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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF DANIEL A. LANGLOSS AND JOAN L. LANGLOSS

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Upon the Petition of)
DANIEL A. LANGLOSS,
)
Petitioner-Appellant/
Cross Appellee,)

And Concerning)
JOAN L. LANGLOSS,
) 9-28
) 88-857
Respondent-Appellee/
Cross-Appellant.)

Appeal from the Iowa District Court for Wayne County (DM 484), Jerrold W. Jordan, Judge.

The husband has appealed a dissolution decree, and the wife has cross-appealed. Both challenge economic provisions of the decree. **AFFIRMED AS MODIFIED.**

William L. Shelton, Chariton, for the petitioner-appellant.

Robert W. Reynoldson, of Reynoldson, Van Werden, Kimes, Reynoldson, Lloyd & Wieck, Osceola, for the respondent-appellee.

Heard by Donielson, P.J., and Sackett and Habhab, JJ.

SACKETT, J. **198**

This appeal involves challenges to the economic provisions of the trial court's decree dissolving a long-term marriage. We affirm as modified.

Petitioner-appellant Daniel A. Langloss and respondent-appellee Joan L. Langloss were married in 1959. Four children were born to the marriage. Only one, Robert, age fifteen at the time of trial, is still subject to support. Daniel, an employee of Clarke Electric Cooperative, Inc., has been in their employ for twenty-five years. He also operates a fur business, a tree trimming business and does some farming. Joan has, at both parties' request, assumed the major portion of the household and child rearing responsibilities.

In 1983 the parties purchased a grocery store in Derby, Iowa. Joan has run the business. The income generated is minimal. Joan has no other special employment skills.

The trial court valued the parties' assets, other than the grocery store and Daniel's pension, at approximately $330,000 and apportioned assets of $187,000 to Daniel and assets of $143,000 to Joan. Daniel was then ordered to pay a debt of $67,000 and a car loan of $5,000 on a vehicle given to Joan. Daniel was also ordered to pay $3,000 toward Joan's attorney fees. Joan was given forty-five percent of the accruals to Daniel's pension to date. The grocery store was ordered sold with the profits to be divided.

Daniel was ordered to pay Joan alimony of $750 a month for thirty-six months and $500 a month for twenty-four months. Daniel was also ordered to pay $200 a month child support.

Daniel appeals and Joan cross-appeals.

I

Daniel challenges the valuation by the trial court of certain assets set aside to him. We find the value placed on the assets by the trial court to be well within the permissible range of evidence and will not disturb them on appeal. See In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973); In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984).

Daniel's next contention is the property award including allocation of his pension was inequitable. He also contends the alimony award was excessive. Joan on cross-appeal complains the alimony award should be for a longer duration.

We consider property division and alimony together in evaluating their individual sufficiency. In re Marriage of Dahl, 418 N.W.2d 358, 359 (Iowa App. 1987); In re Marriage of Griffin, 356 N.W.2d at 608. The property award made by the trial court resulted in Joan receiving net assets of $143,000 plus one-half the equity in the grocery store and forty-five percent of the pension accruals Daniel acquired during marriage. Daniel received assets of $187,000;

liabilities of $72,000 plus his attorney fees and $3,000 toward Joan's, one-half the grocery store and fifty-five percent of pension accruals. He received nearly $30,000 less in property.

There is no mechanical rule which dictates an equal division. In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980); In re Marriage of Stewart, 356 N.W.2d 611, 612 (Iowa 1984). We reject any rule based on percentage division of the assets and determine what is equitable under the specific facts of each case. In re Marriage of Byall, 353 N.W.2d 103, 106 (Iowa App. 1984). We determine here the assets were nearly all acquired by the parties during a long-term marriage. We reject Daniel's contention he should receive a greater share of the assets because he was the wage earner. The parties are in the position they are today because of joint efforts. We determine a nearly equal division of assets is equitable.

The trial court awarded forty-five percent of Daniel's accrued benefits as of the date of the decree and ordered a proposed Qualified Domestic Relations order be prepared for his signature. Daniel contended this was not equitable. We agree with the trial court Daniel's pension should be considered in framing the financial clauses of the dissolution. See In re Marriage of Bevers, 326 N.W.2d 896, 900 (Iowa 1982); In re Marriage of Williams, 421 N.W.2d 160, 167 (Iowa App. 1988); In re Marriage of Byall, 353 N.W.2d at 106.

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II.

Daniel contends the alimony awarded is excessive. Joan contends the period for which the alimony is awarded should be extended. We examine the dictates of section 598.21(3) and applicable case law. See e.g. In re Marriage of Thomas, 319 N.W.2d 209, 212 (Iowa 1982); In re Marriage of Dahl, 418 N.W.2d at 361; In re Marriage of Luebbert, 400 N.W.2d 80, 82 (Iowa App. 1986); In re Marriage of Griffin, 356 N.W.2d at 608-09; In re Marriage of Stewart, 356 N.W.2d 611, 612-13 (Iowa App. 1984); In re Marriage of Hayne, 334 N.W.2d 347, 350-51 (Iowa App. 1983); .

We consider the fact Joan has received substantial assets which will be available for her support. She also will enjoy retirement benefits. We recognize with no education beyond high school and absence from the job market for nearly a quarter of a century Joan's opportunity for a job paying above minimum wage is doubtful. Neither party has attempted to establish the cost of Joan receiving further job training or her ability to be retrained. While Joan absented herself from the job market to care for home and children Daniel maintained his long-term employment with the resulting benefits. See In re Marriage of Mentel, 359 N.W.2d 505, 507 (Iowa App. 1984). We note Joan has made only minimal FICA payments. We are required to look at the presence or absence of social security benefits. In re Marriage of Schissel, 292 N.W.2d 421, 427 (Iowa 1980); Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968).

Both parties if they are in reasonable health need to earn up to their capacities in order to pay their own present bills and not lean unduly on the other party for permanent support. In re Marriage of Wegner, 434 N.W.2d 397, 399 (Iowa 1988). We look not only at Joan's present income but also her earning capacity. See Wegner, 434 N.W.2d at 399. Daniel earns about $25,000 annually. He continues to accrue pension benefits and enjoys other job related benefits such as health insurance. His farm, fur and tree trimming businesses have yielded minimal income for effort expended. Joan realizes little or no income from the grocery store. We determine Joan will enter employment at minimum wage with few if any employment benefits.

We affirm the property award in all respects except we order an additional $15,000 in cash go to Daniel. We affirm the trial court's division of pension. We modify the alimony to provide Joan shall receive $300 per month until she receives a portion of Daniel's pension.

III.

Daniel challenges the attorney fee award to Joan's attorney. Attorney fees are not recoverable as a matter of right but rest within the trial court's discretion and depend upon one spouse's financial needs and the other spouse's ability to satisfy them. In re Marriage of

Orgren, 375 N.W.2d 710, 714 (Iowa App. 1985); In re Marriage of Mueller, 400 N.W.2d 86, 89 (Iowa App. 1986); In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983). We find no reason to disturb the trial court award on appeal. We determine each party shall pay his or her own attorney fees on appeal. The spouses have obtained nearly equal property settlement and have funds with which to pay their fees. See In re Marriage of Hoag, 380 N.W.2d 8, 10 (Iowa App. 1985). Each party shall pay one-half of the appellate costs.

AFFIRMED AS MODIFIED.