FILED
FEB 25 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

**IN RE MARRIAGE OF WILLIAM R. MONROE, JR. AND JO ANN MONROE**

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| **Upon the Petition of** | ) | **117** |
| **WILLIAM R. MONROE, JR.,** | ) | Filed February 25, 1987 |
| *Petitioner-Appellee,* | ) | |
| **And Concerning** | ) | |
| **JO ANN MONROE,** | ) | 6-529<br>86-427 |
| Respondent-Appellant. | ) | |

Appeal from the Iowa District Court for Des Moines County (CD 1444-0385) - William S. Cahill, Judge.

Respondent wife appeals from the judgment and decree dissolving the parties' marriage. **AFFIRMED.**

*David C. Koestner* of the Beckman Law Office, Burlington, Iowa, for respondent-appellant.

William Bauer of Dailey, Ruther, Bauer, Schulte & Hahn, Burlington, Iowa, for petitioner-appellee.

Considered by Donielson, P.J., Snell, and Schlegel, JJ.

Respondent wife appeals from the judgment and decree dissolving the parties' marriage asserting the trial court erred in the property division, alimony award, child custody award, and failure to award attorney fees at trial. She also requests petitioner be ordered to pay her attorney fees and costs on appeal. We affirm the trial court.

Petitioner, William Monroe, and respondent, Jo Ann Monroe, were married in 1959. William, who filed a dissolution petition in March 1985, is a pharmacist. His gross annual income from 1979 through 1984 averaged $48,751.17. Jo Ann is employed part-time as a substitute teacher. Her gross annual income from 1979 through 1984 averaged $3,691.24.

At the time of trial in 1985 both William and Jo Ann were 47 years old, and three of their four children were emancipated. The trial court found that both parties were in reasonably good health. It noted, however, that William suffered from an alcohol abuse problem, and that William's pharmacist license had been suspended in March 1985 as a result of his alcoholism.

The trial court found marital property consisting of the parties' homesteads in Burlington and Fort Madison, several automobiles, and other personal property. The court also found that William owned a one-half interest (fifty shares of stock) in a retail pharmacy business known as Apothecary 24.

The trial court granted Jo Ann physical custody of the parties' minor daughter, Melinda. It awarded the parties' Burlington homestead and twenty-two shares of Apothecary 24 stock to Jo Ann, and awarded the Fort Madison homestead and twenty-eight shares of Apothecary 24 stock to William. The trial court awarded Jo Ann rehabilitative alimony of $100 a week for fifty-two weeks, or until she secured full-time employment, whichever was less. The trial court

also ordered William to pay weekly child support of $55. The court ordered that William and Jo Ann would pay their own attorney fees.

Our scope of review is de novo. Iowa R. App. P. 4. In equity cases, especially when considering the credibility of witnesses, we give weight to the fact findings of the trial court but we are not bound by them. Iowa R. App. P. 14(f)(7).

In reviewing a district court's division of marital property, we are guided by the criteria set out in Iowa Code section 598.21(1) (1985). We reaffirm our rejection of any rule based upon 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 awards of marital property. In re Marriage of Andersen, 243 N.W.2d 562, 564 (Iowa 1976). In general, the division of property is based upon each marital partner's right to a just and equitable share of the property accumulated as a result of their joint efforts. In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981). The controlling mandate is that courts achieve an equitable and just award under the circumstances. In re Marriage of Wallace, 315 N.W.2d 827, 831 (Iowa Ct. App. 1981).

Jo Ann contends that the property division is inequitable because the trial court should not have awarded Bill a liability for a small business he is engaged in; because the trial court awarded Jo Ann the Burlington homestead at a value of $32,000 when the parties had stipulated to a value of $30,000; because the trial court did not place Bill's loan of $3,460 to the small business in his asset column; because the trial court did not place the value of some furniture, appliances, and stock in Bill's asset column; and because the trial court did not value and distribute the Apothecary 24 stock properly.

We believe the property division is overall an equitable one and should not be disturbed. The trial court examined evidence regarding Bill's personal business loan liability for a photo processing business in which he had invested.

The court permitted Bill to claim one-third of the total debt as a liability. We find no evidence in the record that the court's awarding this liability should be deemed error. It is true that the court assigned the value of $32,000 rather than the stipulated value of $30,000 to the Burlington homestead. The trial court is not bound by a joint stipulation of the value of marital assets. In re Marriage of Fish, 350 N.W.2d 226, 231 (Iowa Ct. App. 1984). We do not find the court's assignment of value is so contrary to the facts or the overall equitable property division as to require that we disturb its valuation. Furthermore, we do not think the court erred in failing to place Bill's loan of $3,460 to the photo processing business in his asset column. The evidence indicates that Bill's transfer of funds to the business could be considered as a nonrecoverable loan. The trial court apparently found that this was the case. We defer to the court's finding of fact on this matter. Also, we find no merit in Jo Ann's claim that the trial court erred in its equitable distribution of the stock, furniture and appliances in its determination of assets. Finally, we see no error in the court's determination of the value of the Apothecary 24 stock.

II.

Jo Ann next maintains that the trial court erred in the amount and duration of alimony awarded.

The payment of alimony is not an absolute right; it is awarded out of fairness, according to the particular facts of the case. Iowa Code § 598.21(3) (1985); In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). Where a spouse has sacrificed her earning capacity 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). When determining the appropriateness of alimony, a court must consider the earning capacity of each party, present standards of living, and ability to pay balanced against the relative needs of

the other. In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa Ct. App. 1983). 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 to the extent that is possible without destroying the right of the party providing the income to enjoy at least a comparable standard of living as well. In re Marriage of Hayne, 334 N.W.2d 347, 351 (Iowa Ct. App. 1983). Alimony must be considered together with the property division in evaluating their individual sufficiency, as 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 Ct. App. 1984).

After examining all the relevant factors, we believe that the alimony obligations imposed by the district court, considered in conjunction with the property division, are equitable. Jo Ann has a teaching certificate and she has taught for twenty years as a substitute teacher. The trial court found that, even though she had a certificate and experience, she would need some training if she were to seek employment other than teaching. She also has the opportunity for employment at the pharmacy given her stock settlement in Apothecary 24. In light of these considerations and in light of the property award, we believe there was no inequity in the alimony award.

III.

Jo Ann next argues that the trial court erred in the amount and duration of child support awarded.

We have long recognized the principle that both parents are under a legal duty to contribute to the support of their children. In re Marriage of Hook, 364 N.W.2d 185, 189 (Iowa 1985); In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976). This obligation, however, is not necessarily to be borne equally by them, rather, it should be apportioned according to the fair ability of each

to contribute. Fleener, 247 N.W.2d at 221. We must examine the facts of the case in light of the factors listed in Iowa Code section 598.21(4) (1985). In the instant case, we believe the trial court fairly apportioned the child support costs. Bill must pay $55 per week in child support. The court expressed some concern as to Bill's future earning potential due to his then unemployment due and temporary license suspension. We find no reason to disturb the court's conclusion on the issue of child support payments.

**IV.**

Jo Ann contends the trial court erred by failing to have Bill pay for her attorney fees incurred in the representation of Jo Ann at the initial trial court proceeding. Attorney fees are not 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. In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa Ct. App. 1983). We find nothing in the record to suggest that the trial court abused its discretion in ordering that the parties pay their own attorney fees.

Jo Ann also asks that she is entitled to attorney fees on appeal. In evaluating a request for attorney fees on appeal, we consider the needs of the party making the request and the ability of the other party to pay. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981). We order the parties to pay their own attorney fees on appeal. Costs are assessed one-half to each party.

**AFFIRMED.**