FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

105

IN RE THE MARRIAGE OF RANDALL L. HEATON AND BEVERLY JEAN HEATON

Upon the Petition of)
RANDALL L. HEATON,)
Petitioner-Appellant,) Filed December 18, 1985
And Concerning)
BEVERLY JEAN HEATON,) 5-527 / 85-12
Respondent-Appellee.)

Appeal from the Iowa District Court for Cass County - J. C. Irwin, Judge.

Petitioner husband appeals from the decree dissolving the parties' marriage, asserting that the property division is inequitable and that the trial court should not have awarded respondent wife alimony. Respondent wife requests attorney fees on appeal. **AFFIRMED AS MODIFIED.**

Roland K. Landsness of Cambridge, Feilmeyer, Landsness, Chase & Wells, Atlantic, for petitioner-appellant.

Martin L. Fisher of Fisher, Fisher & Fisher, Adair, for respondent-appellee.

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

PER CURIAM

Petitioner Randall L. Heaton and respondent Beverly Jean Heaton were married in 1974. They have two children who were ages eight and six years old at the time of trial. Randall is a restaurant manager earning $30,000 a year. Beverly is an office manager at an income tax service and also an associate real estate broker; she planned to earn $9,100 in 1984. The trial court set up a joint custody arrangement, with Beverly having physical care of the children. It directed Randall to pay child support of $500 per month to be reduced to $300 per month when the oldest child is no longer eligible for support. Randall was also ordered to pay alimony of $475 per month for six months and then $300 per month for six years. The trial court awarded Randall the personal property in his possession, including his car, his life insurance, and the parties' income tax refund. The trial court awarded Beverly the parties' house and the personal property in her possession, including her car. Each party was directed to pay his or her own attorney fees. Randall has appealed.

Our review is de novo. In re Marriage of Deck, 342 N.W.2d 892, 894 (Iowa Ct. App. 1983). We give weight to the fact findings of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7).

Property Division. The factors we consider to determine if a property division is equitable are set forth in Iowa Code section 598.21. The crucial issue in reviewing property division in a dissolution decree is whether the distribution under the particular circumstances was equitable. In re Marriage of Wallace, 315 N.W.2d 827, 830 (Iowa Ct. App. 1980). We reject any rule based on a percentage division of the assets. In re Marriage of Lattig, 318 N.W.2d 811, 814 (Iowa Ct. App. 1982). We are not bound to achieve a precisely equal division in property awards. In re Marriage of Anderson, 243 N.W.2d 562, 564 (Iowa 1976).

The parties' home was conservatively valued at $42,000. The home is subject to mortgage indebtedness of approximately $32,000. The trial court awarded Beverly the home and required her to assume the mortgage balance. We find that this property division was not equitable. The house has been placed on the market for sale and Beverly is planning to move to Des Moines to further her education. Randall owned another house prior to the marriage, the proceeds from the sale of which he reinvested in the marital home. A more equitable property division is due to Randall, which we find to be one-half of the home's equity. We affirm the remainder of the trial court's division of property.

Alimony. The factors to be considered in affixing an award of alimony have been set out at length in Iowa Code section 598.21(3) (1985). The spouse with the lesser earning capacity is entitled to be supported, for a reasonable time, in a manner as closely resembling the standards existing during the marriage as possible. In re Marriage of Hayne, 334 N.W.2d 347, 351 (Iowa Ct. App. 1983). However, once the dependent spouse's standard of living is assured, there is no reason, in equity, for the supporting spouse to provide still more. Id. In addition, where a spouse has sacrificed her earning ability in order to make a home for the family and the other spouse has profited thereby, alimony is justified. In re Marriage of Sanders, 255 N.W.2d 109, 111 (Iowa 1977).

The disparity between the parties' earning capacities is great. Randall earns $30,000 annually while Beverly's earnings in 1983 were $5,800 and expected to be $9,100 in 1984. Beverly has worked part-time while raising the children and devoted more of her time to homemaking. The parties were at the same educational level at the time of their marriage. However, Randall rigorously pursued training in the restaurant management field which greatly increased his earning capacity. Now, Beverly desires the same opportunity to further her education. She hopes to obtain a business degree by attending school part-

time while working and raising the children. We agree with the trial court that Beverly is entitled to rehabilitative alimony to enable her to pursue a career. However, we are persuaded that the trial court's award of alimony is inequitable and should be reduced in both amount and duration.

This is not the case of a marriage of extended duration. The parties were married ten years. Furthermore, Beverly was only thirty-two years old at the time of trial and has a real estate brokers associate license.

We find that a more equitable alimony award is $300 per month for four years. Because this award has a rehabilitative purpose, Randall's alimony obligation shall not terminate upon Beverly's remarriage.

Attorney Fees. In evaluating a request for attorney fees on appeal, the appellate court must consider the needs of the party making the request and the ability of the other to pay. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981). The parties shall pay their own attorney fees incurred on appeal. Costs are assessed to appellant.

AFFIRMED AS MODIFIED.

OXBERGER, C.J., (dissenting).

I would affirm the trial court.