IN THE COURT OF APPEALS OF IOWA

No. 7-208 / 96-0375

000125

IN RE THE MARRIAGE OF DANNY WAYNE FRANCIS AND SARAH JANE FRANCIS

Upon the Petition of
DANNY WAYNE FRANCIS,

Petitioner-Appellee,

And Concerning
SARAH JANE FRANCIS,

Respondent-Appellant.

FILED
JUN 26 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Wapello County, Daniel P. Wilson, Judge.

Sarah Francis appeals from entry of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Steven Gardener of Kiple, Kiple, Denefe, Beaver & Gardener, Ottumwa, for appellant.

Patrick F. Curran of Vinyard & Curran, Ottumwa, for appellee.

Heard by Cady, P.J., and Vogel, J., and Schlegel, S.J.*

* Senior judge from the Iowa Court of Appeals serving on this court by order of the Iowa Supreme Court.

PER CURIAM.

Respondent-appellant Sarah Jane Francis appeals challenging the economic provisions of the decree dissolving her twenty-four year marriage to petitioner-appellee Danny Wayne Francis. She contends she should have been awarded alimony and the trial court should have ordered Danny to pay her attorney fees. We affirm as modified.

At the time of the decree, Danny was forty-five years old. He was working for John Deere where he had worked during the marriage. The trial court found his annual salary was about $56,000. He has substantial employee benefits in addition to his salary.

Sarah, who was forty, worked for the Mahaska State Bank. The trial court found her annual salary to be about $20,000. She has few employee benefits.

The parties have two children. The older child, an adult, is self-supporting. The younger child, Amber, was twenty at the time of the decree and was attending college. Danny was giving her $75 a week. The trial court found Danny intended to make the same contribution for approximately one and one-half years following the entry of the decree while Amber would still be a student, but did not order that he continue the support.

In this equity action, our scope of review is de novo. Iowa R. App. P. 4. Our duty is to review the entire record and determine rights anew from the credible evidence on issues properly presented and preserved. *In re Marriage of Steenhoek*,

305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court but are not bound by them. Iowa R. App. P. 14(f)(7). Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983).

The parties stipulated to the division of personal property, real estate, and debts. The stipulation, approved by the trial court, resulted in an allocation based on the values attributed by the parties to assets of $75,270 in equities to Danny and $62,889 to Sarah. Danny has a thirty-year retirement plan. His pension at John Deere was valued by the parties at $25,882 and was given entirely to him. Sara was not awarded alimony.

Although Sara only challenges the failure to award alimony, we cannot consider alimony in isolation but must look to the economic provisions of the decree as a whole in assessing the equity. Iowa is an equitable distribution state which means the partners in a marriage that is to be dissolved are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Robison*, 542 N.W.2d 4, 5 (Iowa App. 1995); *In re Marriage of Havran*, 406 N.W.2d 450, 452 (Iowa App. 1987).

In awarding alimony, we look to the particular circumstances of this case. The mandate is to achieve an equitable and just result under the circumstances. *See In re Marriage of Webb*, 426 N.W.2d 402, 405 (Iowa 1988). We consider Danny's earning capacity and the standard of living the parties have maintained, as well as Danny's

relative ability to pay. *See In re Marriage of Imhoff*, 461 N.W.2d 343, 345 (Iowa App. 1990). We look to the factors of Iowa Code section 598.21(3).

This was a long-term marriage. Sarah stayed home to care for the children during the first twelve years of marriage. She has received less property than Danny. Her salary is substantially lower than his. She has fewer employee benefits. Her pension benefits are less. Sarah should be awarded alimony. *See In re Marriage of Bethke*, 484 N.W.2d 604, 608-09 (Iowa App. 1992).

We order Danny pay Sarah alimony of $800 a month for seven years, when the alimony shall decrease to $300 a month. The alimony shall terminate on the death of either party. Sarah has received less property than Danny; consequently, her alimony shall terminate upon remarriage only after she has received three years of alimony.

Sarah contends she should have been awarded attorney fees by the trial court. We review for an abuse of discretion. *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa App. 1994). Sarah received substantial property and is gainfully employed. *See In re Marriage of McFarland*, 239 N.W.2d 175, 180 (Iowa 1976). The trial court did not abuse its discretion in not awarding her attorney fees.

Sarah requests attorney fees on appeal. We award her $1500.

We deny Danny's request for attorney fees. Costs on appeal are taxed to Danny.

AFFIRMED AS MODIFIED.