FILED
MAY 28 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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IN RE THE MARRIAGE OF PATTY LEE KELLEY AND PAUL R. KELLEY

Upon the Petition of	)	
PATTY LEE KELLEY,	)	Filed May 28, 1987
Petitioner-Appellant,	)	
And Concerning	)	
PAUL R. KELLEY,	)	7-164 / 86-1042
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Union County (No. *DM C-D 9892*), Darrell Goodhue, Judge.

Petitioner wife appeals *from the decree dissolving* the parties' marriage. **AFFIRMED.**

Susan K. Janssen, Winterset, for appellant.

Marion E. James of Camp, Harsh, Boysen, James & Mackaman, Creston, for appellee.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ.

PER CURIAM

Petitioner wife appeals from the decree dissolving the parties' marriage. Petitioner contends that (1) her alimony award is inadequate; (2) the trial court should have ordered respondent husband to provide a life insurance policy to secure the alimony award in the event of his death; and (3) the property division was inequitable. We affirm.

Petitioner Patty Lee Kelley and respondent Paul R. Kelley were married in 1949. The parties have three children, all of whom are now grown. During most of the parties' thirty-seven-year marriage, Patty took care of the children and maintained the family home. Patty also worked various times as a real estate agent, a telephone operator, at a drive-in restaurant, and in a hospital. Patty was unemployed at the time of trial, mainly due to health problems which included arthritis and asthma. Patty is currently fifty-five years old. Paul began working for the Burlington-Northern Railroad in 1953 and is now a conductor. Paul earned gross wages of $48,359.00 in the year before trial, approximately $8,000.00 of which was due to overtime. Paul is currently 54 years old.

In its dissolution decree, the district court determined the parties' net worth to be about $22,000.00. The court awarded Patty a $3,000.00 automobile, her household goods, and a $4,000.00 property settlement. The court additionally awarded Patty $900.00 per month alimony, ordered Paul to pay for two-thirds of Patty's medical expenses not to exceed $2,000.00 per year, and awarded Patty $1,000.00 in attorney fees. The court awarded Paul the parties' remaining property, including their commercial and farm real estate. The court ordered that the $900.00 per month alimony payments continue until Patty reached the age of sixty-five. At that time alimony was to continue in an amount to be then determined only if Patty was not entitled to receive railroad retirement benefits through Paul. The court also directed that Paul's medical payments continue until age sixty-five and shall continue even though Patty might remarry.

Because a dissolution proceeding is equitable in nature, our scope of review is de novo. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

We first address Patty's argument that the alimony award is inadequate. Under Iowa law, the payment of alimony is not a right, but rather must be determined in light of all the circumstances, including the property settlement. In re Marriage of Bevers, 326 N.W.2d 896, 900 (Iowa 1982). When considering the appropriateness of an award of alimony, we must consider the earning capacity of each party, each party's present standard of living, and a spouse's ability to pay balanced against the relative needs of the other. In re Marriage of Hitchcock, 309 N.W.2d 432, 436 (Iowa 1981).

Patty requests that we award her $1,500.00 per month in alimony. Patty also requests that Paul be ordered to purchase a life insurance policy in favor of Patty to ensure her receipt of alimony in case of Paul's sudden death. Patty introduced evidence that a policy covering a fifty-five-year-old adult would cost $700.00 per year, or $58.00 per month, and would increase to $1,044.00 per year at age sixty-four. We note, however, that Paul's net monthly income for the first four months of 1986 was $2,194.44 after adjustment for non-voluntary deductions. After payment of alimony to Patty, Paul's income is reduced to $1,294.44. Given the fact that Paul was ordered to pay two-thirds of Patty's medical bills as well as $900.00 per month in alimony, we find Patty's request for $1,500.00 per month unreasonable. We additionally note that Paul was ordered to assume all of the parties' considerable debt, except for several loans obtained by Patty personally. We therefore reject Patty's argument that the $900.00 per month alimony is inadequate.

Patty additionally argues that the trial court should have ordered Paul to purchase a life insurance policy to secure payment of alimony in the event of Paul's death. The trial court noted in its decree that it appeared that Patty would be entitled to receive railroad benefits upon Paul's retirement. The trial court noted that if Patty was not entitled to such benefits, the alimony payments should continue, but in an amount redetermined when Paul reaches sixty-five years of age. In light of the great cost of purchasing such insurance, the amount of alimony payments and payments of Patty's medical bills, and the fact that Patty will likely receive railroad retirement benefits, we decline to accept Patty's argument that Paul should be ordered to purchase a life insurance policy to secure the alimony payments.

Patty also contends that the property division was inequitable. Patty contends that the trial court erred in finding that the parties' net worth was $22,000.00, rather than $46,986.00. The main contention centers around the trial court's statement in the decree that the gross value of the farm real estate "does not exceed $190,000.00." Paul valued the farm real estate between $128,000.00 and $136,500.00. Patty valued the farmland between $226,000.00 and $234,000.00. William Ray, an appraiser, valued the property between $147,160.00 and $185,600.00. In reaching its conclusion that the parties' net worth was $22,000.00, the trial court obviously did not rely on either party's valuation, but instead averaged the valuations suggested by Mr. Ray, arriving at a figure of approximately $165,000.00.

Upon our own independent examination of the evidence, we find that the trial court's valuation of the parties' net worth was well within the permissible range of evidence, and we will therefore not disturb such valuation on appeal. In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973).

Patty, however, further contends that the property division itself was inequitable. Pursuant to the decree, Patty received a $3,000.00 automobile and a $4,000.00 cash property settlement. Under Iowa law, a percentage division of property is not statutorily sanctioned. In re Marriage of Bornstein, 359 N.W.2d 500, 503 (Iowa 1984). Rather, the ultimate question is whether the distribution is equitable under the specified facts of the particular case. Id. All economic aspects of the divorce decree must be viewed as an integrated whole. Id. The property division and alimony provisions must therefore be considered together in evaluating their individual sufficiency. In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984). We find that upon viewing all the economic provisions of the dissolution decree as a whole, the property division was equitable under the circumstances. We agree with the trial court's statement that a forced liquidation sale would be inappropriate due to the depressed value of the Iowa farm economy, the selling costs likely to be incurred, and the possible adverse tax consequences. Additionally, given Patty's financial resources, we are not as convinced as Patty that if she was awarded part of the farm real estate, she would be able to absorb the significant losses which have already occurred.

Patty also seeks allowance of additional attorney fees for this appeal. An award of attorney fees in a dissolution action is not a matter of right, but depends upon the relative needs and abilities of the parties. In re Marriage of Fish, 350 N.W.2d 226, 231 (Iowa App. 1984). The Iowa Supreme Court has recognized that a spouse who in good faith but unsuccessfully appeals a dissolution decree may be awarded attorney fees. In re Marriage of Peterson, 227 N.W.2d 139, 142-43 (Iowa 1975), citing Geisinger v. Geisinger, 202 N.W.2d 44, 47 (Iowa 1972). Patty's counsel has submitted an itemized statement of services rendered and time spent on this appeal, totalling $4,250.27. Upon a consideration of the financial condition of both parties, we conclude that Paul shall pay $2,000.00 towards Patty's attorney fees on appeal. Costs on appeal are taxed equally to the parties.

AFFIRMED AS MODIFIED.