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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-399 / 88-1659

IN RE THE MARRIAGE OF TERRANCE LEE HAHN AND AUDRIEANNA ANN HAHN

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Upon the Petition of
TERRANCE LEE HAHN,

Appellee,

And Concerning
AUDRIEANNA ANN HAHN,

Appellant.

Appeal from the Iowa District Court for Fayette County, James C. Bauch, Judge.

The wife appeals from a dissolution decree, challenging economic provisions. The appellee husband requests attorney's fees on appeal. **AFFIRMED.**

Gary J. Boveia of Boveia Law Offices, Waverly, for the respondent-appellant.

R.L. Van Veldhuizen, Oelwein, for the petitioner-appellee.

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

DONIELSON, P.J.

The parties, Terry and Audrie Hahn, were married on December 31, 1976, after having lived together for over a year. They have one child, a girl born December 4, 1978. In addition, Audrie has custody of an older child from a previous relationship.

Audrie has worked throughout the marriage. She has held the same job for a manufacturing firm since 1977 and presently earns over $25,000 per year.

Terry worked for a railroad during the marriage and later operated a small construction business. He then opened a waterbed store, which later closed due to financial problems. He is presently involved with a second waterbed store. His relationship to the second store is disputed; Audrie contends he is purchasing the store on contract from one Liskow, while Terry asserts he is merely employed by Liskow as a manager.

The dissolution decree placed the parties' daughter in joint legal custody and in Audrie's primary physical care. This custody arrangement is not disputed on appeal. The decree directed Terry to pay Audrie $100 per month in child support.

The decree awarded Terry the parties' house, which was valued at $22,500 but was subject to a debt of a similar amount. The district court concluded Terry was merely an employee of the second waterbed store, with no ownership

interest; the court therefore declined to divide the assets of that business. Each party received various vehicles and small assets. Terry was awarded all his corporate stock in his former construction company; this stock has little, if any, value due to corporate debts. Neither party was awarded alimony or trial attorney's fees.

Audrie has appealed from the dissolution decree. She contends the district court should have awarded her alimony and attorney's fees. She also contends the division of property is inequitable; in particular, she contends Terry is an owner of the waterbed store and the district court should have considered the assets of the store in dividing property between the parties. Terry has requested attorney's fees on appeal.

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

I. **Waterbed Store**. Audrie contends the trial court erred in concluding Terry was not the owner of Dreamland, a waterbed store in Decorah. She argues the assets of Dreamland should have been considered when the court made its disposition of the parties' property. Terry claims he is only an employee of Dreamland and Russell Liskow is the owner of the business.

Audrie's allegation that Terry owns Dreamland is premised on an agreement and promissory note entered into between Terry and Liskow on August 18, 1987. She argues these documents reflect a sale of Liskow's Decorah store to Terry. The note obligates Terry to pay Liskow $12,000, in installments of $300 per month. The agreement appears to make Liskow a secured party with a mortgage interest in inventory held by Terry. The agreement requires Terry to notify Liskow with regard to changes in the business, and it sets forth minimum inventory requirements which are to be met. The agreement provides Liskow with a right to inspect the premises, and it stipulates steps to be taken should the business have to close. The last provision of the agreement states Terry had taken over a $7,700 inventory obligation and had received a check for $4,300 in exchange for signing the $12,000 promissory note.

In further support of her contention that Terry owns Dreamland, Audrie relies on the fact that the Dreamland checking account lists only Terry as the authorized signature, and the account is captioned "Terry's Construction DBA Dreamland." "Terry's Construction" is the name of a business Terry established in 1982. Terry's Construction admittedly ran a retail waterbed store in Oelwein until April 30, 1988, when it was closed. Audrie argues further proof of Terry's ownership of Dreamland is evidenced by a newspaper photograph which refers to Terry as owner of the business.

Terry claims he is merely an employee of Liskow's at Dreamland. He contends the August 18, 1987, agreement and promissory note reflect a security interest Liskow took in Terry's inventory located in his Oelwein store. He explained the $4,300 check represented money loaned to him to improve cash flow for his Oelwein business.

Terry disclaimed having any ownership interest in Dreamland. He stated the newspaper reference to him as the owner was in error. He explained the reference to "Terry's Construction" on the Dreamland checking account as an effort to help Liskow reestablish Dreamland after Liskow had reacquired the business by foreclosing on someone else. Terry claims the name "Terry's Construction" was used in "a few places to help speed the transaction up."

As noted earlier, we give weight to the fact findings of the trial court. Our purpose in doing so was aptly described by the Iowa Supreme Court:

> There is good reason for us to pay very close attention to the trial court's assessment of the credibility of witnesses. A trial court deciding dissolution cases "is greatly helped in making a wise decision about the parties by listening to them and watching them in person." In contrast, appellate courts must rely on the printed record in evaluating the evidence. We are denied the impression created by the demeanor of each and every witness as the testimony is presented.

In re Marriage of Vrban, 359 N.W.2d 420, 423 (Iowa 1984) (citations omitted). The trial court was presented with conflicting evidence; it had the opportunity to view the witnesses and assess their credibility. Credibility was of

key importance in this matter, as Terry offered a plausible explanation to refute Audrie's evidence and allegation that he owned Dreamland. Upon our de novo review, we find no justification to rule differently than the trial court. The trial court did not err in concluding Terry was not the owner of Dreamland, and it correctly excluded any of Dreamland's value when it made its property disposition.

II. **Property Distribution.** Audrie contends the trial court erred in failing to equitably compensate her for her contributions to the assets of the parties throughout the course of their marriage. In reviewing a trial court's division of marital property, we are guided by the criteria set out in Iowa Code section 598.21(1) (1989). 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 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 marital partners' rights 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 1976). In dividing property, a court is to consider the contribution of each party to the marriage. Iowa Code § 598.21(1)(c) (1989). 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 App. 1981).

Audrie focuses on the fact that her earnings were substantially higher than Terry's during the marriage, yet she feels Terry was awarded the "vast majority" of the parties' property. Audrie contributed more toward the family finances near the end of the marriage, but Terry contributed more during the early years of the marriage. As the trial court found in its decree, taken as a whole, the parties contributed equally toward the finances of the marriage.

The property distribution was equitable. While Terry may have received the family home and acreage, the pickup, and the corporate stock, it is apparent each of these was nearly fully encumbered and Terry was left with little, if any, equity in these items. "The allocation of marital debts between the parties is as integral a part of the property division as is the apportionment of marital assets." In re Marriage of Johnson, 299 N.W.2d 466, 467 (Iowa 1980). In light of the assignment of debts in this matter, we find the property division equitable, and we will not modify the trial court's decision.

III. Attorney Fees - Trial Court. Audrie argues the trial court erred in failing to require Terry to pay some of her attorney fees. Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of

Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). To overturn an award the complaining party must show that the trial court abused its discretion. Id. Awards of attorney fees must be for fair and reasonable amounts, In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977), and based on the parties' respective abilities to pay. Lattig, 318 N.W.2d at 817.

The record in this case reveals Audrie had a larger and more steady income than that received by Terry. In light of the relative difference in their respective incomes, it was not an abuse of the trial court's discretion to decline to award attorney fees to Audrie.

IV. Attorney Fees - On Appeal. Terry seeks an award of attorney fees on appeal. When making an award of appellate attorney fees, we are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). From our review of the record, we conclude the parties to this action should be responsible for their own appellate attorney fees.

AFFIRMED.