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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MARY BRYAN AND BARNIE M. BRYAN, SR.

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Upon the Petition of	)	
MARY BRYAN,	)	Filed September 6, 1984
Petitioner-Appellee,	)	
And Concerning	)	
BARNIE M. BRYAN, SR.,	)	4-230 83-1401
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Muscatine County - James R. Havercamp, Judge.

Respondent appeals from the property division provisions of the parties' dissolution decree. AFFIRMED.

Terrence L. Mealy, Muscatine, Iowa, for respondent-appellant.

David W. Newell and Jeffrey M. Johnson, Muscatine, Iowa, for petitioner-appellee.

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

SCHLEGEL, J.

Respondent, Barnie Bryan, appeals from the property division provisions of the parties' dissolution decree. Barnie asserts on appeal that the property division is inequitable because the court considered fault in awarding the marital home to Mary and failed to properly consider the factors contained in Iowa Code section 598.21(1) (1983), in making the property division. We affirm.

Mary and Barnie were married for thirty-two years and have six children, only one of whom is still a minor and living at home. Barnie is a journeyman electrician who makes approximately $17 per hour when he has work, but he has been unemployed since December, 1981. Mary has been employed the last sixteen years outside the family home and currently holds a position as a "sander" earning $3.60 per hour, with a net pay of $99.32 per week. The parties' minor child, fifteen and one-half years old, remains in the family home and plans to attend college.

Barnie suffers from alcoholism and is apparently unable to overcome its debilitating effects despite seven hospitalizations. He testified that he has spent as much as twenty percent of his income on alcoholic beverages. Barnie also has apparently lost some of his income during the marriage through gambling. Mary and one of the parties' adult children testified that the percentage of income spent on alcohol was higher. In any case, despite his higher income, the financial contribution of both parties towards purchasing the marital home, paying living expenses, and providing for the children has been approximately equal. The evidence also shows that Mary, in addition, assumed primary responsibility for the physical care of the parties' children and home during the marriage.

Mary received $15,962 as inheritance from her father and an uncle during the marriage. Barnie does not contest that the inheritances were to Mary alone. Mary had $5,000 received from these inheritances remaining at the time of trial. The balance has been used for family expenses and necessities during the

marriage. Also, the initial $1,000 paid on the parties' home was a gift to Mary from her uncle. Barnie apparently receives $500 per year inheritance from a source not revealed in the record.

Barnie was fifty-five at the time of trial and Mary was fifty-two. Both parties enjoy good health, with the exception of Barnie's alcoholism. There is no evidence that either party brought any property into the marriage.

The parties' primary asset is the marital home with an equity of $32,292. Barnie also has a pension plan through his employment from which he will receive benefits of approximately $350 per month when he is age 62. The pension plan, however, is not vested and is contingent upon Barnie remaining in his labor union. Mary has possession of $1,000 worth of appliances and furniture in the family home, much of which was inherited from her father. Barnie has possession of a 1979 Ford van with approximately $3,000 equity and furniture, guns, and tools valued between $500 and $700. The parties have joint miscellaneous debts of $1,117 and Barnie has incurred debts for his own benefit totalling $3,520.

The trial court awarded Mary custody of the parties' child, $50 per week child support, and the parties' marital home, partly as her share of the equity and partly in lieu of alimony. Barnie was awarded the 1979 Ford van, tools, guns, and furniture in his possession. Mary was also awarded the furniture in her possession and required to assume the indebtedness on the parties' home. The joint debts were divided equally and Barnie was to pay all debts incurred for his benefit.

I. Our review of this equitable proceeding is de novo. In re Marriage of Castle, 312 N.W.2d 147, 148 (Iowa Ct. App. 1981).

II. Our analysis in determining an equitable property division begins with Iowa Code section 598.21(1) (1983), which codified many aspects of our prior law. Although frequently an equal division of assets is made, there is no mechanical rule that dictates this result. 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). 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).

When asked to review an individual economic provision of a dissolution decree, we consider all the provisions together as an integrated whole. In re Marriage of Castle, 312 N.W.2d at 149. The trial court awarded Mary the parties' asset, the marital home. The value of the pension fund awarded to Barnie is difficult to determine due to the conditions which must be met in order for Barnie to collect it. Mary's expert testified that a vested annuity plan which pays similar benefits would cost a 62-year-old male approximately $40,000. He further testified that discounting that amount back to age 55 would result in a value of $18,000 to $24,000. He cautioned that this valuation does not reflect the contingent nature of Barnie's pension plan. Thus, Mary received most of the parties' accumulated marital equity when she was awarded the parties' home.

We disapproved of a disproportionate property division in In re Marriage of Heinemann, 309 N.W.2d 151, 153 (Iowa Ct. App. 1981), where both parties contributed to the family's well being and the decree otherwise provided for substantial child support. However, an award to the custodial parent of the marital home which formed the primary asset of the parties was found equitable in In re Marriage of Ried, 212 N.W.2d 391, 394-95 (Iowa 1973), where the uneven division was compensated for in the determination of the amount of support. In this case, Barnie was required to pay only $50 per week child support for the parties' minor child and no alimony despite the parties' long marriage, the financial needs of Mary, and his vastly superior earning capacity. In addition, Barnie was awarded the 1979 van and his pension fund. While we recognize the contingent nature of the pension benefits, we are not convinced these benefits are valueless as Barnie would have us believe and we consider them in determining an equitable division. Iowa Code § 598.21(1)(i) (1983).

Moreover, the trial court awarded Mary the parties' marital home not only as her share of property, but to ensure that she would receive the necessary support for herself and the parties' minor child from Barnie. The court found as follows:

> During the latter part of this marriage, his drinking and gambling has had a tremendous adverse effect on the mental and economic health of Petitioner and their children, the majority of his earnings having been dissipated. The marriage has a history of financial obligations not being met thereby, and Respondent has never demonstrated financial stability or any inclination thereto. Petitioner has had the responsibility of financially maintaining this family, and has experienced considerable difficulty supporting and maintaining herself and the family during this marriage and the pendency of this action. As previously found, Respondent has with regularity failed to maintain employment and has through his substance abuse avoided at every opportunity financially contributing in accordance with his apparent ability. It must and is assumed that Respondent's future performance pursuant to any order made concerning support and alimony would be set with the same resistance and ineffective performance. It is therefore necessary that the division of property between these parties upon their dissolution of marriage adequately provide for the necessary support of Petitioner and the minor child of the parties independent of Respondent's willingness to make that financial contribution from his own earnings or assets.

We believe that, under this record, the trial court's property division is equitable. We reject Barnie's contention that the trial court erroneously considered fault in making the property division. See In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972). The record shows that the court considered Barnie's alcoholism only as it has affected his contribution to the accumulation of the parties' assets, Iowa Code section 598.21(1)(c) (1983), and as it will likely affect his future ability to make necessary support payments to Mary as demonstrated by the record. Iowa Code section 598.21(1)(h) (1983).

Accordingly, the decision of the trial court is affirmed.

AFFIRMED.