

FILED

DEC 23 1986

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

**IN RE THE MARRIAGE OF DOMENIC GIAMMETTA
AND JOYCE GIAMMETTA**

97

Upon the Petition of)

DOMENIC GIAMMETTA,)

Filed December 23, 1986

Petitioner-Appellant,)

And Concerning)

6-370
85-1574

JOYCE GIAMMETTA,)

Respondent-Appellee.)

Appeal from the Iowa District Court for Scott County (Eq. No. 35510)

- James R. Havercamp, Judge.

Petitioner husband appeals from the economic provisions of the decree dissolving his marriage. **AFFIRMED AS MODIFIED.**

James L. Tappa of Spector, Tappa, Kopp & Nathan, Rock Island, Illinois, for the petitioner-appellant.

Michael J. McCarthy of McCarthy & Lammers of Davenport for respondent-appellee.

Considered by Oxberger, C.J., Snell & Schlegel, JJ.

OXBERGER, C.J.

This appeal concerns the economic provision of a dissolution decree. Petitioner Domenic Giammetta challenges the property division and alimony awards devised by the trial court in its decree dissolving his nineteen year marriage to respondent Joyce Giammetta. In addition, Domenic contends that the court erred in refusing to allow him to claim the income tax exemptions for the parties' minor children, and that the court should have quashed the post-trial garnishment of his assets because he was not given proper notice. We affirm as modified.

The principles governing our review of the economic provisions of a dissolution decree are familiar and well established. Our standard of review is de novo. Iowa R. App. P. 4. Accordingly, we review the facts and the law and determine the parties' rights anew where the issues have been properly presented and preserved. In re Marriage of Phipps, 379 N.W.2d 26, 27 (Iowa Ct. App. 1985). Although we give weight to the trial court's findings of fact, particularly concerning the credibility of witnesses, we are not bound thereby. In re Marriage of Bornstein, 359 N.W.2d 500, 502 (Iowa Ct. App. 1984).

Domenic's first assignment of error is that the property division made by the trial court was inequitable. In support of this assertion, he maintains that the court inaccurately estimated the values of the parties' marital residence, household goods, automobile, and their business assets and liabilities. He argues that because of the court's erroneous valuations, the respondent's net equity pursuant to the decree exceeds his by approximately \$40,000.

We have carefully reviewed the record, including the financial statements and testimony presented by both parties, and conclude that the values of the marital home, household goods, and the automobile subscribed by the trial court are well within the permissible range of the evidence and accordingly,

we are not inclined to disturb them. See In Re Marriage of Bare, 203 N.W. 551, 554 (Iowa 1973). The parties' appraisals of the residence ranged from \$80,000 assigned by Domenic to \$56,300 assigned by Joyce's expert witness. As such, we think that the \$60,000 value subscribed by the trial court is proper. Joyce valued the household goods at \$750, and Domenic valued these items at \$10,000; we think that the record supports the trial court's valuation of \$5,000. Similarly, we think that the parties' testimony indicates that the \$2,000 value assigned to the 1979 Mercury automobile is appropriate.

We agree with Domenic's contention, however, that the court incorrectly assigned a value of \$24,600 to the "Fred's 66" service station. We think that the testimony of Domenic's accountant, Eugene Krabbenhoft, clearly establishes that the net value of the business is \$15,308. In its calculation, the trial court erroneously indicated that Krabbenhoft had included Domenic's additional business liabilities in valuing the business; Krabbenhoft's testimony, however, is to the contrary. Furthermore, we agree with Domenic's assertion that the court misstated the amount of the balance due on the Midway Oil contract. The record reflects that the proper amount of this obligation is \$53,152. Similarly, the proper amount of Domenic's obligation to Brenton National Bank is \$27,875 rather than \$24,846.

Applying the above assessments to the division of the parties' assets made by the trial court, the net value of the items received by each party is as follows: Domenic was awarded assets totaling \$234,950, less liabilities of \$143,758, leaving a net equity of \$91,192. Joyce was awarded assets totaling \$126,098 less liabilities of \$2,922, which leaves a net equity of \$123,176. In evaluating the propriety of this distribution, we are guided by the factors enumerated in Iowa Code section 598.21(1)(1985). Our critical inquiry is whether the trial court's division of the assets is equitable in the particular circumstances

of this case. In re Marriage of Wallace, 315 N.W.2d 827, 830 (Iowa Ct. App. 1980). We recognize that each marital partner is entitled to a just and equitable share of the property accumulated through their joint efforts. In re Marriage of Hitchcock, 309 N.W.2d 423, 437 (Iowa 1981). Furthermore, all economic aspects of the decree must be viewed as an integrated whole, and not in isolation. In re Marriage of Bornstein, 359 N.W.2d 500, 503 (Iowa Ct. App. 1984).

We have carefully scrutinized the record in light of the principles set forth above and the criteria listed in section 598.21(1) of the Code. Having done so, we conclude that the division of property should be slightly modified to reflect our re-valuation of the parties' assets. Hence, we have reduced Joyce's share of the balance due on the real estate contract for the West Second Street property by \$7,000. We have credited Domenic's share of the division by this sum.

Domenic misquotes the trial court's decree when he maintains that he was made liable for the balance due on the marital residence and ordered to pay Joyce temporary alimony of \$296 per month until the home mortgage is satisfied; the \$296 in alimony is paid wholly in satisfaction of the debt on the home. Accordingly, we think that the amount of this debt should be erased from Domenic's enumerated liabilities, and considered only in the alimony context. This leaves the parties with a nearly equal property division.

Domenic further argues that the trial court's alimony award is excessive. The trial court awarded Joyce \$100 per month in alimony, to be increased to \$180 per month as Domenic's child support obligations to each of the couple's three children ceases. We have considered the propriety of this award in light of the statute governing the provision of alimony, Iowa Code section 598.21(3), and find it equitable. The record discloses that Domenic and Joyce were married in 1966; at that time, they were ages eighteen and thirty-eight respectively.

Their respective ages are now thirty-seven and fifty-seven. Both parties owned very few assets at the time of the marriage. During the marriage, Domenic earned the income necessary to support their family, while Joyce minded the home; Joyce has never worked outside of the home, and has acquired no marketable skills. Furthermore, her ability to secure employment is severely hampered by her health. Domenic, on the other hand, is in good health and is the proprietor of a successful business. Moreover, Joyce was named physical custodian of the parties' three children, two of whom are still minors. After considering all of these factors, we affirm the trial court's alimony award. See In re Marriage of Ralston, 242 N.W.2d 269, 271 (Iowa 1976) (two primary factors in determining alimony are the duration of the marriage and the ability of the spouse seeking support to engage in gainful employment).

Domenic additionally maintains that the trial court erred in refusing to allow him to claim the income tax exemptions for the parties' minor children. Section 152(e)(1986) of the Internal Revenue Code provides that, absent certain exceptions, the custodial parent receives entitlement to the exemptions for dependent children. Finding none of the exceptions applicable in the case at bar, we are compelled to reject Domenic's contention. See I.R.C. §152(e)(2)-(5)(1986).

In addition, Domenic argues that the trial court should have quashed the post-trial garnishment of his assets because he was not provided with proper notice. This contention is without merit. Iowa Code section 642.14, which governs the provision of notice pursuant to a garnishment action, states in relevant part:

Judgment against the garnishee shall not be entered until the principal defendant shall have had ten days' notice of the garnishment proceedings, to be served in the same manner as original notices.

The record reveals that the appellant was given notice of the garnishment

on October 22, 1985; the court's order condemning the property in the possession of the garnishees was not entered until November 21, 1985. Domenic contends, however, that because the garnishees were given notice on October 2, 1985, he should have been notified on that date as well. The statute, however, contains no such requirement; hence, Domenic's contention is without merit. See Hubbard v. Des Moines Independent Community School District, 323 N.W.2d 238, 239-40 (Iowa 1982).

Finally, Joyce has requested the recovery of attorney's fees and costs incurred in connection with this appeal. In evaluating such a request, we consider both the needs of the requesting party and the ability of the other party to pay. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981). We have done so, and conclude that the parties should bear the responsibility for their own fees and costs.

AFFIRMED AS MODIFIED.