



IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF CANDACE E. TALBOT AND STEPHEN C. TALBOT

Upon the Petition of	)	
CANDACE E. TALBOT,	)	339
Petitioner-Appellee,	)	Filed November 26, 1986
And Concerning	)	
STEPHEN C. TALBOT,	)	<u>6-339</u>
Respondent-Appellant.	)	86-09

Appeal from the Iowa District Court for Washington County (No. 1038-0485)
- James P. Rielly, Judge.

Respondent husband appeals from the decree dissolving the parties' marriage, asserting that petitioner wife's alimony award is excessive both in amount and duration and that the property division is inequitable. **AFFIRMED AS MODIFIED.**

John W. Hayek of Hayek, Hayek, Hayek & Holland, Iowa City, for appellant.

William L. Meardon of Meardon, Sueppel, Downer & Hayes, Iowa City,
for appellee.

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

PER CURIAM

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The parties to this appeal, Candace and Stephen Talbot, were granted a dissolution of their marriage by the District Court for Washington County on January 3, 1986. The district court, as part of the dissolution decree, divided the marital property and imposed alimony obligations on Stephen. Stephen, in this appeal, challenges the alimony provisions as being unjustified in both amount and duration and the property division as being inequitable. Our review is de novo. Iowa R. App. P. 4. Although we are not bound by the district court's findings of fact, we give them weight. Iowa R. App. P. 14(f)(7).

The district court imposed an alimony obligation on Stephen of \$250 per month. These payments, by virtue of the dissolution decree, are to continue until Candace dies or remarries. Stephen contends that, in light of the other obligations imposed upon him by the decree, this alimony obligation is unjustified. We agree with the district court that Candace is entitled to alimony, reasonable in amount and duration, from Stephen to enable her to enter the employment market. We think, however, that given the circumstances of the parties the duration of the obligation imposed by the district court is unjustified.

The statutory factors which guide the alimony determinations made by Iowa courts are detailed in Iowa Code section 598.21(3) (1985) and need not be set forth at length here. In addition to the statutes, we are assisted by the sizeable body of case law on this issue. We are informed by both the cases and section 598.21(3) that the payment of alimony is not an absolute right; it is awarded out of fairness, according to the particular facts of the case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976); Iowa Code § 598.21(3) (1985). Two of the factors to be given great weight in such a determination are the duration of the marriage and the ability of the supported spouse to engage

in gainful employment. In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972); Iowa Code § 598.21(a), (e) (1985). In addition, where a spouse has sacrificed her earning capacity in order to make a home for the family and the other spouse has profited thereby, alimony is justified. In re Marriage of Sanders, 255 N.W.2d 109, 111 (Iowa 1977). When determining the appropriateness of alimony, the trial court must consider the earning capacity of each party, present standards of living, and ability to pay balanced against the relative needs of the other. In re Marriage of Estlund, 344 N.W.2d 276 (Iowa Ct. App. 1983). The spouse with the lesser earning capacity is entitled to be supported for a reasonable time in a manner as closely resembling the standards existing during the marriage as possible to the extent that is possible without destroying the right of the party providing the income to enjoy at least a comparable standard of living as well. In re Marriage of Hayne, 334 N.W.2d 347, 351 (Iowa Ct. App. 1983).

Candace is a thirty-six-year-old high school graduate who has completed two years of college. It is her desire to return to college and finish her degree after the parties' two-year-old son begins school. Although she worked briefly prior to the beginning of the marriage, the parties agreed that she should not work outside the home during the marriage. During the fourteen-year marriage of the parties, she was primarily responsible for the care and maintenance of the parties' household and three children. Although she testified to health problems with a sciatic nerve, the evidence does not suggest this to be a significant impediment to her obtaining an education and employment.

Stephen is a forty-year-old high school graduate who completed one year of college. He is employed as an assistant grocery store manager and earns a net salary of approximately \$2,237 per month. He is obligated by the dissolution decree to pay \$750 per month in child support in addition to maintaining the

children's medical and life insurance and paying all medical deductibles and one-half of the uninsured medical expenses.

A review of the relative situation of the parties in light of the guidance provided by the statutes and case law persuades us that the district court's alimony award of \$250 per month is reasonable. We think, however, that the award should be reduced in duration to six years, a period we think sufficient on the facts of this case to enable Candace to enter the job market. This period will allow Candace to remain home until the parties' children all reach school age and, in addition, allow her an opportunity to then finish her college education. This support obligation shall cease if, prior to the expiration of this six-year period, Candace dies or remarries.

Stephen next asserts that the property division achieved by the district court is inequitable. In reviewing a district court's division of marital property, we are guided by the criteria set out in Iowa Code section 598.21(1) (1985). We reaffirm our rejection of any rule based upon a percentage division of the assets. In re Marriage of Lattig, 318 N.W.2d 811, 814 (Iowa Ct. App. 1982). We are not bound to achieve a precisely equal division in awards of marital property. In re Marriage of Anderson, 243 N.W.2d 562, 564 (Iowa 1976). In general, the division of property is based upon each marital partner's right to a just and equitable share of the property accumulated as a result of their joint efforts. In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1976). The controlling mandate is that courts achieve an equitable and just award under the circumstances. In re Marriage of Wallace, 315 N.W.2d 827, 831 (Iowa Ct. App. 1981).

The district court divided the parties' assets and liabilities so that Candace received net assets of \$18,925 and Stephen received net assets of \$1,732. In support of this distribution, the court stated that it had

considered the fact that Candace had received the sum of \$47,000 in inheritance and gifts which were invested in assets during the marriage and while she probably should have received all of the assets of the parties, the Court does not believe it would be fair to deprive Steve of all of his assets because he does have to use some of his liquid assets to pay the indebtedness of the parties.

Stephen alleges that the district court erred in considering the assets accumulated as a result of the inheritance and gifts as separate nonmarital property. He argues that they should not be so considered if used for general living expenses and purposes.

Iowa Code section 598.21(2) (1985) provides that

[p]roperty inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage.

The district court's distribution of the property is, we think, consistent with this statute if we treat the property involved as gifts and inheritance and not, as Stephen contends, marital property. In re Marriage of Passick, 375 N.W.2d 284 (Iowa Ct. App. 1985), involved the claim of an ex-wife that she was entitled, in the property distribution, to an additional \$6,000 in recognition of a portion of her inheritance used to purchase her husband's chiropractic clinic. We agreed that she was entitled to that part of her inheritance used to purchase the clinic and modified the property distribution accordingly. Id. at 286. Similarly, in the present case, we do not think the property at issue lost its character as inherited and gifted property merely because used for purposes of the family's well-being. Accordingly, we reject Stephen's argument.

Costs are assessed one-half to each party.

AFFIRMED AS MODIFIED.

Snell, J., concurs; Oxberger, C.J., dissents; Sackett, J., concurs in part and dissents in part.

OXBERGER, J. (concurring in part and dissenting in part)

I concur with the majority's disposition of the parties' contentions regarding the alimony award. I dissent, however, from the majority's result with respect to the property division.

The record discloses that the parties' net worth, after subtracting \$6,895 in liabilities, was \$20,657. The court then awarded Candace net assets of \$18,925 and awarded Stephen net assets of \$1,732. The court justified this disparity by noting that Candace had received \$47,000 in inheritance and gifts which she had expended during the marriage.

I think that the majority erred in affirming the trial court's decision. Initially, I think that because Candace spent her inheritance on the parties' living expenses, the inheritance lost its "inheritable characteristics." The effect of Candace's expenditures was the placement of the expended sums in the form of joint ownership. In In re Marriage of Butler, 346 N.W.2d 45, 47 (Iowa Ct. App. 1984), we explicitly noted that, "Other jurisdictions . . . have recognized that the separate property of one spouse is transferred into marital property when it is placed in some form of joint ownership." Although the facts of the Butler case concerned property which was placed in joint tenancy, the court's citation to other cases based upon a mere finding of joint ownership indicates that joint tenancy is not a necessary prerequisite. See Farmer v. Farmer, 392 So.2d 723, 726 (Ala. Cir. App. 1981); Husband T.N.S. v. Wife A.M.S., 407 A.2d 1045, 1047-48 (Delaware 1979).

Moreover, I think that the majority's conclusion is particularly inequitable when it is considered that Stephen spent his income on the parties' marital expenses. Candace contributed her inheritance to the marriage which enabled her to spend her income on the assets which the trial court awarded to her. We have never recognized that one parties' income acquired during the marriage

may be enjoyed by both, while the other parties' income is to be enjoyed individually; on the contrary, we have held that property accumulated during the marriage is marital property. In re Marriage of Callenius, 309 N.W.2d 510, 514 (Iowa 1981).

Accordingly, I would grant the appellant's request that the property division be modified so that the Pacific First Federal account is awarded to Stephen.

I concur in part and dissent in part.

I concur with the majority that the property award should be affirmed and the alimony award to Candace should terminate in six years. Though not calling it rehabilitative alimony, the majority has determined the purpose of Candace's alimony award is to enable her to reenter the job market. I basically agree with this assessment. I determine the alimony to be rehabilitative.

By assuming a homemaker's role during the 14-year marriage, Candace lost the benefits which accrue from other employment, including social security benefits,¹ job seniority and job experience. Stephen has accrued these benefits during marriage. While it is difficult to put a dollar value on these benefits, it is sufficient to say Candace leaves the marriage at an economic disadvantage. The alimony award will help her become reeducated and bridge this economic gap. With education she should become an economically productive person so she can realize financial independence and be in a position to contribute to the financial needs of the parties' children.

The majority, however, elects to terminate her rehabilitative alimony on remarriage, apparently determining if a new husband arrives on the scene Candace will no longer deserve to be rehabilitated. She will have no need to obtain financial independence to take care of her own needs and contribute to the financial needs of her children. They have determined in advance that "new husband" will take care of Candace's needs and she will no longer have need for financial independence.

¹ While she could draw on Stephen's account because the marriage exceeded 10 years, she must remain single and not be drawing on her own account. Furthermore, her benefits are limited to one-half of his. Also, she does not have disability benefits as does the employed person. See The Social Security Act §216(d)(1), 202(b)(1)(H), 202(b)(1)(D), and 20 C.F.R. §404.310.

Iowa has no statute requiring alimony to terminate on remarriage. However, the Iowa court has determined while the subsequent remarriage of an alimony recipient does not automatically terminate an alimony obligation it shifts the burden to the recipient to show extraordinary circumstances exist which require the continuation of alimony. See In re Marriage of Shima, 360 N.W.2d 827, 828 (Iowa 1985). The majority in terminating Candace's alimony on remarriage has already determined on remarriage she could not rebut the presumption of Shima. The Iowa courts have not specifically addressed the issue of continuation after remarriage of alimony designated as rehabilitative.

I determine the award should continue even if Candace should remarry. While I consider it important on remarriage for her to have personal financial security, I consider it even more important that she be rehabilitated so she can contribute to her children's financial well being.