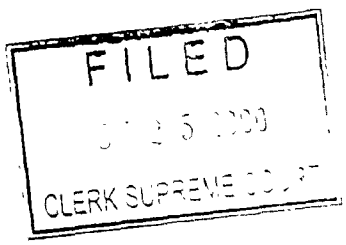
IN THE COURT OF APPEALS OF IOWA

No. 0-604 / 99-1597
Filed October 25, 2000

IN RE THE MARRIAGE OF TERI D. ARRICK AND KENNETH D. ARRICK

Upon the Petition of
TERI D. ARRICK,
Petitioner-Appellant,

And Concerning
KENNETH D. ARRICK,
Respondent-Appellee.



Appeal from the Iowa District Court for Pottawattamie County, Keith Burgett, Judge.

Petitioner appeals from the order dissolving her marriage. **AFFIRMED.**

Drew H. Kouris, Council Bluffs, for appellant.

Michael Gallner, Council Bluffs, for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

HUITINK, J.

Teri Arrick appeals from the economic provisions of the district court's decree dissolving her marriage to Kenneth Arrick. We affirm.

I. Background Facts and Proceedings.

The Arricks were married on December 19, 1963. They separated in February 1998. Teri filed a petition to dissolve their marriage on April 2, 1998.

The fighting issues at trial concerned property division, liability for various debts, and Teri's request for alimony. The district court, citing Kenneth's permanent disability and limited income, declined to award Teri alimony. Kenneth was awarded property valued at $38,435. Teri was awarded property valued at $41,622.

The district court also ordered the Arricks to sell their home and divide the net sale proceeds equally. The final disposition of sale proceeds, however, was made contingent on their application to any refund Kenneth owed for excess social security disability payments. The equal division of a $9000 bank account was similarly restricted.

On appeal Teri challenges the equity of the court's property division. She contends Kenneth should be solely responsible for repayment of excess social security benefits and her share of the property division should not be reduced for this potential liability. Teri also argues she should receive the family home and all its equity subject to any mortgage debt. In addition, Terri renews her request for alimony.

II. Scope of Review.

Our review in this equity case is de novo. Iowa R. App. P. 4. We give weight to the district court's findings of fact, especially in matters of credibility, but are not bound by them. Iowa R. App. P. 14(f)(7).

III. Alimony.

An award of alimony depends upon the circumstances of each case. *In re Marriage of Fleener,* 247 N.W.2d 219, 220 (Iowa 1976). The many factors considered in resolving this issue are specified in Iowa Code section 598.21(3). Generally, we consider the earning capacity of each party, their standards of living, and relative needs. *In re Marriage of Estlund,* 344 N.W.2d 276, 281 (Iowa App. 1983).

Teri is fifty-five years of age. She has a significant employment history and current net monthly income of $1011.50. In addition, Teri's employee benefits include health insurance and pension eligibility.

Kenneth is fifty-six. He has been totally disabled since 1986. Kenneth receives $1329 combined workers' compensation and social security benefits each month.

Kenneth's assessment of the equities on this issue are highly persuasive. He correctly notes Teri "is employed, has a retirement plan, and has the ability to receive pay increases, promotion and bonuses." These circumstances, in addition to Kenneth's disability and modest income, preclude an award of alimony to Teri. We affirm on this issue.

IV. Property Division.

The district court's property division was designed to accommodate Kenneth's potential liability to repay $32,000 in excess social security benefits received from 1993-1996. This liability was created by Kenneth's settlement of a disputed workers' compensation claim and resulting receipt of a net $32,000 lump sum settlement. The settlement proceeds were used to purchase Teri's car for $8300 and a $3500 pickup for Kenneth. The balance was placed in a joint account. When the parties separated, Teri made withdrawals totaling $9000. Kenneth withdrew approximately $2000. At the time of trial, there was $9000 of these funds remaining in Kenneth's safe deposit box.

As noted earlier, the district court made division of the parties' $23,500 home equity and the remaining $9000 settlement proceeds contingent on resolution of this liability. When viewed in light of the parties' joint expenditure of Kenneth's settlement, the court's disposition of the parties' home equity and remainder of Kenneth's settlement proceeds was equitable.

The district court's decree is affirmed in its entirety. Costs are assessed to Teri.

AFFIRMED.