

IN THE COURT OF APPEALS OF IOWA

No. 9-595 / 89-227

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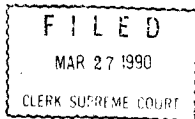
IN RE THE MARRIAGE OF GOLDIE BLUM and JOHN C. BLUM, JR.

Upon the Petition of
GOLDIE BLUM,

Appellee,

And Concerning
JOHN C. BLUM, JR.,

Appellant.



Appeal from the Iowa District Court for Pottawattamie
County, Paul H. Sulhoff, Judge.

Appeal from the economic provisions of a dissolution
decree. **AFFIRMED.**

Hugh P. Finerty, Jr. of Finerty & Rosman, Council
Bluffs, for appellant.

Maynard S. Telpner of Telpner, Smith, Sawatzke &
Ruesch, Council Bluffs, for appellee.

Considered by Oxberger, C.J., and Donielson and
Sackett, JJ.

OXBERGER, C.J.

This is an appeal from the economic provisions of a dissolution decree between Goldie Blum and John Blum, Jr. We affirm.

Goldie and John were married on November 5, 1969. Two children were born of the marriage; one in May 1970 and another in March 1974. The oldest child is currently attending college.

Goldie, 41, is currently employed at U.S. West Communications. She has worked there since three years prior to her marriage to John. At the time of trial, Goldie earned an annual salary of over \$37,000 plus bonuses as an account representative. In addition, Goldie has a vested pension with U.S. West as well as some U.S. West and AT&T stock.

John, 43, is currently employed at Trity Equipment in the parts department. John, a high school graduate with training in air conditioning while in the Navy, has had several jobs during the parties' marriage. He is currently making over \$16,000 a year. John has life insurance.

Following trial, the district court entered its decree of dissolution. The district court awarded the parties homestead to John subject to Goldie's right to use the premises until July 1, 1992. John was held responsible for the first mortgage on the property. John was also awarded the parties' real estate in Arkansas. Goldie was awarded her common stock, her pension plans with her employer, and the life insurance on the parties' two children. The other

property divided is not disputed on appeal. In addition, joint custody of the parties' children was awarded with primary care given to Goldie. No specific child support award was made. No alimony was awarded and the parties were required to pay their own attorney fees. Following this decree, John filed this appeal. Both parties also seek attorney fees for this appeal.

To resolve the issues presented by the parties we turn to well-established principles. Our scope of review is de novo. Iowa R. App. P. 4. Although not bound by the trial court's determination of factual findings, we will give considerable weight to them, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). Prior cases, though helpful, have little precedential value since we must base our decision here primarily on the particular circumstance of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

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 606, 608 (Iowa App. 1984). The partners in a marriage are "entitled to a just and equitable share of the property accumulated through their joint efforts." In re Marriage of Havran, 406 N.W.2d 450, 452 (Iowa App. 1987). When the value placed on the assets by the trial court is within the permissible range of

evidence we will not disturb those values 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).

Alimony is an allowance to the ex-spouse in lieu of a legal obligation to support that person. See In re Marriage of Hitchcock, 309 N.W.2d 432 (Iowa 1981). Alimony is not an absolute right; its award depends upon the unique circumstances of each particular case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). In making an award of alimony the courts are to consider those factors listed in Schantz v. Schantz, 163 N.W.2d 398 (Iowa 1968), as modified by In re Marriage of Williams, 199 N.W.2d 339 (Iowa 1972) and now codified in Iowa Code section 598.21(3). See In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983); In re Marriage of Hayne, 334 N.W.2d 347 (Iowa App. 1983).

We find no reason to modify the trial court's decision to deny alimony in this case.

The criteria governing property division are now contained in Iowa Code section 589.21. The determination as to what constitutes an equitable property division cannot be reduced to precise mathematical formulas. The courts strive to make a just and equitable award under the unique circumstances of each case. Among the factors to be considered are the parties' respective incomes, educations, and earning capacities; the length of the marriage; the

contributions and sacrifices made by each toward the acquisition of the property during the marriage; the sources of the property; the respective parties' needs; their social position and living standards both before and during the marriage; their physical and mental health and life expectancies; the tax consequences to each party; and such other factors as may reasonably enter into any division. See In re Marriage of Wallace, 315 N.W.2d 827, 830 (Iowa App. 1981).

We find the property award by the trial court to be equitable.

John contends the trial court erred in denying his request for attorney fees. Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). To overturn an award the complaining party must show that the trial court abused its discretion. Awards of attorney fees must be for fair and reasonable amounts, In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977), and based on the parties' respective abilities to pay. In re Marriage of Lattig, 318 N.W.2d 811, 817 (Iowa App. 1982).

We affirm the trial court's denial of John's request for attorney fees.

Both John and Goldie seek attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the

parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Hayne, 334 N.W.2d 347, 353 (Iowa App. 1983); In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981).

Guided by these general legal principles, we find that each party shall be responsible for his or her own attorney fees. Court costs are taxed to John.

AFFIRMED.

Sackett, J., specially concurs without opinion.