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169

CLERK SUPREME COURT

**IN THE COURT OF APPEALS OF IOWA**

**IN RE THE MARRIAGE OF NORMAN G. GLAZEBROOK AND EVANGELINE J. GLAZEBROOK**

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| Upon the Petition of | ) | |
| **NORMAN G. GLAZEBROOK,** | ) | |
| Petitioner-Appellee/ Cross-Appellant, | ) | Filed January 29, 1985 |
| | ) | |
| And Concerning | ) | |
| **EVANGELINE J. GLAZEBROOK,** | ) | 4-487 / 84-654 |
| Respondent-Appellant/ Cross-Appellee. | ) | |

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Appeal from the Iowa District Court for Black Hawk County - Leonard D. Lybbert, Judge.

Respondent wife appeals and petitioner husband cross-appeals from the decree dissolving the parties' marriage. On appeal, respondent wife asserts that the property division and alimony provisions of the decree are inequitable in various respects. Respondent wife also requests attorney fees on appeal. On cross-appeal, petitioner husband asserts that respondent wife's alimony award is excessive. REVERSED IN PART, AFFIRMED IN PART, AND REMANDED.


David J. Dutton and Cheryl L. Weber of Mosier, Thomas, Beatty, Dutton, Braun & Staack, Waterloo, for appellant.

C. A. Frerichs of Fulton, Frerichs, Martin & Andres, P.C., Waterloo, for appellee.


Considered en banc.

SNELL, J.

Petitioner Norman G. Glazebrook (Norman) and respondent Evangeline J. Glazebrook (Angie) were married in 1962. Norman then sold real estate and insurance; he later began working at John Deere. Angie was a teacher. In 1969, Angie's mother transferred title of her house to Angie; the parties sold the house soon thereafter. In 1971, the parties became involved in developing and operating a rollerskating rink; Norman worked there full-time and Angie worked on weekends and some evenings. In 1974, the parties sold their interest in the skating rink at a substantial profit; they used the money to buy an interest in a closely-held corporation which operated skating rinks. The parties also invested in oil and gas wells. Norman began working at John Deere again; at the time of trial, he was earning $44,000 per year. Angie continued teaching; at the time of trial, she was earning $14,000 per year. She testified that she would be earning more as a teacher if she had gone back to school; however, she stated that Norman had asked her not to return to school to minimize her income for tax reasons.

The trial court awarded Norman the household goods in his possession; his car, subject to the debt; his John Deere stock; the parties' interest in three oil ventures; a credit union account; a bank account; the parties' silver quarters; and some jewelry. The trial court awarded Angie the parties' house, subject to the mortgage; the household goods in her possession; her car, subject to the debt; an oil venture; a U.S. savings bond; a credit union account; a bank account; an insurance policy; and some crystal, antique furniture, and jewelry. Angie inherited the parties' first house and received jewelry as gifts from her mother. The trial court stated that in making the property division, it had given Angie an $11,000 credit for the proceeds from the sale of her mother's house. The trial court denied Angie's request that she be given an additional award because Norman had dissipated various marital assets with his gambling and unexplained withdrawal of funds.

The trial court stated that Angie had received property worth $36,674 more than Norman's, and that this difference was to be "an award . . . in lieu of alimony that would otherwise be awarded to [Angie] by reason of the difference between her future earning capacity and that of [Norman]." The trial court also awarded title of the couple's two main assets, an interest in a skating rink corporation and an interest in oil and gas wells, to Norman and ordered him to pay Angie as alimony one-half of the net income from the skating rink corporation and the oil and gas wells; it provided for Angie to receive half the value of these assets if Norman sold them or if either party died. Angie has appealed from the dissolution decree and Norman has cross-appealed.

Angie sets forth the following grounds of error: (1) the trial court erred in awarding Angie one-half the net proceeds in Skate Country, Inc. and the oil ventures while allowing the title to remain in Norman; (2) the trial court erred in failing to set off $84,000 to Angie representing one-half the monies wasted by Norman's gambling and diversion to unknown uses; (3) the trial court erred in not awarding Angie rehabilitative alimony to compensate her for the $10,000 per year reduction in salary at Norman's request; (4) the trial court erred in the amounts set off to Angie on the house and gifts.

Our scope of review is de novo. In re Marriage of Deck, 342 N.W.2d 892, 894 (Iowa Ct. App. 1983). We give weight to the fact findings of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7).

The guidelines for the disposition of property are set forth in Iowa Code section 598.21. The crucial issue in reviewing property division in a dissolution decree is whether the distribution of property under the particular circumstances was equitable. In re Marriage of Wallace, 315 N.W.2d 827, 830 (Iowa Ct. App. 1980).

I. **Skating Rink and Oil and Gas Well Interests.** The trial court awarded title of the parties' two main assets, the skating rink interest and the oil and gas well interests, to Norman, and ordered him to pay one-half the net proceeds from these interests to Angie. The court justified this division by reasoning that the skating rink and oil and gas well interests would be too hard to value.

We find that the trial court should have placed a value on these two interests and awarded Angie a dollar award equal to one-half of this value. Under the present division, Angie has no means of protecting her interest. Norman, as title holder, has complete control over both interests. There are no checks on his power to dispose of or use these two assets. Any amount which Angie receives is subject to Norman's decisions on the investments. Because Norman is on the board of directors of the skating corporation, he has considerable control over the distribution of dividends. We find that there is evidence in the record on the value of these two assets; however, the evidence is disputed as to the valuation. The trial court, with the advantage of seeing the witnesses, is in a better position to make an accurate valuation. If additional testimony is necessary, the trial court can require it. On remand, the trial court should place a dollar value on the two assets and order Norman to pay one-half of this value to Angie. We reject Norman's argument that Angie should only receive one-third the value of the two interests. Both Norman and Angie worked together over the years to build up these two interests. The money from the sale of Angie's mother's home was used to help the couple in their early years. There is no basis in the record to support the argument that Angie is only entitled to one-third of the property.

**II. Gambling Debts.** Angie alleges that the court erred in not modifying the award to reflect Norman's gambling losses during the period from the time of separation to the time of the decree. In making the award, we find that the trial court did take these items into consideration and we find the award to be equitable.

**III. Alimony.** The trial court determined that because under the decree, Angie would receive $36,674 more of the property, it would not award her any additional alimony. The court stated: 173

> The foregoing distribution of property results in respondent receiving $36,674.00 more in value than petitioner. It is concluded that the difference in value shall constitute an award to respondent in lieu of alimony that would otherwise be awarded to her by reason of the difference between her future earning capacity and that of petitioner.

This statement indicates an improper fusion of an alimony and property award. Although closely related, alimony and property rights are distinguishable and have differing purposes. Alimony is an allowance to the ex-wife in lieu of the husband's legal obligation of support. In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981). The property distribution is based on what is equitable in light of the parties' circumstances. In re Marriage of Wallace, 315 N.W.2d 827, 830 (Iowa Ct. App. 1981).

In this case, the court awarded no alimony despite the fact that Norman makes substantially more than Angie. Angie currently makes $14,000 per year. She testified that she did not pursue the higher education necessary for pay advances in her field because Norman convinced her that any extra earnings would only go to taxes.

Section 598.21(3) sets forth the standards for an award of alimony. Under these standards we find that Angie is entitled to an award of $7,500 per year alimony for five years. During this five-year period she can pursue the higher education necessary for her to obtain the pay raises she would have had.

**IV. The House and Gifts Received by Angie From Her Mother.** We have reviewed the record with respect to the disposition of the house and gifts which Angie inherited from her mother and find the award equitable.

**V. Attorney Fees.** Angie requests attorney fees. In evaluating a request for attorney fees on appeal, the appellate court must 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 Ct. App 1981).

We conclude that the parties shall pay their own attorney's fees and costs.

REVERSED IN PART, AFFIRMED IN PART, AND REMANDED.

All judges concur except Oxberger, C.J , who dissents.

**OXBERGER, C.J.,** (dissenting)

I would affirm the trial court.