

FILED

JUN 26 1984

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF JUDY GAIL ALEXANDER and WILLIAM RONALD ALEXANDER

287

Upon the Petition of)

JUDY GAIL ALEXANDER,)

Filed June 26, 1984

Petitioner-Appellee,)

And Concerning)

WILLIAM RONALD ALEXANDER,)

4-163
83-1200

Respondent-Appellant.)

Appeal from the Iowa District Court for Warren County - Robert O. Frederick, Judge.

Respondent appeals from the economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Robert L. Stuyvesant of Schooler, Stuyvesant & Benton, Carlisle, Iowa, for respondent-appellant.

Mason G. Ouderkirk, Indianola, Iowa, for petitioner-appellee.

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

Respondent, William Alexander, appeals from the economic provisions of the parties' dissolution decree. William asserts the property division, the award of \$375 alimony per month to petitioner, and the award of \$1,314 attorney's fees to petitioner are inequitable. We modify and affirm.

I. Scope of Review. Our review of this equitable proceeding is de novo. Iowa R. App. P. 4; In re Marriage of Castle, 312 N.W.2d 147, 148 (Iowa Ct. App. 1981). Our responsibility is to review the facts as well as the law and to determine rights anew from the credible evidence on properly presented and preserved issues. In re Marriage of Full, 255 N.W.2d 153, 158 (Iowa 1977). While we give weight to the findings of the trial court, especially where the credibility of witnesses is involved, we are not bound by them. Iowa R. App. P. 14(f)(7). As in all cases of this type, precedent is of little value and our decision must ultimately depend on the particular facts of this case. In re Marriage of Kehrli, 241 N.W.2d 923, 926 (Iowa 1976).

II. Economic Provisions of the Decree. William and Judy were married in 1962. William was nineteen years old at the time of the marriage and Judy was sixteen years old. They have three children, two of which were adults at the time of trial. The youngest child, seventeen years old at the time of trial, was placed in William's custody in accordance with the child's wishes. The custody award is not challenged on appeal.

Judy completed her high school education after the marriage by obtaining a G.E.D. She was thirty-seven at the time of trial and held two part-time sales jobs with a total gross salary of \$107 per week. Judy was responsible for maintenance of the parties' home and caring for the parties' children during the marriage. She also operated a day care center for as many as fifteen children during much of the

marriage. Judy was hospitalized for nearly two months in 1982 for mental health problems and, in addition, she also suffers some type of heart condition. It does not appear from the record that the heart condition prevents her employment. Judy was still in therapy for her mental health problems at the time of trial.

William was thirty-nine years old at the time of trial and employed as a gasoline station manager at a gross salary of about \$15,700 per year (\$294 per week plus annual bonus). He had a high school diploma and suffered no limiting health problems as of the time of trial. In addition, he has skills as a "drywaller," a carpenter, and a dog trainer that he utilizes to do part-time work to supplement his salary.

The parties brought no assets into the marriage, nor have they received any substantial gifts or inheritances during the marriage. The parties' primary asset at trial was a house, valued at \$50,000 to \$55,000 but subject to a \$12,000 encumbrance. The trial court directed that the house be sold and the net proceeds divided equally. Each party was awarded furniture, personal items, life insurance policies, and an automobile.¹ The trial court also awarded Judy \$3,403.50 in cash since William had received personal items and life insurance policies of greater value. The court directed William to pay Judy alimony of \$375 per month until she dies or remarries and ordered William to pay \$1,314 in attorney's fees incurred by Judy.

William challenges the trial court's disposition asserting that he is entitled to a greater portion of the parties' assets than was awarded to him and that the parties' home, in which he and the parties' minor child resides, should not have been ordered sold until their minor child graduates from high school. William also

¹It appears that the parties stipulated to the division of the household goods with the exception of a twenty-five inch television.

claims he should not have been required to make \$150 per month rent payment to Judy until the house is sold. Further, William claims the alimony award should be for a limited period of time and for a lesser amount.

Although property division and alimony may be closely related, they are distinguishable and have differing purposes. In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981). Division of property is based on each marital partner's right to a just and equitable share of the property accumulated as a result of their joint efforts. Knipfer v. Knipfer, 259 Iowa 347, 353, 144 N.W.2d 140, 143 (1966). Alimony is an allowance to the ex-spouse in lieu of a spouse's obligation of support. Id. at 352, 144 N.W.2d at 143. A court, therefore, must determine whether the property division and alimony taken together are equitable to both parties while keeping in mind the separate purposes of the alimony and property division. See In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975).

A. Property Division. Our analysis begins with Iowa Code section 598.21 (1981), which codified many aspects of our prior case law. A justified property division is one that is equitable under the circumstances. Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976); In re Marriage of Cooper, 255 N.W.2d at 919. Although frequently an equal division of assets is made, there is no mechanical rule that dictates this result. In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980); In re Marriage of Conley, 284 N.W.2d 220, 223 (Iowa 1979).

We have examined the record and find that the trial court made an approximately equal division of the parties' assets. It awarded Judy additional cash in order to offset the award of insurance and tools to William. In light of the facts set out above and considering the factors in Iowa Code section 598.21(1) (1981), we agree with the trial court that this is a case for an approximately equal division of the marital assets. Both parties made substantial contributions to the marriage.

William's primary complaint on appeal is that, in light of the award of alimony, the approximately equal property division is inequitable. We agree that Judy's alimony award is relevant in determining whether the property division is equitable. However, we do not believe the alimony award as modified below renders the property division inequitable in this case.

William also contends on appeal that the marital home should not have been ordered sold until the parties' minor child completed high school. See Iowa Code § 598.21(1)(g) (1981). The record reveals that the parties' minor son, Kirk, was a junior in high school at the time of trial in April, 1983. This issue, therefore, has been rendered moot by the pendency of this appeal. We do, however, affirm the trial court's order that William pay Judy \$150 per month rent until the house is sold.

B. Alimony. The payment of alimony is not an absolute right; it must be determined in light of all the circumstances, including the property settlement. In re Marriage of Bevers, 326 N.W.2d 896, 900 (Iowa 1982). The factors we consider in this case in making a determination of spousal support are codified in Iowa Code section 598.21(3) (1981).

The length of the marriage, the present emotional health of Judy, Judy's educational level, William's superior earning capacity, and the present unlikelihood of Judy becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage are all factors which strongly support an award of alimony in this case. We agree with the trial court's decision to award alimony of \$375 per month to Judy. However, we modify its decree to provide that payments are to continue for ten years or until Judy dies or remarries, whichever occurs first.

Judy was thirty-seven years old at the time of trial and was employed at two part-time sales jobs. She also had maintained a babysitting service for nearly ten

years during the marriage. The record indicates that Judy will require support for a substantial period of time in order for her to develop marketable skills that will enable her to support herself at a standard of living reasonably comparable to that she enjoyed during the marriage. We believe, however, that in light of her age, the property division, and the other circumstances of this case the award of permanent alimony is inappropriate. An award of rehabilitative alimony for a substantial period of time to include a training period and an opportunity to secure employment is appropriate. See In re Marriage of Bevers, 326 N.W.2d at 900; In re Marriage of Ronek, 325 N.W.2d 917, 918 (Iowa Ct. App. 1982).

Accordingly, the decree of the trial court is modified by deleting all alimony obligations beyond ten years.

III. Attorney Fees.

A. Trial Court. The court ordered William to pay \$1,314 attorney's fees incurred by Judy. Iowa Code section 598.11 authorizes the court to order an award to enable a party to prosecute or defend a dissolution action. William contends that in light of the property division and alimony award Judy was able to pay her own attorney's fees. He also asserts that the trial court failed to give him credit for \$250 advanced in temporary attorney's fees. We give weight to the trial court's finding and conclude the award of \$1,314 was justified. See In re Marriage of Pittman, 346 N.W.2d 33, 37 (Iowa 1984); In re Marriage of Beeh, 214 N.W.2d 170, 176 (Iowa 1974).

The award for attorney fees was equal to the amount requested by Judy's attorney for the time spent in preparing for trial and for trial time. The respondent is therefore entitled to credit for the amount of attorney fees advanced by him. Accordingly, we hold that William is to have credit for the \$250 in attorney's fees previously advanced by him.

B. On Appeal. Judy also has made application for \$975 in attorney fees incurred in defending this appeal. We have authority to grant such application, see In re Marriage of Williams, 303 N.W.2d 160, 167 (Iowa 1981), but decline to do so in this case. We believe that in light of the property division she is able to pay her own attorney's fees on appeal. William is ordered to pay the taxable costs on appeal.

AFFIRMED AS MODIFIED.