was inadequate and should be increased. We find this contention without merit. Trial court has considerable discretion in allowing attorney fees in dissolution actions and the facts of this case do not warrant our interfering with that discretion. See Locke v. Locke,263 N.W.2d 694, 696 (Iowa 1978).

Respondent has applied for award of costs and attorney fees on this appeal. Petitioner is ordered to pay $750 of those fees. Costs of this appeal are assessed against petitioner.

Except for those provisions specifically modified by this opinion, trial court's judgment is affirmed.

AFFIRMED WITH MODIFICATION.