

FILED

JAN 26 1982

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JOHN J. VIVIANO AND DIANE W. VIVIANO

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Upon the Petition of)

JOHN J. VIVIANO,)

Petitioner-Appellee,)

Filed January 26, 1982

And Concerning)

DIANE W. VIVIANO,)

Respondent-Appellant.)

1-407
2-66165

Appeal from Polk District Court - Rodney J. Ryan, Judge.

Respondent wife appeals from the economic provisions of the parties' dissolution decree, asserting that she should be awarded additional alimony and property. She also requests attorney fees on appeal. **AFFIRMED AS MODIFIED.**

Susan L. Ekstrom of Ekstrom Law Office, Des Moines, for respondent-appellant.

Thomas P. Hyland and Tim Pearson of Hyland, Laden & Pearson, Des Moines, for petitioner-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

Respondent wife appeals from the economic provisions of the parties' dissolution decree, asserting that she should be awarded additional alimony and property. She also requests attorney fees on appeal. We affirm as modified.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. Our responsibility is to review the facts as well as the law and to determine rights anew from credible evidence on properly presented and preserved issues. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977). While we give weight to the findings of the trial court, especially where credibility of witnesses is involved, we are not bound by them. In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974); Iowa R. App. P. 14(f)(7). As in all cases of this type precedent is of little value and our decision must ultimately depend on the particular facts of this case. In re Marriage of Kehrli, 241 N.W.2d 923, 926 (Iowa 1976).

The parties were married in 1961 and were approximately forty-one at the time of trial. The petitioner filed his petition for dissolution of marriage on July 7, 1980. The decree, entered on December 11, 1980, provided for joint custody of the two children with the petitioner responsible for their expenses. The respondent was awarded the parties' home,¹ household goods, personal property, and a 1974 Ford Mustang. She was also awarded alimony of \$300 per month for December, 1980, and January, 1981, \$250 per month for February, 1981, through June, 1981, and \$100 per month for July, 1981, up to January 1, 1982. The petitioner was awarded a Wisconsin cabin, household furnishings therein, and a 1978 Ford LTD.

The petitioner is an elementary school principal with net pay of \$831.93 every two weeks. The respondent was not awarded any interest in his IPERS

¹ The parties' home had a market value of \$40,000 to \$45,000 at the time of the trial court's award and was subject to a \$10,200 encumbrance which was to be assumed by the respondent.

account, amounting to approximately \$14,000. The respondent was primarily a housewife and mother during the marriage but earned approximately \$280 per month from part-time employment at the time of trial. She is, however, certified as a teacher.

The trial court based its award of limited alimony in part on the fact that the respondent could earn more money, if she chose to do so, by taking what she considered a less rewarding job for higher pay. While we agree that respondent should be encouraged to become self-supporting, we find that the trial court's limited award of alimony is insufficient. We, therefore, award respondent \$250 per month in permanent alimony until her remarriage or the death of either party. This award is necessary to enable respondent to become self-supporting and to compensate her for the nineteen years of marriage during which she placed priority on the parties' home and family rather than her career and future retirement needs. In all other respects, the trial court's decree is affirmed.

Respondent is granted \$500 in attorney fees on appeal.

AFFIRMED AS MODIFIED.

OXBERGER, C.J., dissenting.

I would affirm the trial court.