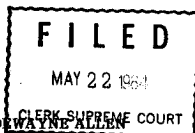


IN THE COURT OF APPEALS OF IOWA



IN RE MARRIAGE OF MARGARET ANN ALLEN & GORDON DEWAYNE ALLEN

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Upon the Petition of )

MARGARET ANN ALLEN, )

Filed May 22, 1984

Petitioner-Appellant, )

And Concerning )

GORDON DEWAYNE ALLEN, )

4-120  
83-1221

Respondent-Appellee. )

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Appeal from the Iowa District Court for Polk County - M. C. Herrick, Judge.

Petitioner appeals from the economic provisions of the parties' dissolution  
decree   AFFIRMED AS MODIFIED

John R Hearn, Des Moines, Iowa, for petitioner-appellant.

Ed Skinner of Skinner & Beattie, Altoona, Iowa, for respondent-appellee.

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

Petitioner, Margaret Allen, appeals from the economic provisions of the parties' dissolution decree. Margaret asserts on appeal: (1) the division of certain of the parties' marital assets was inequitable; (2) the trial court should have specified the terms upon which the parties' house was to be sold; and (3) the court should have awarded her alimony and attorney fees. Margaret also requests attorney fees on this appeal. We affirm as modified.

I. Scope of Review. In this equity action, our review is de novo. In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974). We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). In so doing, we give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. Property Division and Alimony. Margaret and Gordon were married in 1952. They have four children, all of whom are now grown. Margaret was fourteen years old at the time of the marriage and Gordon was twenty years old. Margaret has an eighth grade education and Gordon has a high school diploma. Neither party brought any assets into the marriage, nor have they received substantial gifts or inheritances during the marriage. Margaret worked primarily as a homemaker and mother until 1970. Since 1970, Margaret has worked fulltime at Northwestern Bell and is now an administrative clerk earning \$359 a week. Gordon has worked for Firestone for thirty-one years and he now earns \$493 a week. Margaret's health, at the time of trial, was very good. Gordon had back problems; however, these problems did not affect his work.

A. Division of Property. The trial court found, and we agree, that both parties made substantial contributions to the marriage and the property acquired, and that the property should be divided approximately equal. Margaret asserts on appeal that the trial court's division of the parties' personal property

was inequitable and that the court erred in not valuing the parties' respective retirement plans and awarding Margaret judgment for one-half the value by which Gordon's retirement exceeds the value of hers. We disagree.

Our analysis begins with Iowa Code section 598.21 (1981), which codified many aspects of our prior case law. A justified property division is one that is equitable under the circumstances. Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976); In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975). Although frequently an equal division of assets is made, there is no mechanical rule that dictates this result. In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980); In re Marriage of Conley, 284 N.W.2d 220, 223 (Iowa 1979). When asked to review an individual economic provision of a dissolution decree, we consider all the provisions together as an integrated whole. See In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976).

The trial court awarded Margaret two cars, most of the personal property in her possession, a life insurance policy, her AT&T stock, her bank accounts and her pension plan. The trial court awarded Gordon a truck; a boat, motor and trailer; the personal property in his possession; certain items in Margaret's possession; a life insurance policy; his bank accounts; and his pension plan. The trial court ordered the parties' house and vacation mobile home sold and the net proceeds equally divided. Gordon was allowed to live in the house until it was sold; he was directed to make the mortgage payments. The trial court directed Margaret to pay a \$747 debt and Gordon to pay a \$1,557 debt. No alimony was awarded, and each party was directed to pay his or her own attorney fees and half the court costs.

We have reviewed the record and find that the trial court equitably divided the parties' personal property. The court allowed the parties to voluntarily divide up much of the personal property and ordered the division of the remainder. Margaret testified at trial that she did not want most of the items ultimately

awarded to Gordon. Her assertion that the division of the parties' personal property was inequitable is without merit.

Margaret contends that the parties' respective pension benefits should be valued and equally divided between the parties. See In re Marriage of Bevers, 326 N.W.2d 896, 899-900 (Iowa 1982). We agree with her that the parties' pension benefits should be considered in the property division, and, in the proper case, the trial court may be required to value the benefits earned during a marriage and award one of the parties a greater economic award in order to equitably divide the property of the marriage. Iowa Code § 598.21(1)(c) (1983). However, we do not believe this to be such a case. Gordon was fifty-one years old at the time of trial and Margaret was forty-five. Gordon suffers from some health problems which may lead to a loss of earning capacity. Both parties will be able to be self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage under the trial court's property division. Although Gordon has had the opportunity to earn greater pension benefits during the marriage, there exists a real possibility on this record that he may be unable to earn additional benefits in the future. Margaret, on the other hand, suffers no health problems and will be able to earn substantial pension benefits in the future to insure a secure retirement. The trial court's award to each party of their respective pension benefits was equitable.

B. Alimony. Margaret testified at trial that she was not asking the court to consider an alimony award. The pretrial conference order filed on May 17, 1983, stated that neither party sought alimony and it was not listed as an issue. Margaret asserts on appeal, however, that because of Gordon's greater annual income, she is entitled to \$3,000 per year alimony.

We do not normally consider matters raised for the first time on appeal. In re Marriage of Tucker, 213 N.W.2d 498, 500 (Iowa 1973). However, upon our review of the record and considering the factors in Iowa Code section 498.21(3) (1983), we

find that, even if the issue were properly before us, this is not a proper case for an award of alimony. Both parties are self-supporting and, although Gordon's income is greater, Margaret's health ensures her a future earning capacity while Gordon may be required to retire.

Accordingly, upon our de novo review, we find that the trial court's property division and decision not to award alimony is equitable. However, we agree with Margaret that the dissolution decree should specify a period in which Gordon must either sell the parties' house or obtain an extension from the trial court for a specific period of time in which to sell the house. We, therefore, modify the decree to provide that Gordon must either sell the parties' home within 180 days of the date of our decision or obtain an extension of time thereof from the trial court for a specific period of time upon a showing of good cause. This modification and our disposition of the case makes it unnecessary for us to rule on the issues in Margaret's "Motion for Leave to Proceed in The Trial Court."

III. Attorney Fees. Margaret asserts on appeal that Gordon should have been ordered to pay \$800 of her trial court attorney fees. Attorney's fees are not recoverable in a dissolution as a matter of right, but rest within the court's discretion and depend upon one spouse's financial needs and the other spouse's ability to satisfy them. Locke v. Locke, 263 N.W.2d 694, 696 (Iowa 1978). Considering both parties' financial needs and ability to pay, we do not believe the trial court abused its discretion in refusing to award attorney fees.

Margaret also requests reasonable attorney fees on appeal. There is, however, nothing in the record to indicate time or costs upon which to base an award. Moreover, considering our disposition of this action and each party's ability to pay their own attorney's fees, we do not believe such an award would be appropriate. The parties shall pay their own attorney fees. Costs on appeal are taxed to Margaret.

AFFIRMED AS MODIFIED.