FILED
MAY 28 1985
CLERK SUPREME COU

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF WILLIAM HOWARD McBETH AND MARTHA MAY McBETH

UPON THE PETITION OF **WILLIAM HOWARD McBETH,**	)	
Petitioner-Appellant,	)	Filed May 28, 1985
AND CONCERNING **MARTHA MAY McBETH,**	)	5-167 84-1150
Respondent-Appellee.	)	

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

Petitioner-husband appeals from the economic provisions of the decree dissolving the parties' marriage. AFFIRMED AS MODIFIED.

Lee M. Walker of Walker and Neighbor, Newton, for petitioner-appellant.

Bradley McCall of Brierly, McCall, Girdner, Chalupa & McCall, Newton, for respondent-appellee.

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

OXBERGER, C.J.

The petitioner-husband appeals from the property and alimony provisions of the couple's divorce decree. We affirm as modified.

The petitioner, William McBeth, and respondent, Martha, were married thirty years when the court granted their divorce June 26, 1984. Martha is forty-seven years old and has suffered from emotional problems involving four hospitalizations. She is currently under medication for depression. Martha has held several jobs during the marriage, including caring for an elderly woman, but her primary role has been that of homemaker and caring for the couple's four children. She has a ninth-grade education along with a GED, a high school equivalency certificate. William is forty-nine years old and has recently retired from his job he held for thirty years as a pipefitter for the Maytag Company in Newton. His health is fair and he suffers from problems with his back and legs. William also runs a used car business on the side.

The court awarded custody of the couple's only minor child to Martha and ordered William to pay $50 per week in child support. William was also ordered to pay $300 per month in alimony until Martha remarried or dies and further ordered him to pay $30,000 to Martha within 30 days of the issuance of the decree, as part of the property settlement.

William first argues the court erred in determining the goodwill of his used car business and in making an equal division of the couple's assets. He also says the property payments should be ordered to be made in installments, and that it will be impossible for him to come up with the $30,000 all at once.

The court determined the couple's assets included a home which, after encumbrances were deducted, was valued at $32,431.26; furnishings worth $2000; life insurance with a $786 value; bank accounts of $500; and a Chevette worth $3000. The court valued Williams' used car business at $25,146, determining the goodwill of the business was $10,000.

William says this figure is too high since in the last five years he has seen

considerable profit in only one year, 1979, suffered losses in 1980 to 1982, and received a profit recently only in 1983. As William indicates, the business is volatile, swinging from one extreme to the other depending on market conditions. Although the trial court put great weight in the 1979 figures because the IRS looked at some of William's records that year, we believe we must look at the overall situation and it shows that the figure of $10,000 in goodwill is too high. The goodwill of the business is personal to William and would have no value to a prospective purchaser. We find the value of goodwill to be zero.

William does not complain of the other aspects of the figures used in valuing the business, and we agree with the trial court figures on the inventory tools and other vehicles used in the business. The total value of the business is adjusted from $25,146 to $15,146. This leaves the couple with a net worth of $53,863.26.

We disagree with William, however, that the property should not be equally divided. He says that he spent long hours after his Maytag job working at his used car business and that Martha's contributions in this regard were minimal. William could not have spent this time working at the business if Martha had not been caring for the children and maintaining the household in the evening. The medical records show Martha indicated to her doctor she received many calls at the house concerning William's business and that her emotional condition and physical problems, including an ulcer, suffered because of the constant calls. We agree with the trial court that after thirty years of marriage, considering Martha's exclusive care of four children, her contributions to the marriage, and other factors set out at section 598.21(1) of the Code, the division of property should be substantially equal.

We do not agree that William should be saddled with a debt requiring an impossibly short time to pay. This needs to be balanced with Martha's interest in

obtaining the present value of her part of the property. Accordingly, we modify the court's award to indicate that William shall pay Martha $22,931.63, which is one-half of the assets of the couple, less the Chevette and furnishings in Martha's possession. This amount shall be paid over five years, in yearly installments of $4586 in principal, plus interest. The first payment shall be made September 1, 1985, and shall be made each following year on September 1. Interest of ten percent shall accrue on the unpaid balance.

William also says the court should have considered his decrease in salary after retirement and Martha's potential for future employment in awarding alimony.

William has retired from Maytag under their "Thirty and Out" program. The record confirms that both he and Martha had planned his retirement at this time prior to the divorce action. William's back and leg problems have made it increasingly difficult for him to continue his work. The couple had been planning to live on his pension, which is one-half the salary he received from Maytag.

Iowa Code section 598.21(3)(h) allows the court to consider mutual agreements for future compensation when determining alimony awards. We believe equity requires us to also consider William's decreased income from $1655 to $875 after his retirement.

Martha is currently not able to maintain employment because of her emotional problems. However, she indicated at trial that the marriage and divorce were the primary cause of stress in her life and she hoped that with time the problems would ease. Martha has held jobs in the past, including one in which she cared for an elderly woman within the last year. She had indicated she quit the job because she was bored. She has now indicated that she is interested in

further education, has taken aptitude tests, and checked into enrollment at a community college in child development. Martha's psychiatrist stated that despite her depression, it was possible for Martha to work, although it would be difficult at the present time. He further indicated employment could be therapeutic.

We agree that alimony should be awarded, but that it should take the form of rehabilitative alimony. Considering the factors set out at section 598.21(3) of the Code, we modify the alimony award to reduce it from $300 per month to $200 per month and provide that it shall end in three years from the date of the decree below, or earlier if Martha remarries, cohabitates with an adult male, or if either William or Martha dies.

All other aspects of the decree are affirmed. Considering the needs of Martha, each party's ability to pay, and results on appeal, as indicated in In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981), we hold each party shall pay their own attorney fees on appeal.

AFFIRMED AS MODIFIED.