

**IN THE COURT OF APPEALS OF IOWA****IN RE THE MARRIAGE OF PATRICIA MAY SWEHLA AND LARRY JOHN SWEHLA****UPON THE PETITION OF
PATRICIA MAY SWEHLA,**

Petitioner-Appellant,

**AND CONCERNING
LARRY JOHN SWEHLA,**

Respondent-Appellee.

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Filed August 30, 1983

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Appeal from Chickasaw District Court, Joseph C. Keefe, Judge.

Petitioner-wife appeals from economic provisions of the parties' dissolution decree. **AFFIRMED.**

Frank H. Hoschlag, New Hampton, for petitioner-appellant.

James E. O'Donohoe, New Hampton, for respondent-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, and Hayden, JJ.

OXBERGER, C.J.

Petitioner-wife appeals from economic provisions of the parties' dissolution decree, asserting that the order appealed from is a final judgment for purposes of appeal or, alternatively, that permission to appeal should be granted pursuant to Iowa R. App. P. 1(c) and that the property division was inequitable or, alternatively, that she should be awarded additional alimony in the event that the property division is affirmed. We affirm.

I. Scope of Review

In equity matters such as this, where our review is de novo, it is our responsibility to review the facts as well as the law and determine from the credible evidence rights anew. In re Marriage of Winegard, 257 N.W.2d 609, 613 (Iowa 1977). We give weight to, but are not bound by, the findings of the trial court. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981).

II. Finality of Judgment

In an effort to ameliorate Larry and Patricia's financial situation, the trial court gave Larry a six-months period to run the tavern and to try to pay off some of the debts. The court then ordered Larry to pay temporary alimony to Patricia to help alleviate her expenses until the court could determine whether the tavern business was a viable one and if any additional rights should be given to Patricia. We find that portion of the trial court's ruling analogous to a temporary support order in that it is meant to provide for the maintenance of the parties until a determination can be made on what to do with the tavern. See 27A C.J.S. Divorce § 203. Temporary support orders are final judgments for purposes of appeal. In re Marriage of Winegard, 257 N.W.2d 609 (Iowa 1977); In re Marriage of Prybil, 230 N.W.2d 487 (Iowa 1975).

We therefore conclude that this appeal is proper.

III. Property Division

Basic guidelines for the distribution of assets of the parties in a dissolution proceeding are set out in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), as

modified by In re Marriage of Williams, 199 N.W.2d 339, 344-46 (Iowa 1972). The property division must be equitable to both parties in a given set of circumstances. In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975). The testimony of the parties indicates that the guidelines of Schantz were sufficiently explored.

We have reviewed the record anew and conclude that the property division was equitable and just. Although Larry was given possession of the tavern, he was ordered to assume all the parties' debts. The award left Patricia free from debt and entitled to one-half of any sums remaining after their assets were sold and debts are paid.

At the trial, each party wanted to be awarded the tavern and each testified that he or she was better qualified to run the business. However, in an effort to resolve the problems of Larry and Patricia, the court looked to who was best able to manage the tavern and make the business viable enough to pay off the debts. We do not question the fact that Patricia worked diligently in the tavern business in an effort to make it lucrative. However, the evidence shows that several note payments were in arrears. The evidence also indicates that the tavern was in need of immediate and costly repairs. Because of his carpenter experience Larry was able to make those repairs at a minimal cost and to provide for the upkeep of the tavern through his own efforts. Larry testified that he was willing to assume all the debts and to work the tavern in an effort to pay off the debts. We see no error in the trial court's decision to give him the opportunity to do so.

We must add that we disapprove of decrees that reserve issues for future determination. In re Marriage of Schlenker, 300 N.W.2d 164, 166 (Iowa 1981). We learn from these cases that trial courts should make final disposition of cases on the circumstances then existing. Id. at 165. However, since that point was not appealed we will not consider it now.

Therefore, we affirm the trial court's ruling concerning the property division.

IV. Alimony

We now consider the alimony provision in relation to the property division. When determining the appropriateness of alimony, considerations must be made concerning the earning capacity of the parties, present standard of living, and ability to pay balanced against the needs of the other party. In re Marriage of Hitchcock, 309 N.W.2d 432, 436-37 (Iowa 1981), citing Schantz at 405. Within a certain set of circumstances the alimony provisions must be equitable to both parties. Cooper at 919. In our de novo review, we will not consider any extra-record facts advanced by either party. In re Marriage of Callenius, 309 N.W.2d 510, 513 (Iowa 1981).

Patricia contends that her prospects of employment are poor and that her standard of living will be severely reduced with the present alimony allotment. She also contends that the sale of the nonbusiness assets will eliminate much of their debt, thus enabling Larry to pay more. Therefore, Patricia asks this court to increase the amount to \$100 a week. However, our de novo review of the record convinces us that this alimony provision was just.

Patricia is 37 years old and in good health. Even though her employment qualifications may be limited, she is able to work in several different job capacities. As to her standard of living, both Larry and Patricia will be forced to lower that standard due to their fragile financial condition. Larry's obligation on the parties' debts is substantial. He will be using the income from the tavern in an effort to reduce these debts. Testimony indicated that the business had not been heretofore self-supporting and now an extra \$50 a week must come out of that income. On the other hand, Patricia has been left free from debt. She is still relatively young and capable of employment. She will be receiving one-half of any

remaining balance after debts are paid. She will be getting \$50 a week alimony to help alleviate some of her expenses.

Under this given set of circumstances, we must affirm the trial court's decision.

AFFIRMED.