FILED
AUG 30 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-203 / 89-698

IN RE THE MARRIAGE OF ANNE PATRICIA CHILDRESS AND RALPH J. CHILDRESS

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Upon the Petition of

ANNE PATRICIA CHILDRESS,

Appellant,

And Concerning

RALPH J. CHILDRESS,

Appellee.

Appeal from the Iowa District Court for Benton County, August F. Honsell, Judge.

The petitioner appeals various economic provisions contained in the district court's decree of dissolution of the parties' marriage. **AFFIRMED.**

Stephen B. Jackson, Cedar Rapids, for appellant.

Michael L. Mollman of Mollman & Wertz, Cedar Rapids, for appellee.

Considered by Donielson, P.J., and Schlegel and Sackett, JJ.

SCHLEGEL, J.

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Anne (Pat) Childress challenges the property division contained in the trial court's decree of dissolution. She also requests attorney fees on appeal. We affirm the trial court.

Ralph and Pat Childress were married on August 16, 1969. It was the second marriage for both. No children were born of this marriage, but each had children from previous marriages. Because of the difficulties experienced in attempting to blend their families, Ralph and Pat maintained separate residences throughout a significant portion of the parties' marriage. In 1971, the parties resided together in a home owned by Pat prior to the marriage. This home was subject to eminent domain proceedings, and the funds received from it were invested in another home.

At the time of the parties' marriage, Ralph brought into the marriage $25,000, a trailer valued at $8,500, a 1966 Chrysler New Yorker, and two $1,000 certificates. Due to the death of one of Ralph's daughters, Ralph received $10,000; he also received an $18,000 gift from his children's maternal grandmother.

During the years from 1971 to 1979, when the parties lived apart, Ralph and Pat acquired numerous properties. In 1979, the family homestead was purchased with funds provided by Ralph. The parties also purchased a lot in

Urbana, Iowa, for $9,000, and later a house was placed on the Urbana lot, at a cost of $32,132; all but $1,000 of it coming from Ralph. The parties also purchased a rental home in Urbana, which pays a rental income of $200 per month to Ralph. Another lot in Urbana was purchased by Ralph and has a fair market value of $350. Another home was purchased in Cedar Rapids by Ralph, where Ralph currently resides.

At the time of trial, both parties were retired. Pat earned $472 per month social security, $412 from her teachers' IPERS account, and $260 per month in rental income. Ralph retired in 1985 after working forty-four years as a boilermaker. Ralph received $1,200 per month in pension benefits, $640 per month social security, $200 per month in rental income, and interest from investments. At the time of trial, Ralph was suffering from asbestosis and was receiving medical care.

Following trial, the trial court awarded Pat: the home at 1224 18th Avenue S.W. in Cedar Rapids; her IRA valued at $22,265; her Norwest NOW account valued at $7,607; the American Federal account of $2,000; the Morris Plan account of $1,447; Collins Credit Union account of $2,000; china valued at $500; the Oldsmobile auto; the New York Life Insurance policy; her IPERS account; and other personal property, for a total amount of $71,402. Ralph received the home at 1356 22nd Avenue S.W. in Cedar Rapids; the

rental real estate in Urbana; the homestead in Urbana and adjoining .89 acre lot; his IRA account of $12,403; Norwest account valued at $10,000; another Norwest account valued at $9,000; a truck; Cadillac automobile; his boilermaker pension plan; the boat, motor, and trailer; the Urbana rental property and furnishings; and other items of personal property, for a total of $159,183 according to Ralph, or $177,857 according to Pat. The trial court additionally ordered Ralph to pay Pat a $15,000 lump sum payment. Pat has appealed.

Pat argues that Ralph never filed a financial affidavit, and therefore did not make a full disclosure to the court. Pat argues that, even giving her credit for the real estate she brought into the marriage, she is still over $45,000 short of an equitable division, and over $70,000 short if the real estate is removed from her list of assets. She therefore requests the reviewing court to grant her an extra $70,000. Pat additionally argues that Ralph has a greater ability to pay attorney fees on appeal, and therefore requests that Ralph should pay those attorney fees.

Our review in cases such as these is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We are not bound by these determinations, however. Id. Prior cases have

little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

Pat challenges the property division made by the trial court. 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). 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 Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983).

The record shows that any disparity in the property division is due to the large amount of property brought into the marriage by Ralph. The trial court did an effective job of distributing the remaining property and we will not disturb the decree on appeal. We affirm the trial court's property division.

Pat also requests attorney fees on 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 Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). The record demonstrates that Pat has sufficient resources from which to pay attorney fees; therefore, she is not entitled to an award of attorney fees.

AFFIRMED.