FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JOYCE ANN SMITH AND WILLIAM J. SMITH

Upon the Petition of)

JOYCE ANN SMITH,)

Petitioner-Appellee,)

And Concerning)

WILLIAM J. SMITH,)

Respondent-Appellant.)

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Filed February 26, 1986

5-644
85-318

Appeal from the Iowa District Court for Mills County (No. D-901) - Glen M. McGee, Judge.

Respondent appeals from the alimony and property provisions of the decree dissolving the parties' common law marriage. **AFFIRMED AS MODIFIED.**

Edward L. Wintroub, Council Bluffs, for respondent-appellant.

Robert Laubenthal of Smith, Peterson, Beckman & Willson, Council Bluffs, for petitioner-appellee.

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

Respondent appeals from the alimony and property provisions of the decree dissolving the parties' common law marriage. Respondent contends the trial court erred in that: (1) the distribution of the marital assets was inequitable; and (2) the alimony award was not supported by the evidence.

Respondent, William Smith, and petitioner, Joyce Smith, were first married and their daughter Kelley was born in 1969. They were divorced in 1972 after Joyce moved to California, leaving Kelley in William's care.

Joyce remarried in California, but in 1976 sought a divorce from her second husband. He shot her, and then killed himself, leaving Joyce paralyzed from the chest down and confined to a wheelchair. Joyce received $80,000 in a lawsuit. Joyce and William renewed communications and in 1980 began living together as husband and wife. Both parties stipulated that a common law marriage existed between them.

The dispute in this case is over the marital assets and alimony. The trial court found Joyce had expended $112,000 for William's benefit, and that William should be credited for $33,570. Therefore, the court found Joyce's claim was approximately $80,000 greater and divided the marital assets accordingly. The court also ordered William to pay Joyce $1,500 per month alimony for three years.

Our review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7).

I. Property Division. Iowa Code section 598.21(1) does not statutorily sanction a percentage division of property. In re Marriage of Bornstein, 359 N.W.2d 500, 503 (Iowa Ct. App. 1984). Rather, the ultimate issue is whether the distribution is equitable under the circumstances. In re Marriage of Callenius, 309 N.W.2d 510, 514 (Iowa 1981).

The trial court found Joyce brought $112,000 worth of assets (primarily cash) into the marriage and William brought $33,570 worth of assets (primarily home equity) into the marriage. Thus, the trial court awarded Joyce the difference in assets contributed to the marriage (i.e., $80,000) when dividing the property.

While the briefs are less than clear on this point, we understand that the $80,000 credit Joyce was given amounted to the residence, the Brew House bar, income from renting farmland, and a bush hog and tractor, valued at $57,700, $19,500, $1,000, and $3,000, respectively. Joyce kept her California property and other incidentals she had before remarrying William, and William kept his millwright business and other incidentals he had before remarrying Joyce.

William attempts to indicate that the trial court undervalued the residence by $33,300 and also his equity in such residence by $37,730. We find no error in the trial court's valuation of such property.

William also claims to be deserving of some credit for endeavors at the Brew House bar. While William did contribute to the bar, we must, nonetheless, remember that Joyce put $112,000 worth of cash into this marriage and is entitled to $80,000 in return. The trial court found that awarding Joyce the bar, tractor, and income from renting farmland to be the most expedient manner to divide the assets. We agree.

It appears to us that, absent the substantial assets brought into this marriage, the less-than-three-year marriage did not generate additional assets for either party. In fact, both parties appear to have left the marriage worse off financially than when they entered. Thus, William's claim that he received nothing in the property from the marriage is correct but not persuasive because Joyce lost an equal amount.

The millwright business was valued at $100,000 by Joyce and William did not testify as to its value. The premarital property of Joyce was valued at $95,000. This leads us to conclude that the property division was equitable.

II. Alimony. The trial court ordered William to pay $1,500 in monthly alimony for three years. William contends Joyce does not need this money and that her earning capacity further diminishes any claim to need such funds. We agree.

Iowa law provides that payment of alimony is not an absolute right. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). In determining whether alimony is appropriate in a given situation, the court will consider the resources the parties receive from the property settlement and the parties' educational backgrounds. See In re Marriage of Horstmann, 263 N.W.2d 885, 891 (Iowa 1978); In re Marriage of Campbell, 204 N.W.2d 638, 639 (Iowa 1973); Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968); see also Iowa Code § 598.21(1) (1985). Alimony issues involve the wife's need for support and the husband's ability to pay. In re Marriage of Hitchcock, 309 N.W.2d 432, 436-37 (Iowa 1981). There must be a review of the entire record to decide whether the awards are justified.

When considering the appropriateness of alimony, the trial court is to consider (1) the earning capacity of the parties, (2) the standard of living the parties are accustomed to, and (3) the ability of the parties to pay. These considerations should be balanced against the relative needs of the parties. Id.

William claims Joyce receives $782 in monthly social security payments, approximately $450 monthly in rental payments from the California property, $750 monthly from leasing farmland, and could make a living from operating the bar. William claims to have a net monthly income of between $1,400 and $2,000 from the millwright business and adjusted gross income from 1980-1983 as follows: $11,862; $3,971; -$17,651; and -$11,094.

An interesting issue is whether William is responsible to pay alimony which, in essence, compensates Joyce for a handicap which occurred prior to the marriage. We find substantial authority which indicates whether the handicap occurs before or after the marriage, the non-handicapped spouse may have to pay alimony based on the decrease in earning power of the handicapped spouse. See In re Marriage of Downing, 210 N.W.2d 436, 437 (Iowa 1973); In re Marriage of Romig, 207 N.W.2d 780, 782-83 (Iowa 1973); Morris v. Morris, 163 N.W.2d 549, 551 (Iowa 1968).

Joyce claims monthly needs totaling $1,700. She claims to need at least $1,000 in addition to her social security benefits to meet her obligations. Joyce also indicates that the income from the California property is misleading because one lot was valued at $50,000, but has been for sale for one year and is probably worth $30,000, and the other property worth $12,000 is subject to a title dispute.

We find the $1,500 monthly alimony for three years to be excessive and modify the award to $1,000 a month for three years, which is reasonable rehabilitative alimony. Thus, we affirm the trial court's decree as modified.

AFFIRMED AS MODIFIED.