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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF RAY S. O'HANESIAN AND ANNA L. O'HANESIAN

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Upon the Petition of)
RAY S. O'HANESIAN,) Filed August 26, 1987
Petitioner-Appellee,)
And Concerning)
ANNA L. O'HANESIAN,) 7-181 / 86-1381
Respondent-Appellant.)

Appeal from the Iowa District Court for Scott County (No. 36556), David J. Sohr, Judge.

Respondent wife appeals from the decree dissolving the parties' marriage and an order in response to her Iowa Rule of Civil Procedure 179(b) motion. **AFFIRMED.**

Arthur L. Buzzell of Buzzell, Semel & Vesole, Davenport, for respondent-appellant.

David M. Erickson and Mark D. Aljets of Mumford, Schrage & Zurek, Des Moines, for petitioner-appellee.

Considered by Donielson, P.J., and Snell and Hayden, JJ.

DONIELSON, P.J.

Respondent wife appeals from the decree dissolving the parties' marriage and an order in response to her Iowa Rule of Civil Procedure 179(b) motion. She argues that: (1) she should have been awarded alimony; (2) her husband should pay a greater amount in child support; (3) she should have received a greater percent of her husband's accrued pension benefits; (4) the payment of her share of the pension benefits should not be postponed until her retirement; and (5) her husband should pay a greater part of the repairs and maintenance on the real estate until it is sold. Petitioner husband filed a cross-appeal which raised several issues of property valuation, but his cross-appeal was dismissed because it was not timely filed. We affirm.

Petitioner, Ray S. O'Hanesian, and the respondent, Anna L. O'Hanesian, were married from 1969 until 1986, a period of 17 years. They have one minor child, Raelene, who was born in 1974. Custody of Raelene is not in dispute. At the time of the dissolution decree, Ray was age 58 and Anna was age 56. Since 1981 Anna has been a bookkeeper-receptionist, receiving a gross monthly income of $953. Ray is an unemployed over-the-road trucker. He receives $527 net per month in Teamsters' pension benefits. The pension continues throughout Ray's life; there is no provision for increased payments over the years; there are no survivor benefits. Ray is eligible for social security in about four years. He has two IRAs valued at $2,600. Anna has four IRAs valued at $7,069. Anna's health is good. Ray indicated he has problems with his eyesight, his back and legs, his teeth, and his nerves. Because of the problems with his back, legs, and eyesight, he testified a doctor told him in 1982 to "get off the road." He had been a trucker for 35 years. Since then he has tried working as a truck stop manager for a short time. Otherwise, he has been on unemployment benefits which have since terminated. He stated at trial that he contacts

Job Service regularly to find new employment, but to no avail. Ray has a ninth grade education. Anna has a high school education, plus she has taken some secretarial and accounting courses.

Under the dissolution decree, neither party was ordered to pay alimony; Ray was ordered to pay $80 per month child support; and Anna was ordered to receive 20 percent of Ray's pension benefits upon her retirement from employment. The trial court ordered a division of the real and personal property of the marriage, using asset values determined by the court or stipulated by the parties. The trial court entered an order on Anna's motion for enlargement and amendment of findings of fact and conclusions of law and decree wherein the court ordered Ray to pay 25 percent of any repairs or maintenance of the home in excess of $400. Anna and Raelene may live in the house without any payments to Ray until child support is no longer payable; at that time, the property is to be sold. During the interim, Anna is to keep the mortgage, insurance, and property taxes current.

Our scope of review is de novo in dissolution proceedings. Iowa R. App. P. 4. While we give weight to the fact findings of the trial court, especially considering the credibility of witnesses, we are not bound by them. Iowa R. App. P. 14(f)(7).

On appeal, Anna argues that she should have received an alimony award. She does not feel that she should be denied alimony just because Ray is not working. Ray responds that because of his age and education his prospects for employment are small, while Anna has the ability to earn an income for several years. Thus, he argues that an alimony award would be inappropriate.

Iowa Code section 598.21(3) (1985) sets forth the factors to be considered in an award of alimony. We need not list them here. Under Iowa law the payment of alimony is not a right, but rather must be determined in light of all the circum-

stances, including the property settlement. In re Marriage of Bevers, 326 N.W.2d 896, 900 (Iowa 1982). Application of those factors set out in section 598.21(3) demonstrates that an award of alimony to Anna would be inappropriate. Ray is not in good physical health. Because of his poor health, he has not been able to work as a truck driver; his only income is $527 per month from his pension benefits. Because of being age 58 and having only a ninth grade education, it appears that there are few job prospects for him, although he continues to search for employment. Anna is employed, and she is in good health. We realize that Anna's economic situation is not ideal. However, she and Raelene are allowed to live in the marital home; we also think Anna received an equitable property distribution. Ray does not have the ability or the funds to pay alimony. He has had to borrow money to pay his debts; he also has had to live with his sister because he could not afford an apartment. We therefore affirm the trial court's finding that no alimony should be awarded.

Anna also argues that Ray should pay an amount greater than 15 percent of his monthly income in child support. Ray now pays $80 per month in child support. He argues that this amount is all he is able to pay. We affirm the trial court with respect to the amount of child support awarded. Iowa Code section 598.21(4) (1985) sets out criteria to consider in determining an award of child support. In addition, we may also consider the parties' ages, present earning capacities, future prospects, duration of the marriage, the indebtedness of each or both, and any other relevant factors. In re Marriage of Byall, 353 N.W.2d 103, 107 (Iowa App. 1984). Ray currently is not capable of paying more than $80 per month based on the facts set out earlier in this opinion. We note that the trial court ordered that the support award is to be reviewed upon Ray obtaining employment or social security benefits. The trial court also ordered Ray to maintain medical and life insurance coverage for Raelene and to name

Raelene as beneficiary on all life insurance policies as long as she qualifies for child support.

Anna contends that she should have received more than 20 percent of Ray's accrued pension benefits. Because they were married 14 out of the 16 years Ray contributed to his pension, Anna feels she should receive 44 percent of his pension benefits (14 out of 16 years times 50 percent). Also, Anna states that payment of her share of the pension benefits should not be postponed until her retirement. She feels that, in effect, the court has forced her to continue working.

Iowa Code section 598.21(1) mandates that property be divided equitably. Taking the economic circumstances of the parties into consideration, we find the trial court was correct in awarding 20 percent of Ray's pension benefits to Anna upon her retirement. Ray's sole source of income is from the pension benefits. Ray's interest in his house is tied up until Raelene attains age 18. His IRAs valued at $2,600 are not liquid. We realize that Anna could certainly use more money; however, we cannot order Ray to pay an amount which would leave him nothing on which to live. Anna argues that without Ray's extra help, she is surviving at an indigency level; Ray argues that if he provides more support, he is at an indigency level. The financial stress in this case undoubtedly will be felt by Anna, Ray, and Raelene.

Finally, Anna appeals from a finding made by the district court in its order in response to her Iowa Rule of Civil Procedure 179(b) motion. She asserts that Ray should pay 25 percent of all repairs and maintenance on the parties' home until it is sold. Under the court's order, Ray only has to pay 25 percent of all repairs once costs exceed $400. We affirm the trial court's finding in this respect. Based on the earning capacity of the parties and the respective

abilities to pay, we find the order for Ray to pay 25 percent of the cost of repairs above $400 is an equitable disposition.

Because Ray's cross-appeal was dismissed, we need not address the allegations concerned with erroneous property valuations.

We therefore find the trial court's orders fair and equitable as they relate to alimony, child support, pension benefits, and the home repair expenses.

AFFIRMED.