FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF LLOYD EVERETT FREESE AND GERTRUDE LENA FREESE

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UPON THE PETITION OF
LLOYD EVERETT FREESE,

Petitioner-Appellee,

AND CONCERNING,
GERTRUDE LENA FREESE,

Respondent-Appellant.

Filed September 24, 1985

5-397
84-1843

Appeal from the Iowa District Court for Pottawattamie County, Glen McGee, Judge.

Respondent-wife appeals from the decree dissolving the parties' marriage, asserting her child support and attorney fees awards are inadequate, and that she should have been awarded alimony. **AFFIRMED AS MODIFIED.**

Thomas E. Gustafson, Denison, for respondent-appellant.

Michael J. Winter, Council Bluffs, for petitioner-appellee.

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

The respondent-wife requests additional child support, an alimony award, and additional contribution to her attorneys fees from that granted in the parties' divorce decree. We affirm as modified.

While the record before this court is lacking in a number of details, it appears that the petitioner, Lloyd Freese, works for the Federal Crop Insurance Agency and earns $1250 in net pay each month. The respondent, Gertrude, has apparently worked in the parties' marital home for the twenty-nine years of the marriage. She was given custody of the couple's children, two boys, aged fifteen and seventeen at the time of trial.

The parties stipulated to the property division and at first glance it appears to be dramatically inequitable in Gertrude's favor. The value placed by the parties on the assets awarded to her totals $196,800 and she was ordered to pay debts of $90,571.81. Lloyd received $5000 in assets and $13,060 in debts; however, Lloyd has not appealed. A closer look at the assets reveals the parties are in a precarious financial condition, as they have been increasingly unable to meet the obligations necessary to keep their assets and are in danger of losing the various properties. A lot with a mobile home and restaurant they refer to as the Hesson House property does not provide adequate income to met operating expenses and the last principal payment was made November 1, 1983. Delinquent taxes are owed on real estate on which two mobile homes sit. The parties have been unable to make payments on another mobile home and lot in Lake View, Iowa, and the stipulation given to the court indicated the July, August, and September 1984 payments have not been met. A Notice of Right to Cure has been sent to the couple. A motel near Denison awarded to Gertrude does not meet state regulations and will not comply without extensive renovation. It has not been used as a motel for some time. One of the few liquid assets

owned by the company, money received from surrender of shares of stock, was ordered applied towards the reduction of Federal Employment tax owed by the parties for 1982 and 1983. The court's recognition of the parties' questionable financial situation is evidenced by the fact the trial court retained jurisdiction to reallocate martial assets if either of the parties should file for bankruptcy.

Therefore, despite the appearance on paper of considerable assets being awarded to Gertrude in the parties' property stipulation, we find merit in her claim that the liquidity of these assets is nil. She has no income, other than the $450 per month child support awarded. The parties were married for twenty-nine years. We find an award of alimony is warranted in this case and hold Lloyd shall pay $75 per month in alimony until Gertrude remarries, cohabitates with an unrelated adult male, or dies.

Gertrude also requests an increase in child support. Considering the factors set out at section 598.21(3) of the Code, we find the award of $450 per month to be equitable. This amount is over thirty-five percent of Lloyd's income.

We also find the court's award regarding attorneys fees to be equitable. Considering the amount Lloyd is capable of paying and the property and alimony awards made, factors referred to in Locke v. Locke, 263 N.W.2d 694, 696 (Iowa 1978), we find the required contribution of $750 to Gertrude's fees to be equitable.

AFFIRMED AS MODIFIED.

Snell, J., concurs, and Sackett, J., dissents.

SACKETT, J. (dissenting)

The parties filed financial statements and valued their assets. Based on these valuations Gertrude received property with equities of $106,228. Lloyd received $5,000 in property and $13,060 in debts Lloyd has not appealed.

The majority determines Gertrude now needs alimony. I cannot agree and would affirm the trial court