FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-122 / 90-1070

IN RE THE MARRIAGE OF DONALD D. CIRKSENA AND CHARLEMAGNE CIRKSENA

Upon the Petition of
DONALD D. CIRKSENA,

Appellant,

And Concerning
CHARLEMAGNE CIRKSENA,

Appellee.

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Appeal from the Iowa District Court for Polk County, Rodney J. Ryan, Judge.

The husband appeals a dissolution decree, challenging its economic provisions. **AFFIRMED AS MODIFIED.**

Virgil Moore, Des Moines, for appellant.

Brett I. Anderson, Des Moines, for appellee.

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

SCHLEGEL, P.J.

Donald and Charlemagne Cirksena were married in 1954. Their six children are all adults.

Donald, fifty-five years old at trial time, has been employed at Firestone Tire & Rubber Company for many years. He works a substantial amount of overtime, although he asserts his doctor has advised him to quit working overtime. His average net income is over $500 per week.

Charlemagne was also fifty-five years old at trial time. She was a housewife for many years but has been employed continuously since 1977. She presently works for the Iowa Credit Union League, earning an average net pay of $250 per week.

The parties' primary asset was a house valued at $53,500, subject to an $8,000 mortgage. The dissolution decree awarded this house to Charlemagne, subject to its mortgage and also subject to a $15,000 lien in favor of Donald. This lien is payable at the rate of $1,000 per year beginning in 1995. Charlemagne also received a $6,600 certificate of deposit, a car, and household furnishings. Donald received a vehicle, two motorcycles, and various tools and recreational equipment, in addition to his $15,000 lien against the house. Each party was awarded all rights to his or her employment pension plan.

Donald was directed to pay Charlemagne alimony of $400 per month until she remarries or until either party dies. Donald was also directed to contribute $2,000 toward Charlemagne's attorney fees.

Donald has appealed from the dissolution decree. He challenges the division of property and the awards of alimony and trial attorney's fees to Charlemagne.

I. In this equity action our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. Donald claims the property distribution was not equitable. When Donald's lien on the house is considered, he has received about $28,400 in property, while Charlemagne has received about $48,500. These figures do not include each parties' pension plan.

The distribution of the property of the parties should be that which is equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(1). In re Marriage of Oler, 451 N.W.2d 9, 11 (Iowa App. 1989). We are not bound to achieve a precisely equal division in awards of marital property. Id.

In this case we believe the property distribution made by the district court is equitable based on Donald's superior earning capacity. However, as the lien payments are presently set up the lien will not be paid in full until at least the year 2010, when both parties will be about seventy-five years old.

We therefore modify the decree to provide that Charlemagne must pay to Donald the sum of $15,000 within six months of the effective date of procedendo in this matter. Charlemagne has the option to sell the house or refinance it. If she elects to sell the property, Donald should be paid out of the net proceeds after the payment of the mortgage. Donald has a lien on the property until the amount of $15,000 is paid to him.

III. Donald also contests the award of alimony to Charlemagne. He feels the award of alimony is based on his overtime income. Donald stated he had been advised to quit working overtime because of medical problems. Without overtime, Donald's gross income is about $30,600 per year. Charlemagne's gross income is about $18,000 per year.

Alimony is an allowance to the ex-spouse in lieu of a legal obligation to support that person. In re Marriage of Cooper, 451 N.W.2d 507, 508 (Iowa App. 1989). Alimony is not an absolute right; its award depends upon the unique circumstances of each individual case. Id. We consider property division and alimony together in evaluating their individual sufficiency. Id.

After examining the relative financial condition of each party, we reduce Donald's alimony obligation to $200 per month. This award takes into consideration the fact that Donald will have a reduced income in the future and should still allow Charlemagne to meet her expenses.

IV. Finally, Donald contends he should not have to pay $2,000 towards Charlemagne's trial attorney fees.

Attorney fees are not recoverable as a matter of right, but rest within the trial court's discretion. In re Marriage of Dahl, 418 N.W.2d 358, 361 (Iowa App. 1987). Any award of attorney fees depends on the financial circumstances and earning of each party. Id.

Based on the relative financial circumstances of each party, we affirm the district court's award of attorney fees.

V. In summary, we have modified the district court decree to order Charlemagne to pay off Donald's $15,000 lien against the marital house within six months after procedendo issues in this case. We have also reduced Donald's alimony obligation to $200 per month. The district court decree is affirmed in all other respects. The costs of this appeal are assessed one-half to each party.

AFFIRMED AS MODIFIED.