FILED
JUN 1 5 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF CLARENCE W. JAMES
AND BERNICE ALICE JAMES

81

Upon the Petition of)
CLARENCE W. JAMES,)
Petitioner-Appellant,)
And Concerning) 9-174
BERNICE ALICE JAMES,) 88-1144
Respondent-Appellee.)

Appeal from the Iowa District Court for Jasper County (DDO-3374), Jerrold W. Jordan, Judge.

Petitioner husband appeals a dissolution decree challenging economic provisions. **AFFIRMED.**

James C. Davis, Des Moines, for petitioner-appellant.

Eugene Knopf and Lee M. Walker of Walker, Knopf & Billingsley, Newton, for respondent-appellee.

Considered by Oxberger, C.J., and Schlegel and Habhab, JJ

SCHLEGEL, J. 82

The appellant, Clarence W. James, appeals the dissolution decree entered in this matter, claiming that the property distribution was not equitable and that he should not have been ordered to pay alimony. Further, he claims he should be awarded at least nominal alimony. We affirm.

The parties were married in 1952. Both parties worked substantially during the entire marriage. The parties maintained separate bank accounts and kept their funds separate throughout the marriage. They each contributed to the expenses of the home and family. The appellee, Bernice Alice James, bore the greatest part of the homemaking and child care for the four children born of this marriage, all of which have attained their majority. In later years, she has carried the burden of the payments upon indebtedness on the house. In 1985, although the home was debt free, the parties placed a mortgage on the house to secure a loan to generate funds to pay certain outstanding debts incurred by Clarence, to pay taxes, and to pay lawyers fees for the defense of one of their sons who had become involved in criminal activity. The balance remaining unpaid at the time of trial was approximately $9,000.

Property division and alimony must be considered together in evaluating their individual sufficiency; they are neither made nor subject to evaluation in isolation

from one another. In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984). The distribution of the parties' property should be that which is equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(1) (1987). In determining the appropriateness of alimony, Iowa Code section 598.21(3)(e)-(f) (1987) provides that the court must consider the earning capacity of each party, present standards of living, and ability to pay, balanced against relative needs of the other. See In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983).

Clarence, during the bulk of the marriage, drove a truck. In 1987, he suffered two heart attacks and a stroke and is no longer able to drive a truck because of the disability caused by the stroke. He claims his only income is from participation in "flea markets," which nets him approximately $100 to $300 at each such flea market.

Bernice is employed as a cook at a restaurant, earning $5.25 per hour for a forty hour week. She is a borderline diabetic, and suffers from knee joint problems. Her employment requires her to be on her feet all day, which aggravates the knee problem. She is not trained for any other kind of work, and does not foresee any improvement in her income situation.

Clarence was very evasive in his testimony concerning values of property he owns, income he may have, what he is

able to earn, or the source of his financial support. It is apparent from the record that he obtains some help from his mother, and also from a woman friend whom he lives with part of the time who furnishes money and food for him. The record shows that Clarence, believing he would receive the house in the dissolution action, advised the loan company holding the mortgage on the house that when the dissolution was final, he would pay off the loan on the house. He did not reveal the source of the funds from which this would be accomplished.

The trial court awarded the house to Bernice, and required her to assume the indebtedness against it. The record indicates that Bernice, from her own earnings, has made the loan payments on the house up until the time of her separation from Clarence. It appears that Clarence has used his money for many other things than the expenses of the home and family. There is substantial indebtedness that must be paid before there can be a clear title to the home. The court found that there may be some litigation that must be carried out to determine the validity of a mortgage held by a lawyer who represented the son for a while. This problem was caused because Clarence arranged for representation and made a commitment to give a mortgage as security for fees. Bernice also signed the papers at Clarence's urging. The lawyer was discharged before finishing the representation.

From the record, Clarence appears to have means to support himself. He cannot drive a truck, but is not totally disabled. He has applied for social security disability payments, but his claim had not been adjudicated at the time of trial.

On the whole record, and upon our de novo review, we agree with the trial court. We believe the distribution made here is equitable.

Clarence asserts that there is no justification for the court to have awarded Bernice nominal alimony of $10 per year, and claims that he should have been awarded at least nominal alimony. Under the circumstances of this case, we believe the court was correct in its award of alimony of $10 per year. The future for Bernice is bleak, given her need to continue work and the condition of her health that may result in an inability to work. While Clarence's present disability causes him to be without substantial income, it would be unwise to eliminate the possibility of an increase of alimony in the event of his future earnings, given Bernice's prospects for the future. We affirm the award of nominal alimony.

Upon the whole record, we affirm the trial court in toto.

AFFIRMED.