



IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ROBERT L. WING AND HELEN M. WING

Upon the Petition of	)	
ROBERT L. WING,	)	Filed November 30, 1983
Petitioner-Appellee,	)	
And Concerning	)	
HELEN M. WING,	)	<u>3-296</u>
Respondent-Appellant.	)	<u>2-69557</u>

Appeal from Polk District Court - Richard A. Strickler, Judge.

Respondent wife appeals from the decree dissolving the parties' marriage, asserting that the trial court's property division and its refusal to award her alimony were inequitable. **AFFIRMED AS MODIFIED.**

Ted Edward Prine of Prine, Piazza & Corsello, Des Moines, for respondent-appellant.

Rex Darrah, Des Moines, for petitioner-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, Hayden, and Sackett, JJ.

SACKETT, J.

Respondent wife appeals from the decree dissolving the parties' marriage, asserting that the trial court's property division and its refusal to award her alimony were inequitable. We modify the property settlement and affirm.

Robert and Helen Wing were married in 1975. There were no children born to this union. Both parties had been married previously. At some time during the marriage each had a child from a prior marriage living with them.

Robert was 47 years old at the time of trial and Helen was 46. Robert was in good health. Helen had had a drinking problem for which she received treatment during the marriage. Shortly before trial Helen had undergone surgery twice because of an aneurysm.

At the time of their marriage both Helen and Robert had some assets, including residential real estate. Robert claims that the net value of his pre-marital assets was \$32,650. Helen claims that her pre-marital assets were valued at \$14,730, while Robert claims they were valued at \$11,130. At the time of trial the net value of property in Robert's name was \$15,685, which included his equity in two residential properties. Helen's residential real estate had been sold during the marriage. Helen had debts in her name in the amount of \$4,300 at the time of trial.

Robert has a gross monthly income of \$1,350. He has additional income from rental property and part-time employment. Helen is not presently employed, although she appeared to have been employed during most of the marriage. The trial court awarded the property and debts in Robert's name to him and ordered Robert to pay Helen a lump sum settlement of \$2,000, to be paid in monthly installments of \$100. No interest was to accrue on the award. Helen was to be responsible for her own debts of \$4,300. Each party was to pay their own costs and fees. No alimony was awarded either party.

Helen appeals the trial court decision, claiming that the circumstances justify a more equitable distribution of assets than was awarded.

I.

Our review of this equity case is de novo. Iowa Rule of Appellate Procedure 4. While weight will be given to findings of the trial court, this court will not abdicate its function as triers de novo on appeal. In re Marriage of Winegard, 257 N.W.2d 609, 613 (Iowa 1977). It is our responsibility to review the facts as well as the law and determine from the credible evidence rights anew. Id.

II.

Helen argues on appeal that the trial court erred in failing to award her alimony. When determining the appropriateness of alimony, the trial court must consider the earning capacity of each party and present standards of living and ability to pay balanced against relative needs of the other. In re Marriage of Hitchcock, 309 N.W.2d 432, 436-37 (Iowa 1981). We recognize that in awarding alimony precedent is of little value, and each case must be decided on its own particular circumstances. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). We have reviewed the record and find that the circumstances presented do not justify an award of alimony to Helen.

III.

Helen argues further that the property division ordered by the trial court was inequitable. We agree. We apply the criteria enumerated in Iowa Code section 598.21(1). While we believe that the trial court was correct in awarding Helen a lump sum property settlement, we find the amount awarded to be inadequate under the circumstances. We, therefore, hold that the property award to Helen be increased to \$6,000, payable at the rate of \$200 per month with interest at 10% on the unpaid balance.

IV.

Helen finally requests an award of attorney fees and costs on appeal. Our modification of the property division should enable Helen to bear the cost of her attorney fees. See In re Marriage of Hitchcock, 309 N.W.2d 432, 438 (Iowa 1981).

Each party shall be responsible for their own fees and costs.

The decree of the trial court is affirmed as modified.

AFFIRMED AS MODIFIED.

HAYDEN, J. (dissenting in part)

Upon a review of the record in this case, I cannot hold that the economic provisions of the trial court's decree are inequitable based upon the length of marriage and financial and economic condition of each party, and accordingly, I would affirm the trial court in all respects.

Donielson, J., joins this dissent.