FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF DORLA MAE ARENDS AND LARRY GENE ARENDS

Upon the Petition of)
DORLA MAE ARENDS,)
Petitioner-Appellee,)
And Concerning)
LARRY GENE ARENDS,)
Respondent-Appellant.)

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8-245
87-1414

Appeal from the Iowa District Court for Grundy County (2-47), George L. Stigler, Judge.

Respondent appeals from the provision of the decree of dissolution entered in the district court which granted spousal support of $150 per week to petitioner. **AFFIRMED AS MODIFIED.**

Gary J. Boveia of Boveia Law Offices, Waverly, for respondent-appellant.

L. Don Snow of Mershon, Snow & Knock, Cedar Falls, for petitioner-appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

HAYDEN, P.J. 2

Respondent, Larry Gene Arends, appeals from the provision of the decree of dissolution entered in the district court which granted spousal support of $150 per week to petitioner. Larry claims the award of spousal support was inappropriate both in amount and duration. Petitioner wife requests attorney fees on appeal. Our scope of review is de novo. Iowa R. App. P. 4. We affirm as modified.

Petitioner, Dorla Mae Arends, and respondent, Larry, were married in 1958. They have three adult children, the youngest is attending the University of Northern Iowa. Larry has farmed for most of his life.

The prospects for a continuation of the farming operation are not good. The farm is deep in debt and has a negative net worth.

During the marriage Dorla worked on the farm. She also operated her own beauty salon out of the family home for nearly three years, but abandoned the endeavor to devote more time to the farming operation. Dorla recently graduated from the Business Institute of Technology after studying computers. She has been unable to find a job in this field and is presently a part-time waitress, earning $32 per week.

Larry is forty-nine years old and in poor health. He has had back problems which have hampered his ability to do farm work. Larry is also diabetic, has been diagnosed as

having heart problems and cancer, and suffers from periods of alcohol abuse.

Dorla is forty-eight years old and in excellent health, but she has been treated for high blood pressure.

The district court entered a decree of dissolution on August 10, 1987. The farm and all related assets and debts were awarded to Larry. Dorla was awarded spousal support in the amount of $150 per week along with other property valued at nearly $10,000. The trial court noted that Dorla's father left the parties' oldest child, Lori, $49,000, without leaving Dorla or any of the other children anything. He also left Dorla's three sisters $49,000. The district court ruled that presumably this amount would have gone to Dorla, but held no evidence existed to show the money was actually given to and controlled by Dorla and not Lori.

Larry appeals the decision of the trial court. He argues after the decree of dissolution he should not be forced to pay Dorla alimony because the farm he received has a negative net worth and any cash flow which he may receive will be needed to keep the farm operation going. Larry contends the spousal support is not in lieu of a property settlement because there is only a negative net worth to distribute. Dorla asks for attorney fees for this appeal.

I. Larry's initial contention is if he is forced to pay $150 per week in support, he will not be able to turn the fortunes of the farm around. The payment of alimony must be determined in light of all the circumstances. In re Marriage of Bevers, 326 N.W.2d 896, 900 (Iowa 1982). 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, 281 (Iowa App. 1983). Iowa Code section 598.21(3) mandates alimony be awarded out of fairness, according to the particular facts of each case. This section refers to specific criteria which the court must consider, such as the physical and emotional health of the parties, the distribution of property, and the educational levels of the parties. Iowa Code § 598.21(3) (1987).

The parties' farm has shown a profit once in the last five years. It is clear from the record the farm is in deep and possibly insurmountable financial trouble. It is evident if the farm is to survive its financial crisis, income from the grain or hog operation will have to be used to service the huge debt. For Larry to be able to pay Dorla any support it is essential the farm survive. Larry has farmed his entire life, with the exception of a brief period when he worked in a box factory. Looking at Larry's general health, which is not good, and his limited poten-

trial for employment outside of farming, it is clear the farm must survive for the sake of both Larry and Dorla.

Dorla, on the other hand, is a high school graduate She has previously been a licensed cosmetologist and could be again through additional education to regain her license, and she has recently completed a computer training course. Dorla is in good health and appears to have some marketable skills. Dorla's ability to take advantage of a wider array of employment opportunities than Larry, as well as the financial difficulties of the farm, lead us to decide the spousal support ordered by the trial court is excessive. However, we do not agree with Larry the support should be entirely stricken from the decree. The record indicates Dorla worked hard in the farming operation as a full partner with Larry. She discontinued her career as a hair stylist to lend more time to the operation of the farm. She also, at numerous times, worked away from home to help pay the bills and expenses generated by the farm We do not accept the notion because Dorla, through the property settlement, wound up in the black and Larry received an indebted farm, Larry should not pay any spousal support. In 1986 the farm showed a small profit and the potential remains for the farm to begin to show further profits. Thus, we decrease Dorla's alimony from $150 to $65 per week. The alimony payments shall terminate upon Dorla earning $120 per week, remarries, cohabits with

another man, or upon the death of either party, whichever occurs first.

II. Dorla cross-appeals, claiming an agreement providing in the event the parties' planned reconciliation failed, the farm property should be awarded to Dorla, was not given consideration by the court as required by Iowa Code section 598.21(1)(k). The court may consider such an agreement along with other factors. The Code does not make such an agreement dispositive, but only one of a number of factors which the court must consider when dividing the marital property equitably between the parties. We obviously cannot read the trial court's mind as to what it did or did not consider in making its finding, but we have reviewed the agreement which was properly admitted into evidence and made part of the record, as part of our de novo review. We hold the agreement will not affect our decision here because our duty to determine an equitable distribution between the parties does not lead us to accept the terms of this agreement in its entirety.

III. Finally, Dorla asks for attorney fees for this appeal. Because we have modified the district court's decision and consider the financial difficulties both parties currently suffer, we hold the parties should pay their own attorney fees with costs of this appeal to be divided evenly between Larry and Dorla.

AFFIRMED AS MODIFIED.

Sackett, J., and Habhab, J., concur in part and dissent in part.

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

I concur in part and dissent in part.

I concur in all respects except I would not order termination of alimony on remarriage or cohabitation.

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

I concur with that part of the majority opinion that terminates the alimony payments at the time Dorla earns $120 per week, remarries, cohabits with another man, or upon the death of either party, whichever occurs first, but I dissent from that part of the opinion that decreases the trial court's award of alimony of $150 per week to $65 per week.