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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF KATHRYN E. MOREL AND RICHARD J. MOREL

Upon the Petition of	)	
KATHRYN E. MOREL,	)	
Appellant,	)	
And Concerning	)	678
RICHARD J. MOREL,	)	2-60963
Appellee.	)	

Appeal from Cerro Gordo District Court - C. H. Wild, Judge.

Appeal by wife from the economic provisions of a dissolution of marriage decree. - Modified and affirmed.

Anna I. Shinkle, Des Moines, for Appellant.

R. Michael Sweesy, Mason City, for Appellee.

Heard by Oxberger, C. J., and Snell, Carter and Johnson, JJ. Donielson, J., takes no part.

PER CURIAM

Petitioner Kathryn E. Morel appeals the economic provisions of the dissolution of marriage decree dissolving her marriage of 23 years to respondent Richard J. Morel. Our review is de novo. In re Marriage of Wilcoxson, 250 N.W.2d 425, 427 (Iowa 1977); rule 4, Rules of Appellate Procedure. However, we do give weight to the trial court's findings of fact, but are not bound by them. Wilcoxson, supra.

In reviewing alimony and property settlements we are guided by the criteria set forth in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968) excluding considerations of fault as mandated by In re Marriage of Williams, 199 N.W.2d 339, 344-45 (Iowa 1972). Factors to be considered in analyzing child support awards are contained in In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974). Finally, the elements to be considered in determining reasonable attorney fees are set out in In re Marriage of Jennerjohn, 203 N.W.2d 237, 245 (Iowa 1972) and In re Marriage of Jayne, 200 N.W.2d 532, 534 (Iowa 1972). Zoellner, supra. Nevertheless, precedents are of little value and each case must be decided upon its own factual situation. In re Marriage of Romig, 207 N.W.2d 780, 783 (Iowa 1973).

The parties, both age 42 at the time of the hearing, stipulated to the value of the nonbusiness assets. In its decree, the trial court awarded Richard \$74,000 and Kathryn \$58,000 of these assets. Both parties were also awarded their respective personal effects. Included in the personal effects awarded to Kathryn were two diamond rings with a stipulated value of \$11,000. Richard was also ordered to purchase for Kathryn an automobile of her own choosing at a cost not to exceed \$6500 to be part of her own property. From a review of the evidence, we find the trial court did not err in dividing the nonbusiness assets of the parties or in including the value of two diamond rings as part of the property awarded Kathryn. The division was fair and equitable.

Kathryn also alleges the trial court used the wrong standard to determine the value of the business assets under the facts and circumstances of the case. At the time of the marriage neither party had much money. Kathryn worked part-time during the first few years, at the same time giving birth to two of the parties' five

children. Richard had completed trade school as a watch maker and was employed in a jewelry store. After two years, the parties moved from Illinois to Mason City, Iowa, where Richard opened his first jewelry store. He has since prospered greatly and Morel, Inc. today owns stores in Mason City, Minneapolis and Winona, Minnesota.

The parties have been unable to agree on the valuation of the business enterprises. The trial court found the jewelry business to have a value of \$415,000. It also found Gem Investment Company, a real estate holding company, had a value of \$50,000. The trial court found that in the event of liquidation, the inventories would be worth less than their book values. In analyzing the balance sheets of the corporation, it considered only the business assets, trade accounts owed and loans from third parties. The court was of the opinion that book values of accounts receivable and merchandise inventory were fair and equitable values for the purpose of the case. It concluded they were probably in excess of liquidation values, but that the inventory values were probably less than replacement cost.

The evidence indicates the values of the businesses are greater if a forced sale is not required. As a result, the trial court concluded that any property settlement should leave the businesses intact and in the hands of Richard. As part of a further property settlement, the trial court ordered Richard to pay Kathryn the sum of \$175,000 payable as follows: "\$50,000 on October 1, 1977, and \$25,000 on October 1, of each year thereafter until the principal sum is fully paid", unpaid balances to draw interest at the rate of 6% per annum. Kathryn contends the trial court erred when it used a liquidating value in determining the value of the businesses and instead should have used book value. She also argues that she is entitled to a greater share of the businesses than the trial court awarded.

An expert witness, Charles Crowley, was called on behalf of the respondent to testify as to the value of the jewelry businesses. He testified that the Morel operation was of a very high quality and ranked it within the upper 5% of all jewelry stores in the country. However, Crowley testified it was not easy to liquidate a large operation such as the three Morel stores. Further, the top outside price which Crowley would offer for the merchandise inventory was 49% of book

value. He stated that between 35 and 45% was standard for the trade. However, he stated nothing was paid for fixtures and equipment; additionally the store owner took the accounts receivables and retained responsibility for the accounts payables. Finally, Crowley testified an operation such as Morel's was highly personalized and this again detracts from using book value as the sole measure of value.

We think the trial court did a credible job in fixing a value for the Morel business enterprises. The evidence indicates that book value is not the measure of present market value of the jewelry stores. If the stores were sold, only a fraction of the book value would be realized. The greatest value of the stores is as going concerns. Complicating the valuation problem are financial statements prepared by Richard which appear to over-inflate the market value of the business. Applying the Schantz criteria, we find the property settlement paid to Kathryn should be increased from \$175,000 to \$200,000. However, after the initial payment of \$50,000 the annual payments should be decreased from \$25,000 to \$15,000 annually, payable as under the original decree, unpaid balances to draw interest at the rate of 6% per year, payable semiannually.

Kathryn also alleges the trial court's award of alimony was inadequate for her to maintain the same high standard of living that the parties maintained during their 23 year marriage. The trial court awarded alimony of \$500 per month for eight months. Kathryn argues that due to her limited work experience and potential, alimony should be increased and of longer duration. Applying the Schantz criteria we find alimony should be increased from \$500 to \$1000 per month to continue until Kathryn remarries or until either party dies.

Next, Kathryn argues that child support of \$200 per month for the parties' 16 year old son is insufficient. Although different, alimony, property settlement and child support payments are closely related in determining the amounts to be awarded. Additionally, both parties have a legal obligation to support their children, not necessarily equally, but proportionately according to their ability and circumstances. Zoellner, supra. The trial court did not err and the award is adequate under the circumstances.

Finally, Kathryn alleges Richard should have been required to pay the balance

of her attorney fees; she also seeks attorney fees on this appeal. Attorney fees are not recoverable as a matter of right. The wife's needs must be balanced against the husband's ability to pay. Zoellner, supra at 523. Under the elements set out in Jennerjohn, supra, and Jayne, supra, the trial court was correct in ordering Kathryn to pay the balance of her attorney fees below. Each party shall pay his or her own fees on appeal. Costs are taxed equally to both parties.

Affirmed as Modified.