

FILED**OCT 25 1983**

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA**IN RE THE MARRIAGE OF TERESA DUHRKOPF AND JEFF DUHRKOPF**UPON THE PETITION OF
TERESA DUHRKOPF,

)

Filed October 25, 1983

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Petitioner/Cross-Appellant,

)

AND CONCERNING
JEFF DUHRKOPF,

)

3-185
2-69136

Respondent-Appellant.

)

Appeal from Bremer District Court, Ralph F. McCartney, Judge.

Respondent-husband appeals and petitioner-wife cross-appeals from economic provisions of the parties' dissolution decree. Both parties assert that the disposition of certain real property was inequitable. **AFFIRMED.**

Gaylen V. Hassman of Engelbrecht, Ackerman & Hassman, Waverly, for respondent-appellant.

Dale E. Goeke of the Bovia Law Offices, Waverly, for petitioner/cross-appellant.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, and Hayden, JJ. Sackett, J., takes no part.

PER CURIAM

Teresa and Jeff Duhrkopf were married in 1974 when they were, respectively, seventeen and nineteen. The husband, Jeff, had been a plumber for approximately three years at that time and brought to the marriage assets which the trial court valued at approximately \$10,000. At the time of trial, Jeff worked for John Deere, grossing approximately \$2,143 per month but was on temporary lay-off. He had 1981 gross income of approximately \$30,000, including substantial overtime that he did not expect to receive in the future. During the marriage, Teresa completed high school and was primarily a housewife and mother although she earned approximately \$3,400 in 1981 from part-time employment. Shortly before trial, she quit one of her part-time jobs and enrolled in a secretarial training program. During the marriage the parties received financial assistance from Teresa's parents which the trial court found offset the value of the assets that Jeff brought to the marriage.

The parties owned two separate parcels of real property, an acreage upon which Jeff lived and a townhouse in which Teresa lived. The acreage had a stipulated fair market value of \$71,000 subject to an existing contractual balance in the amount of \$24,997. The parties owed Farmers Savings Bank of Frederika, Iowa, \$35,165 on an unsecured note bearing 17.5 percent interest per year; this note was cosigned by Teresa's father, Eldon Westendorf. The townhouse had a stipulated fair market value of \$31,000, subject to a mortgage of \$14,555 and to assessments totaling \$3,938. Teresa made a home improvement loan for the townhouse of \$1,300 after the parties had separated. The parties also stipulated that they owed Eldon Westendorf \$12,000.

The acreage was ordered sold with the proceeds to be used, in order of priority, for payment of the \$24,997 contract balance, payment of the \$35,165 bank debt, and payment of the \$12,000 debt to Eldon Westendorf with any remaining proceeds to be equally divided. Occupancy of the townhouse was awarded to Teresa until the youngest of the two children, now aged eight and three, reaches the age of eighteen, or if she abandons the property as a residence before then. At that time the property was ordered to be sold with the proceeds used, first, to reimburse Teresa for all sums advanced by her for payment of the bank mortgage balance and special assessments. The proceeds were then to be used for payment to Eldon Westendorf for any balances due him by reason of payment of the obligation on the note he cosigned and, then, for payment of any amount remaining due him from the \$12,000 debt. Any remaining proceeds were to be equally divided by the parties. The decree was subsequently amended to provide that Teresa should be reimbursed for only one-half of the amount of interest paid by her on the mortgage.

Each party was awarded certain items of personal property and each was ordered to pay certain specified debts. Teresa was awarded alimony of \$175 per month through November 1983. The court ordered Jeff to pay child support of \$550 per month to be increased to \$650 per month in December 1983 and reduced to \$450 per month when the oldest child becomes ineligible for support. Teresa was awarded attorney fees totaling \$700. The court did not order Teresa to file a joint tax return for the year 1981. If she had filed jointly a larger refund could have been obtained but her eligibility for student financial aid might have been jeopardized.

Jeff appeals and Teresa cross-appeals the economic provisions of the dissolution decree, asserting that the disposition of the real property was inequitable. Jeff raises in issue that: (1) the child support award was excessive; (2) the alimony award was excessive; (3) the disposition of the townhouse and accompanying debts was inequitable; and (4) the parties should have been ordered to file an amended joint income tax return for 1981. Teresa claims that: (1) the child support award should have been subject to an annual cost-of-living adjustment clause; (2) the disposition of the acreage and accompanying debts was inequitable; and (3) she should be awarded additional attorney fees for both trial and this appeal.

Our review is de novo. Iowa R. App. P. 4. We are not bound by the trial court's findings of fact, but we give them weight, especially with regard to the credibility of witnesses. Iowa R. App. P. 14(f)(7). In reviewing each individual economic provision of a dissolution decree, we consider all the provisions together as an integrated whole. See In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976). In reviewing the property provisions of a dissolution decree, we consider the factors articulated in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), as modified in In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972) (fault for breakdown of marriage eliminated from Schantz factors), and the factors enumerated in Iowa Code section 598.21 (1983).

I. Property Division

Both parties contest the trial court's disposition of the real property. There is no requirement in a division of assets that parity between the parties be effected. In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980); In re Marriage of Conley, 284 N.W.2d 220, 223 (Iowa 1979). Even if the trial court's goal

was to divide the assets equally, there is no requirement that the division be mathematically precise. Conley at 223. The test for an acceptable allocation of assets is whether the distribution constitutes an equitable and just award under the particular circumstances of the parties. Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976); In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972); Schantz at 405. We consider the distribution of the property to be equitable under the circumstances in this case.

Jeff and Teresa were married eight years. Both of them and both of their children evidently are physically and mentally healthy. It is not clear that either party made any extraordinary sacrifice in furtherance of a happy marriage. Both parties had equal amounts of education at the time of the dissolution. The main difference between the parties was each one's employment status. The trial court evidently determined Jeff's potential earning capacity, due to his training as a plumber, to be greater than Teresa's. Teresa claimed she had no training in any field except minimal secretarial skills. By providing temporary alimony for Teresa, the court enabled her to upgrade her earning capacity. However, even after Teresa finishes her post-high school education, her earning capacity would be unlikely to equal Jeff's. Jeff has a greater ability to pay; Teresa's needs are relatively greater, particularly because the two children are in her custody.

Therefore, we do not find reasons which require us to modify the property disposition. The sale of the acreage should produce sufficient funds to eliminate

the debts charged to Jeff. He will not have to reimburse Teresa for the principal payments she has made until sometime in the future when Teresa sells the house. In the meantime, Teresa must make the mortgage payments. Teresa requests that we grant the townhouse to her outright. We do not understand what purpose this would serve. As the disposition stands, Teresa will be receiving money as child support for several years. The point in time when child support payments will end is the same as when she must sell the house. Thus, she will receive a lump sum of money consisting of one-half of the proceeds of the house, reimbursement from Jeff of all the principal payments she has made and one-half of the mortgage interest she has paid. It is possible the trial court made this arrangement to assist Teresa after the child support payments end, in lieu of alimony. We see no reason to change the dissolution decree.

II. Alimony and Child Support

Jeff contends the alimony and child support payments are excessive. Teresa counters that the child support award should have included a yearly cost-of-living increase.

In reviewing an alimony award, we must take into consideration the factors in Schantz, and the Iowa Supreme Court recognition that:

Although property rights and alimony may be closely related, they are distinguishable and have differing purposes. In re Marriage of Murray, 213 N.W.2d 657, 659 (Iowa 1973). Division of property is based on each marital partner's right to a just and equitable share of the property accumulated as the result of their joint efforts. Knipfer v. Knipfer, 259 Iowa 347, 353, 144 N.W.2d 140, 143 (1966). Alimony is an allowance to the ex-wife in lieu of the husband's legal obligation to support her. Id. at 352, 144 N.W.2d at 143.

In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981). The trial court evidently determined that Jeff should support Teresa while she attended school. After that, she would be able to support herself. We affirm the award of alimony.

Furthermore, we affirm the trial court's award of a child support allowance.

The Iowa Supreme Court has stated:

Factors to be considered are parties' age, health, present earning capacity, future prospects, amount of resources owned by each or both parties, contributions of each to the joint accumulations, the children involved, duration of the marriage, indebtedness of each or both, and any other relevant factors which might assist the trial court in reaching a just and equitable decision.

In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974). In this case, the trial court's decision to place a large burden on Jeff for the children's support is in accord with Jeff's greater ability to pay.

The trial court evidently decided it was not necessary to grant a cost-of-living adjustment. We agree.

III. Income Tax Return

Jeff claims he could have saved \$1000 by filing a joint tax return for 1981. Teresa used the fact that she was going to file separately to obtain student financial aid; to require her to file a joint return would be to require her to commit a falsehood. The trial court evidently viewed the separate filing as another way to help Teresa get through school and increase her earning capacity. We affirm.

IV. Attorney Fees

Teresa requests additional attorney fees for both the trial court case and the case on appeal. The Iowa Supreme Court has outlined the factors to be considered in reviewing requests for attorney fees:

A determination of reasonable attorney fees must include, but is not limited to, a consideration of these elements: (1) the amount of time spent; (2) nature, extent and difficulty of the services; (3) amount involved; (4) responsibility assumed; (5) results obtained; (6) customary charges for similar services; and (7) the professional standing and experience of the attorney.

In re Marriage of Jennerjohn, 203 N.W.2d 237, 245 (Iowa 1972). We give weight to the trial court finding and conclude the award was justified; we therefore do not modify it. See In re Marriage of Williams, 303 N.W.2d 160, 167 (Iowa 1981). Furthermore, because both parties seem to be in relatively the same monetary position after the dissolution decree, we deem both parties able to pay their own attorney fees on appeal. See id.

AFFIRMED.