

FILED

MAY 22 1984

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF GEORGIA D. GOODE & ROBERT DUANE GOODE

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Upon the Petition of	)	
GEORGIA D. GOODE,	)	Filed May 22, 1984
Petitioner-Appellant,	)	
Cross-Appellee,	)	
And Concerning	)	
ROBERT DUANE GOODE,	)	<u>4-95</u>
Respondent-Appellee,	)	83-632
Cross-Appellant.	)	

Appeal from the Iowa District Court for Mahaska County - James P. Rielly,
Judge.

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

Jim R. Sween, Eldora, Iowa, for petitioner-appellant.

Bert A. Bandstra, Knoxville, Iowa, for respondent-appellee.

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

PER CURIAM

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Petitioner, Georgia Goode, appeals from the economic provisions of the parties' dissolution decree. Georgia asserts on appeal that the property division and her alimony award are inequitable and that she should have been awarded more attorney's fees. Respondent, Robert Goode, cross-appeals from the parties' dissolution decree but does not raise any issues. Accordingly, we consider only those issues raised by Georgia. See Iowa R. App. P. 14(a)(3) and (5); Iowa R. App. P. 14(i). We affirm.

Georgia, 70 at the time of trial, and Robert, 59 at the time of trial, were married on November 27, 1968. This was the second marriage for the parties and both have adult children by their prior marriages. At the time of the parties' marriage in 1968, Georgia lived at New Sharon, Iowa, where she was employed as a school teacher. Robert owned and operated a dairy and grain farm near Blakesburg, Iowa. Georgia owned a five-room house, which was completely furnished, at the time of the marriage. Robert owned approximately 300 acres of farmland and was involved in a farming partnership. The trial court found he had a net worth of \$67,500 at the time of the marriage.

After the parties were married each continued to reside at their respective homes. Robert would visit Georgia on weekends. Georgia stayed in a rented house in Blakesburg with Robert for two to three months the first summer after the parties' marriage. Both parties retained their respective earnings and maintained separate accounts. The parties planned to build a new home in Blakesburg, but as a result of a disagreement, they separated in 1972.

Robert liquidated his farming operation in 1972 and obtained employment with a farm equipment manufacturing company. He was assigned to work in Kansas, Colorado, and Wyoming. The parties reconciled in 1974 and Robert and Georgia were together on weekends in New Sharon when he was able to come back from Kansas. Georgia continued to live in her home in New Sharon and Robert would spend most of his weekends at her home.

Robert constructed a Wausau home in New Sharon in 1975. The parties moved into it after it was completed and lived in it until 1977 when they sold it. They built another home and lived in it until 1981. They moved into the residential property in which Georgia now resides in 1981. This home was built by the parties using funds earned by Robert in his work or from the sale of assets owned by Robert. Georgia gifted the home she had owned prior to the marriage to her children. It was valued at \$15,000.

After Georgia filed this action in 1981, Robert constructed a residence on an acreage adjoining the residence where Georgia lives. Also, Robert owns a four-plex in New Sharon and other real estate. Robert received a \$19,100 inheritance from his mother's estate in 1981. There were no other substantial gifts or inheritances received by either party during the marriage. The trial court found the parties' net worth to be \$245,076 at the time of trial.

Georgia was retired at the time of trial and in good health. She was receiving \$200 per month benefits from the Iowa Public Employees Retirement System and \$450 per month benefits from Social Security. Robert was employed as a territory manager with a farm equipment manufacturer and his annual income varies, depending on commissions earned. His adjusted gross income has ranged from \$65,198 in 1977 to \$17,938 in 1981.

The trial court awarded Georgia a life estate in the parties' house, some household goods, a car, and certain bank accounts, cash and certificates, totaling \$9,806.32. Robert was awarded the rest of the parties' real and personal property. He was directed to pay all of the parties' debts, \$200 per month alimony, unpaid temporary support of \$5,577.99, and \$4,133 toward Georgia's attorney fees.

I. Scope of Review. Our review of this equitable proceeding is de novo. Iowa R. App. P. 4; In re Marriage of Castle, 312 N.W.2d 147, 148 (Iowa Ct. App. 1981) Our responsibility is to review the facts as well as the law and to determine rights anew from the credible evidence on properly presented and preserved

issues. In re Marriage of Full, 255 N.W.2d 153, 158 (Iowa 1977). While we give weight to the findings of the trial court, especially where the credibility of witnesses is involved, we are not bound by them. Iowa R. App. P. 14(f)(7). As in all cases of this type, precedent is of little value and our decision must ultimately depend on the particular facts of this case. In re Marriage of Kehrl, 241 N.W.2d 923, 926 (Iowa 1976).

II. Economic Provisions of Decree. Georgia contends that the trial court's property division and alimony award were inequitable. Specifically, she asserts in her brief that Robert failed to disclose all his assets, that the trial court improperly considered fault in making its decision, that her contribution as a homemaker to the accumulation of marital assets was substantial, and that the court applied the wrong standard in determining alimony. She asks this court to increase her share of property and to award her property in lieu of an alimony award.

Although property division and alimony may be closely related, they are distinguishable and have differing purposes. In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981). Division of property is based on each marital partner's right to a just and equitable share of the property accumulated as a result of their joint efforts. Knipfer v. Knipfer, 259 Iowa 347, 353, 144 N.W.2d 140, 143 (1966). Alimony is an allowance to the ex-spouse in lieu of a spouse's obligation of support. Id. at 352, 144 N.W.2d at 143. A court, therefore, must determine whether the property division and alimony taken together are equitable to both parties while keeping in mind the separate purposes of the alimony and property division. See In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975).

A. Property Division. Our analysis begins with Iowa Code section 598.21 (1981), which codified many aspects of our prior case law. In re Marriage of Castle, 312 N.W.2d at 149. A justified property division is one that is equitable under the circumstances. Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976). We

agree with and adopt as our own the following assessment of this case by the trial court

In arriving at a fair and equitable division of the property accumulation of the parties, the court finds that the situation presented in this matter is most unusual. While the parties have been married for a period of 14 years the court notes that besides the two year separation which occurred between 1972 and 1974 that prior to that separation the parties did not live in the same household except for a summer vacation. The court further notes that after the reconciliation the Petitioner continued to live in New Sharon, Iowa while the Respondent was away with his traveling job in the West during the weekdays. It appears that the parties only spent time together on weekends. This arrangement stopped in the year of 1981 when the Respondent moved out of the homestead. The record clearly shows that the Petitioner has continued to keep all of the money that she has earned in her own separate accounts and that she has made a gift of the house that she owned at the time of the marriage. She has further placed savings in joint tenancy accounts with her children and in one instance a grandson. The court concludes that practically all of the assets which are going to be available for distribution have been contributed by Robert and the court further concludes that Georgia has not performed all of the normal duties that a spouse would have performed under the circumstances of a normal marriage.

The increase in net worth of the parties resulted both from Robert's contributions and appreciation of property which he had acquired before the marriage. Georgia's maintenance of her house as the "marital home" was primarily for herself and her youngest child from her previous marriage until 1975. Robert maintained a separate home prior to that time and performed all his own homemaking functions, including washing his clothing. After the parties commenced sharing a home in 1975, Georgia had increased responsibilities. However, Robert still primarily resided in Kansas. We find Georgia's most substantial contribution to the parties' marriage to be her management of the four-plex from 1976 to 1981. Throughout the marriage both parties have maintained separate accounts and, for nearly half the marriage, separate homes.

We reject Georgia's contention that the trial court erroneously considered fault in making the property division. See In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972). One of the factors in determining an equitable property division in Iowa Code section 598.21(1) is the contribution of each party to the marriage. See In re Marriage of Lattig, 318 N.W.2d 811, 815 (Iowa Ct. App. 1982) (contribution of the wife as a homemaker and mother allows her an equitable share in property even though husband contributed more financially). The trial court's award was not based upon her refusal to move to the farm or to Kansas, rather it was based, in part, on a consideration of the contribution of both parties to the marriage and to the accumulation of property during the marriage. We believe its decision was equitable.

A full disclosure of the financial conditions of parties to a dissolution proceeding is necessary in order for a trial court to make a proper award of alimony or a property settlement. In re Marriage of Winegard, 278 N.W.2d 505, 511 (Iowa), cert. denied, 444 U.S. 951, 100 S. Ct. 425, 62 L. Ed. 2d 321 (1979). Both parties accuse the other of concealing assets in this case. The ownership of assets as well as valuation was vigorously disputed at trial. However, we believe the trial court adequately took all these factors in consideration and we adopt its determination of the parties' net worth as our own.

B. Alimony Award. Georgia asserts on appeal that the trial court applied a standard of need in determining alimony rather than attempting to achieve a standard of living for her reasonably comparable to that enjoyed during the marriage. See In re Marriage of Wallace, 315 N.W.2d 827, 831 (Iowa Ct. App. 1981); Iowa Code §§ 498.21(1)(f) and 498.21(3)(f). We do not believe the trial court considered only need making its award; in any case, we make that determination anew.

The payment of alimony is not an absolute right; it must be determined in light of all the circumstances, including the property settlement. In re Marriage

of Bever, 326 N.W.2d 896, 900 (Iowa 1982). The factors we consider in making a determination of spousal support are codified in Iowa Code section 598.21(3) (1981).

Georgia is presently retired and, excluding her accrued pension benefits, has only a minimal earning capacity. She will be unable to maintain her present standard of living without additional support, particularly in light of the property settlement. We believe this is an appropriate case for an award of alimony.

The trial court, in addition to the \$200 per month alimony, ordered Robert to pay real estate taxes and insurance on the house. As a result, Georgia will have approximately \$660 per month expenses. She receives \$650 retirement benefits. We believe the award of \$200 per month alimony is equitable in light of the property division and will enable her to maintain a comparable standard of living. We decline to award petitioner property in lieu of alimony. She may seek assistance from the court if she is unable to collect her alimony award.

Accordingly, we affirm the trial court's property division and award of alimony.

III. Attorney Fees. Georgia sought \$7,500 toward attorney fees at trial. The court found that in light of the fact that trial took only two days, it would not be justified in granting the entire award. As a result, it awarded Georgia \$4,133 in attorney fees. Georgia asserts that Robert has a greater ability to pay and that his actions in concealing his assets increased her attorney's 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).

There is no doubt that Robert has a greater ability to pay. However, Georgia was given sufficient assets in the distribution of property and in the payment of accrued temporary support to pay her own fees. Considering this, as well as her award of alimony, we believe the trial court's award of \$4,133 for attorney's fees to Georgia was proper and should be affirmed.

Georgia also seeks an additional \$6,385 attorney's fees on appeal. Her attorney has submitted an itemized statement for 106 hours and 25 minutes for time spent in prosecuting this appeal. Robert has already been ordered to pay \$4,133. Presumably, Robert has a substantial obligation for fees to his own attorneys. Georgia has received several accounts free and clear of any debt obligation and an award of alimony. Without commenting upon the amount of fees Georgia should pay, we deny her application for fees.

AFFIRMED