

IN THE COURT OF APPEALS OF IOWA

No. 2-227 / 91-1203

FILED

SEP 29 1992

CLERK SUPREME COURT

IN RE THE MARRIAGE OF STEVE LEE JOCHEMS AND
VICKI SUE JOCHEMS

227

Upon the Petition of
STEVE LEE JOCHEMS,

Appellant/Cross-Appellee,

And Concerning
VICKI SUE JOCHEMS,

Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Jasper County,
J. W. Jordan, Judge.

Petitioner husband appeals and respondent wife cross
appeals certain economic provisions of the decree
dissolving the parties' marriage. **AFFIRMED.**

Lee M. Walker, Newton, for appellant.

Dennis F. Chalupa, Newton, for appellee.

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

HAYDEN, J.

Steve and Vicki Jochems were married on October 10, 1980. They had two children: Lacey Jo, born on April 23, 1983; and Chad Steven, born on May 8, 1986. The parties lived in Newton, Iowa, during the marriage.

Steve was thirty-one years old at the time of the dissolution hearing. He is employed as a supervisor at Thombert, Inc., a company which manufactures industrial plastics. Steve has gross income of \$37,000 per year and net income of \$2,400 per month.

Vicki was twenty-eight years old at the time of the dissolution hearing. Prior to the birth of Lacey, Vicki worked part-time at a newspaper office for minimum wage. Vicki has not had any other work outside the home. She has earned some money taking care of other people's children in her home. Vicki has a high school education. The district court found Vicki had the ability to earn \$150 per month.

The district court awarded the parties joint legal custody of the children, with Vicki having primary physical care. The court applied the child support guidelines and ordered Steve to pay child support of \$867 per month. Steve was also ordered to pay alimony of \$500 per month for a period of thirty-six months, or until Vicki remarries, cohabits with a male, or dies.

In considering the property distribution, the court noted Steve acquired the marital residence prior to the marriage. Steve paid about \$9,000 on the house prior to

the marriage. The district court found it would be inequitable to set that amount off to Steve because of Steve's greater earning capacity and because he had been able to accumulate retirement funds. The court awarded Vicki assets valued at \$32,257, which included the house, a car, and furniture. Steve was awarded assets valued at \$28,130. The assets awarded to Steve included his pension and 401K plan.

Steve appealed, and Vicki cross appealed.

I. Our scope of review in dissolution cases is de novo. In re Marriage of Craig, 462 N.W.2d 692, 693 (Iowa App. 1990). While not bound by the trial court's determination of factual findings, we will give them considerable weight, especially when considering the credibility of witnesses. Id.

II. Steve contends the property division was not equitable. He claims he should receive a setoff for the \$9,000 investment he made in the marital residence before the marriage. Steve asks for a lien on the house, payable upon Vicki's remarriage, cohabitation with a male, or when the children are no longer dependents.

The partners in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. In re Marriage of Russell, 473 N.W.2d 244, 246 (Iowa App. 1991). We consider property division and alimony together in evaluating their individual sufficiency. Id. The Iowa courts do not require an equal

division or percentage division. Id. The determining factor is what is fair and equitable in each particular circumstance. Id.

We agree with the district court's decision it would be inequitable to set off to Steve the value of the property he brought to the marriage in this case. The parties agreed Vicki should have the house, at least during the time she is raising the parties' children. We also note Vicki was awarded alimony for only a limited time, although her diminished earning capacity will continue for some time into the future. Furthermore, Vicki has not been able to accumulate pension funds as Steve has. As noted above, we consider property division and alimony together in evaluating their individual sufficiency. We affirm the property distribution as set forth by the district court.

III. Steve also contends the award of alimony to Vicki should be eliminated, or at the very least reduced. He believes Vicki has a greater earning capacity than found by the district court. In her cross-appeal, Vicki claims she should be awarded alimony of \$600 per month for at least five years. We will consider these arguments together.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. In re Marriage of Whelchel, 476 N.W.2d 104, 110 (Iowa App. 1991). Alimony is an allowance to the ex-spouse in lieu of a legal obligation to support that person. In re Marriage of Oler, 451 N.W.2d 9, 13 (Iowa App. 1989). When determining the

appropriateness of alimony, the court should consider the earning capacity of each party. Id. Also, the ability of the one spouse to pay should be balanced against the needs of the other spouse. Id.

We affirm the district court's award of alimony. We find alimony is appropriate under the facts of this case due to the discrepancy between the earning capacity of the two parties. The award of alimony for three years should allow Vicki time to improve her employment skills so she may become self-supporting. However, we also note Vicki was awarded a greater amount of the parties' assets than Steve, and so we will not increase the amount or length of her alimony award.

We affirm the dissolution decree as set forth by the district court. Each party shall pay his or her own attorney fees on appeal. Costs of this appeal are assessed to Steve Jochems.

AFFIRMED.