IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JAMES DAGIT AND BARBARA DAGIT

Upon the Petition of)
JAMES DAGIT,)
Petitioner-Appellee,)
And Concerning)
BARBARA DAGIT,)
Respondent-Appellant.)

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FILED
FEB 2 3 1989
CLERK SUPREME COURT

8-662
88-845

Appeal from the Iowa District Court for Chickasaw County (No. DM5-142), Robert E. Mahan, Judge.

The wife appeals from a dissolution decree, challenging economic provisions. **AFFIRMED AS MODIFIED.**

J. D. Villont of the Donohue Law Office, West Union, for respondent-appellant.

Michael K. Kennedy of Kennedy & Kennedy, New Hampton, for petitioner-appellee.

Considered by Schlegel, P.J., and Hayden and Habhab, JJ.

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SCHLEGEL, P.J.

Barbara Dagit appeals the decree entered by the trial court in this dissolution action. She challenges the economic provisions and seeks attorney's fees on appeal. We affirm as modified.

The parties to this action were married in 1959. There were three boys born to this union, all of which are now adults. None of them reside with either of the parties. Petitioner James Dagit is a construction foreman with a gross annual salary of $26,700. He also earns additional income from part-time employment and from a small hog operation he owns with his son, Joe. Barbara is a secretary with a gross annual salary of $7,355. She also earns approximately $50 per month from alteration sewing. Both parties are in their late forties. James is in good health. Barbara suffers from a hiatal hernia, a spastic colon, carpal tunnel syndrome, and high blood pressure.

The parties' primary asset was a house valued at $55,000 to $60,000, subject to a mortgage debt of $26,500. The trial court ordered that the house be sold and the proceeds, after the payment of the mortgage and expenses of sale, be divided equally between the parties. James was awarded a 1978 pickup truck that he listed at a value of $2,000, his employees retirement plan valued at $8,089.61, an interest in livestock valued at $4,000, the cash values of his life insurance, a Farmall A tractor and mower, and the personal property now in his possession. Barbara was

awarded all personal property in her possession, including household goods that were valued by both parties at $3,000, and a lump sum payment of $1,000.

The trial court also directed that Barbara and James were each entitled to one-half of an IRA (Individual Retirement Account) having a total value of $13,859.02. This was the value that had been given to the court by James and agreed to by Barbara. Subsequent to the filing of the court's findings of fact and conclusions of law, however, it was made clear, by a motion filed by respondent under Iowa Rule of Civil Procedure 179B, that the true value of the IRA was only $2,605.24, instead of $13,859.02. The court ordered that the IRA be divided equally, and each party received $1,302.62.

Under the court's distribution, the parties received the following properties and values:

Item	James	Barbara
1/2 Homestead	$14,240.00	$14,240.00
1978 Pickup	2,000.00	-
James's Retirement Plan	8,089.00	-
Livestock	4,000.00	-
Tractor & Mower[1]	?	-
Life Insurance - Cash Value	?	-
Household Goods	-	3,000.00
Lump Sum Award	-	1,000.00
IRA	1,302.62	1,302.62
Totals	$29,631.62	$18,542.62

1. The court made no finding as to the value of James's tractor and mower, and presumably it was of no great value. In addition, no value was allocated for the cash value of life insurance, for any feed or supplies on hand for the hog operation, or for the personal property allocated to either of the parties.

James was also ordered to pay debts in the amount of $5,690, and Barbara was ordered to pay debts in the amount of $5,087. Of the debts payable by James, $4,100 was due to the indebtedness of his hog operation. The debt was payable from a joint account maintained by James and Joe, the value of which was not established by the court. James, however, testified that a "Hog Note" in the amount of $3,100 and feed bills in the amount of $1,000 were payable from that account. Deducting the debts payable personally by the parties, the court awarded James net assets of a value of $28,041.62 and awarded Barbara net assets of a value of $13,455.

The court further awarded Barbara short-term alimony in the sum of $250 per month for forty-eight months.

Barbara first claims that the trial court erred in its division of the parties' property. In our determination of this matter, we are guided by certain well-established principles. The distribution of the parties' property in a dissolution action should be that which is equitable under the circumstances upon consideration of the criteria codified in Iowa Code section 598.21 (1987). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983). Under this statute, the ultimate question is whether the distribution of the property is equitable; there is no rule based upon strict percentage division of assets. In re Marriage of Lattig, 318 N.W.2d 811, 814 (Iowa App. 1982).

Division of property is based upon each marital partner's right to a just and equitable share of the property accumulated as the result of their joint efforts. In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981).

Upon our consideration of the provisions of Iowa Code section 598.21 as applied to the facts of this case, we find that the property division ordered by the court is inequitable. When the parties lived on a farm, Barbara helped in the field and with the livestock operation. Barbara was also the primary caretaker of the parties' three children as well as the primary homemaker. When the parties moved to town, Barbara took a part-time job. Though James's earning capacity is nearly three and a half times that of Barbara's, Barbara's overall contributions to the marriage are substantial. See Marriage of Lattig, 318 N.W.2d at 815. We therefore modify the decree and order that the lump sum payment ordered by the court be increased to $7,000, payable within twelve months from the date of this opinion. Barbara shall have judgment for that amount, together with interest as provided by law.

Barbara also contests the award of alimony, both as to amount and duration. The criteria to be considered in awarding alimony have been codified in Iowa Code section 598.21(3). Alimony and property rights may be closely related, but they are distinguishable and have differing purposes. Marriage of Hitchcock, 309 N.W.2d at 437. When

determining the appropriateness of alimony, the trial court must consider (1) the earning capacity of each party, and (2) present standards of living and ability to pay balanced against relative needs of the other. Id. at 436-37.

James is in good health and able to earn a substantial salary. His employer furnishes him with a truck to drive to and from work and he receives other fringe benefits from his employer such as health insurance coverage and a pension plan. He lives in his father's farm house and his only financial obligation is to pay for utilities and some upkeep on the buildings, some of which benefit his hog operation. Barbara, on the other hand, is not trained for any type of employment other than that which she has done for approximately seven years. Her job pays $4 per hour, and she has had substantial ill health, requiring her to leave her work, without pay, for the treatment of her health problems. She estimates that it will cost her $250 per month for proper housing, plus utilities. Medical insurance will cost another $200 per month. Her medicines cost approximately $65 per month.

The court ordered James to pay rehabilitative alimony of $250 per month for 48 months. In light of the length of the marriage, Barbara's contributions to the marriage, her poor health and limited employment skills, as well as James' ability to pay, we modify the alimony award and order that James shall pay alimony in the amount of $300

per month until Barbara shall either remarry or die. We make this award not with the effort to restore her to her former standard of living, but to enable her to survive with the small earnings she has and the expenses she must defray, including substantial medical expenses.

We further order James to pay $500 of Barbara's trial attorney fees and $500 of her appellate attorney fees.

Costs are taxed to James.

AFFIRMED AS MODIFIED.