IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

IN RE THE MARRIAGE OF EVELYN J. BRADY AND MILO M. BRADY

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UPON THE PETITION OF
EVELYN J. BRADY,

Petitioner-Appellant,

AND CONCERNING
MILO M. BRADY,

Respondent-appellee.

Filed April 27, 1982

2-83
2-66432

Appeal from Scott District Court, James R. Havercamp, Judge.

Petitioner-wife appeals from the economic provisions of the parties' dissolution decree, asserting (1) the property division was inequitable (2) the alimony award was inadequate, and (3) the award of attorney fees should be increased. AFFIRMED WITH MODIFICATION.

Seymore M. Raben of Raben, Liebbe, Shinkle & Bremer , Davenport, for petitioner-appellant.

Edward N. Wehr of Wehr & DeLange, Davenport, for respondent-appellee.

Considered by Donielson, P.J., and Snell and Carter, JJ.

Petitioner-wife appeals from the economic provisions of the parties' dissolution decree, asserting (1) the property division was inequitable, (2) the alimony award was inadequate, and (3) the award of attorney fees should be increased. We affirm the trial court's order with modification of the property settlement.

Appellant, Evelyn J. Brady, and appellee, Milo M. Brady, were married in 1940. At the time of trial Evelyn was sixty and Milo was sixty-five years of age. The parties have one child, who is emancipated and not dependent upon her parents for support.

Milo retired from the practice of dentistry in 1965. At that time, he purchased and operated a trucking company. In 1970, Milo sold the trucking company and now holds an executive position with trucking companies. Milo had an income after taxes of approximately $73,000 for 1977 and 1978, and over $86,000 for 1979. The income is derived from wages, investments and sales of partnership interests. Milo suffered a coronary in 1968 and has recently experienced bladder and prostate surgery. He also suffers from arterial sclerosis.

Evelyn had completed two years of college at Northwestern University prior to her marrige to Milo. Aside from devoting herself to the duties of being wife and mother, she has actively assisted Milo in the entertainment aspect of his business enterprises and has made substantial, although not equal, contributions to their jointly held assets. Evelyn has not been employed until very recently, when she was a partner in a now financially defunct diet center in California. The trial court concluded she had little to offer in the way of marketable skills. Except for a substantial amount of jewelry and other personal property received as gifts and

inheritance, a $150 per month annuity acquired prior to marriage, a condominium in Davenport occupied by Milo and a home in California, held jointly, she has no other property. Eveyln has suffered from rheumatoid arthritis, which is presently in remission.

The trial court valued the marital assets at $853,363.00. In addition, the trial court noted each party held considerable personsal property by virtue of gift or inheritance. The trial court awarded Evelyn the California home, subject to any indebtedness, all personal property and household goods in her possession in California, a 1973 station wagon, membership in a California country club and various items of personal property. She was awarded alimony of $1250 per month until she remarries or dies, which is to become a charge against Milo's estate upon his death. Evelyn was awarded a lump sum property settlement of $125,000, bearing no interest for the first sixty days and ten percent thereafter. Milo was awarded the real property in Florida and Davenport, Iowa, subject to any indebtedness, and all the personal property and household goods in both locations. He was awarded all of his business enterprises, subject to any indebtedness and all other personal property in his control including cash, pensions, stock, investments, and trust funds. No attorney fees, except the $1500 of temporary attorney fees previously allowed Evelyn, were awarded. Approximately thirty-six percent of the assets were awarded Evelyn and sixty-four percent of the assets were awarded to Milo.

I. Scope of Review.

Our review of this case is de novo. Iowa R. App. P. 4. We are not bound by the trial court's findings of fact, but we give weight to the findings, especially regarding the credibility of witnesses. Iowa R. App. P. 14(f)(7). In reviewing each 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). In reviewing the property provision of a dissolution decree, we consider the factors articulated in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972), and the factors enumerated in section 598.21, The Code 1981.

II. Valuation of Marital Assets.

Evelyn contends the trial court improperly valued the marital assets. Evelyn essentially questions the trial court's treatment of the tax liabilities and the amount of debts outstanding. The trial court was faced with conflicting evidence on the values of property and contingent and estimated future tax consequences. The evidence was presented in various financial statements, which the court had to reconcile. Our review of the record leads us to believe the trial court's treatment of the tax liabilities and payments and the valuation of the assets and liabilities was proper. Accordingly, we decline to modify the valuation of the marital property.

II. Property Settlement.

Evelyn contends the trial court's property settlement was inequitable. She claims a fifty-fifty split of the personal property, incorporating her requested modifications of the trial court's valuation, is the equitable solution.

In response to Evelyn's argument, we are guided by the notion that although an equal division of the assets is frequent, there is no requirement that parity between the parties be effected. 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). Even if the trial court's goal was to divide the assets equally, there is no requirement that the division be mathematically precise. Conley, 284 N.W.2d at 223. The test for an acceptable allocation of assets is whether the distribution constitutes an equitable and just award under the particular circumstances of the parties. Locke

v.Locke, 246 N.W.2d 246, 251 (Iowa 1976); Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968); In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972). We think an increase of the lump sum distribution from $125,000 to $175,000, payable under the same terms as specified by the trial court, is a more equitable solution.

III. Alimony.

Evelyn contends the trial court's provision of $1250 per month alimony was inequitable given the parties' earning capacities and the standard of living to which Evelyn is accustomed. After applying the criteria set forth in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), excluding fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972), we arrive at the conclusion the evidence does not support Evelyn's claim for an increase in alimony. We have considered factors including the earning capacites and prospects of each party, the relative level of education attained by each party, the potential effects of inflation, the parties' ability to pay and the property division effectuated by the trial court's decree. See In re Marriage of Winter, 223 N.W.2d 165, 169 (Iowa 1974); In re Marriage of Burham, 283 N.W.2d 269, 277 (Iowa 1979). We conclude the trial court's provision for alimony is reasonable and equitable under the facts in this case.

IV. Attorney Fees.

Evelyn seeks reimbursement for the attorney fees she incurred during trial and on appeal. We note the trial court has considerable discretion respecting awards of attorney fees. In re Marriage of Schissel, 292 N.W.2d 421, 428 (Iowa 1980). Our primary consideration in making that determination is each party's resources. In re Marriage of Williams, 303 N.W.2d 160, 167 (Iowa 1981). Assessing the parties' resources in this case, we deny Evelyn's request for additional attorney fees.

AFFIRMED WITH MODIFICATION.