FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-263 / 89-1372

IN RE THE MARRIAGE OF CARMA JEAN BOUSKA AND DANIEL EDWARD BOUSKA

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Upon the Petition of

CARMA JEAN BOUSKA,

Appellant,

And Concerning

DANIEL EDWARD BOUSKA,

Appellee.

Appeal from the Iowa District Court for Chickasaw County, L. D. Lybbert, Judge.

Appellant appeals from the property division of the district court's decree dissolving her marriage to appellee. **AFFIRMED.**

Gary J. Boveia, Waverly, for the appellant.

Frances L. Gohlke of Carney & Gohlke, Waverly, for the appellee.

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

HABHAB, J.

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Appellant Carma J. Bouska appeals from the property division of the district court's decree dissolving her marriage to appellee Daniel E. Bouska. In the alternative, Carma seeks an alimony award. Additionally, both parties seek attorney fees for this appeal. We affirm.

The parties were married in 1979. No children were born of the marriage. Both attended community college. At the time of marriage, Carma was employed as a medical secretary at the Mayo Clinic. She has reapplied for that type of position at the Mayo Clinic.

At the time of the dissolution, Carma was thirty-eight years old and Daniel was forty-two. Daniel farmed throughout the marriage and Carma assisted. Since separation in 1988, Carma has been employed full time and has gross weekly earnings of $210.

The parties' principal assets--farm real estate, farm equipment, livestock, and grain stores--were heavily leveraged. Carma contended at trial that the net value of the parties' marital assets was $300,000. Daniel, on the other hand, placed a net value of $70,000 on these assets. The trial court determined the value to be $126,000 and awarded each party one-half of that amount.

Carma was awarded various household goods, an automobile, an insurance annuity, and a bank account. The trial court valued those assets at $13,000. To reach her total property award of $63,000 (one-half of $126,000),

Daniel was ordered to pay Carma $50,000, with $25,000 payable within thirty days and the balance in yearly installments of $5,000. The unpaid balance draws interest at the statutory rate. Daniel was awarded all of the farm-related assets, subject to their debts.

Our scope of review in dissolution cases is de novo. Iowa R. App. P. 4. While not bound by the trial court's determination of factual findings, we will give considerable weight to them, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). In reviewing a property disposition, we keep in mind 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).

Carma does not dispute the trial court's division of the parties' property, but rather its valuation. She contends the net value of the parties' assets to be approximately $300,000 rather than the $126,000 value placed by the trial court. We find the value placed on the assets by the trial court to be well within the permissible range of evidence and decline to disturb them on appeal. See In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa

1973); In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984).

Carma alternatively requests if the division of property is not disturbed that she be awarded alimony. We note Carma failed to request alimony at trial. Factually it appears that when the matter was submitted to the trial court, appellant's counsel informed the court that "this is a property settlement solely between the two parties . . . ."

Regardless of appellant's position before the trial court, from our de novo review of the record we find that alimony is not warranted under the factual setting of this case. Alimony is an allowance to the ex-spouse in lieu of a legal obligation to support that person. See In re Marriage of Hitchcock, 309 N.W.2d 432 (Iowa 1981). Alimony is not an absolute right; its award depends upon the unique circumstances of each particular case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). In making an award of alimony, the courts are to consider those factors listed in Schantz v. Schantz, 163 N.W.2d 398 (Iowa 1968), as modified by In re Marriage of Williams, 199 N.W.2d 339 (Iowa 1972), and now codified at Iowa Code § 598.21(3) (1989). See In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983); In re Marriage of Hayne, 334 N.W.2d 347 (Iowa App. 1983).

We consider property division and alimony together in evaluating individual sufficiency. In re Marriage of Dahl,

418 N.W.2d 358, 359 (Iowa App. 1987); In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984). When all of the above factors are taken into consideration, we decline appellant's invitation to award $1,000 per month alimony for five years as a means of bringing into balance what the appellant perceives as the inequitableness of the division of the property.

Both parties request appellate attorney fees. 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). We order that each party pay his or her own attorney fees. Costs of this appeal are assessed to appellant.

AFFIRMED.