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CLERK SUPREME COURT

IN RE THE MARRIAGE OF HARLAN W. WITTENSTEIN and SHIRLEY A. WITTENSTEIN

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2-60535

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Heard by Allbee, C.J., Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Respondent, Shirley A. Wittenstein, appeals from the economic provisions of a dissolution decree seeking additional marital property and alimony. Both parties recognize that in evaluating the property and alimony awards we use the criteria explained in *Schantz v. Schantz*, 163 N.W.2d 398, 405 (Iowa 1968), as modified to eliminate consideration of fault by *In re Marriage of Williams*, 199 N.W.2d 339 (Iowa 1972).

At the outset we deal with the assertion of petitioner, Harlan W. Wittenstein, that this appeal should be dismissed because respondent acquiesced in trial court's decree by releasing a savings account to petitioner in accord with that decree's terms. Respondent's willingness to abide a single provision within the decree did not waive her right to claim other provisions were unjust. *In re Marriage of Abild*, 243 N.W.2d 541, 542-43 (Iowa 1976).

In resolving the issues as trier de novo, we have examined the entire record, giving weight to trial court's findings, but not being bound by them. *In re Marriage of Winegard*, 257 N.W.2d 609, 613 (Iowa 1977). Our review in light of the *Schantz* criteria leads to the conclusion that trial court's property division was justified. Petitioner did receive property of greater value than that awarded respondent; however, it is he who must, through operation of the brokerage firm, generate the income necessary to meet alimony payments and satisfy all indebtedness and tax liabilities which accrued to the parties during their marriage, as required by the decree. We believe trial court's division of the marital property fits the circumstances peculiar to this case. See *In re Marriage of Briggs*, 225 N.W.2d 911, 912 (Iowa 1975). Equal division in property awards cannot be achieved in every instance. See *In re Marriage of Andersen*, 243 N.W.2d 562, 564 (Iowa 1976); *In re Marriage of Cooper*, 225 N.W.2d 915, 919 (Iowa 1975).

We do find merit, however, in respondent's complaint that the alimony award is inadequate. Considering in particular the parties' standard of living during the marriage, their respective earning capacities, and balancing respondent's reasonable needs against petitioner's resources and ability to pay, we find that the alimony should be increased by \$200 per month to a total of \$650 per month.

Attorney fees for this appeal are sought by respondent. Such fees are not allowed as a matter of right and any award must depend upon financial circumstances and earnings of both parties. In re Marriage of Peterson, 227 N.W.2d 139, 142 (Iowa 1975). We find that petitioner should pay \$1000 towards respondent's attorney fees. By so doing we do not fix the amount to be charged by respondent's attorney; we have only decided what portion petitioner should pay. In re Marriage of Peterson, 227 N.W.2d at 143.

Trial court's decree is affirmed as modified, and this cause is remanded for entry of decree consistent with this opinion. Costs on appeal are taxed to petitioner.

Affirmed as modified.