FILED
JUN 29 1982
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF KAREN A. JONES AND BRIAN W. JONES

UPON THE PETITION OF)
KAREN A. JONES,)
Petitioner-Appellant,)
AND CONCERNING)
BRIAN W. JONES,)
Respondent-Appellee.)

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2-67238

Appeal from Webster District Court, Newt Draheim, Judge.

Petitioner-wife appeals from the economic provisions of the parties' dissolution decree, asserting (a) the property division was inequitable (b) she should have been awarded alimony and (c) respondent should have to pay her attorney fees. AFFIRMED WITH MODIFICATION.

Mark S. Cady of Mitchell, Coleman, Perkins & Enke, Fort Dodge, for petitioner-appellant.

Kurt L. Wilke of Bennett, Wilke & Barbour, Fort Dodge, for respondent-appellee.

Considered by Snell, P.J., and Carter, and Johnson, JJ.

Petitioner-wife appeals from the economic provisions of the parties' dissolution decree , asserting (a) the property division was inequitable (b) she should have been awarded alimony and (c) respondent should have to pay her attorney fees. We affirm with modification.

Petitioner, Karen A. Jones, and respondent, Brian W. Jones, were married in 1963, and both were thirty-six at the time the decree was entered. Brian, a high school graduate, was a truck driver for Hormel and Co. and also did outside part-time trucking. He had total income of approximately $32,600 in 1980 but there was a possibility that Hormel and Co. would leave town. Karen has a G.E.D. but was primarily a housewife and mother with the exception of one month spent as a laborer during the parties' separation.

Karen was awarded custody of the parties' three children, now aged nineteen, fourteen, and ten, together with child support of $250 per month per child subject to an annual COLA adjustment. She was awarded personal property valued at approximately $4650 and occupancy of the home until either the youngest child turns eighteen or she remarries, with the home to be sold at that time and the proceeds equally divided. Brian was awarded real and personal property valued at approximately $12,000 and ordered to pay debts amounting to approximately $8200. Karen was ordered to make the mortgage payments on the home until its sale. She was awarded no alimony and no mention was made of Brian's pension plan. An income tax refund of approximately $1600 was ordered equally divided for payment of the parties' respective attorney fees, in accordance with a purported pretrial agreement.

On appeal, Karen claims the property division was inequitable, she should have been awarded alimony and Brian should pay her attorney fees.

I. Scope of Review

Our review of this case is de novo. Iowa R. App. P. 4. We are not bound by the trial court's findings of fact, but we give weight to the findings, especially regarding the credibility of witnesses. Iowa R. App. P. 14(f)(7). In reviewing each

individual economic provision of a dissolution decree, we consider all the provisions together as an integrated whole. See In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976). In reviewing the property provision of a dissolution decree, we consider the factors articulated in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972), and the factors enumerated in section 598.21, The Code 1981.

II. Property Settlement

Karen claims she should be awarded more net assets than the trial court awarded. She claims there is no evidence to support the trial court's conclusion Brian should receive a greater portion of the assets. She argues, although her financial contributions to the marriage were small, her contributions as homemaker were equally important as Brian's financial contributions. With that proposition we cannot disagree. However, in responding to challenges to a court's property distribution, we are guided by the notion that, although an equal division of the assets is frequent, there is no requirement that parity between the parties be effected. 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). Even if the trial court's goal was to divide the assets equally, there is no requirement that the division be mathematically precise. Conley, 284 N.W.2d at 223. The test for an acceptable allocation of assets is whether the distribution constitutes an equitable and just award under the particular circumstances of the parties. Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976); Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968); In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972). After applying those broad principles to the facts in this case, we conclude the trial court's property division was essentially fair and equitable. We believe, however, Brian's interest in the equity of the family home should be frozen at one-half of the current unencumbered value of the home established at trial. Accordingly, Brian is

awarded $12,283.75, bearing interest at an annual rate of ten percent, to be paid when the home is sold under the terms of the trial court's decree. Brian's interest will be a lien on the home until it is sold.

We note the trial court made no specific reference to Brian's pension fund in the decree but the court, in its ruling on a motion to enlarge, indicated Brian was to retain all retirement benefits under his pension fund. We see no reason to disturb that provision, especially given our disposition of Karen's remaining arguments. See In re Marriage of Winter, 223 N.W.2d 165, 169 (Iowa 1974)(indicating the court can properly consider how the property has been divided in awarding alimony).

III. Alimony

Karen contends the trial court's denial of alimony is inequitable given the parties' earning capacities, standards of living, her education and her desire to pursue higher education. After applying the criteria set forth in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), excluding fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972), we arrive at the conclusion the evidence does support Karen's request for alimony. We have considered factors including the earning capacities and prospects of each party, the relative level of education attained by each party, the potential effects of inflation, the parties' ability to pay, particularly Brian's prospective pension benefits, and the property division effectuated by the trial court's decree. See In re Marriage of winter, 223 N.W.2d 165, 169 (Iowa 1974); In re Marriage of Burham, 283 N.W.2d 269, 277 (Iowa 1979). We conclude Karen should be awarded alimony of $250 per month. The alimony shall start on the date the child support payments are reduced, for reasons other than COLA adjustments, under the terms of the trial court's decree.

IV. Attorney Fees

Karen seeks reimbursement for the attorney fees she incurred during trial and on appeal. We note the trial court has considerable discretion respecting

awards of attorney fees. In re Marriage of Schissel, 292 N.W.2d 421, 428 (Iowa 1980). Our primary consideration in making that determination is each party's resources. In re Marriage of Williams, 303 N.W.2d 160, 167 (Iowa 1981). Assessing the parties' resources in this case, we conclude Brian should pay $750 of Karen's attorney fees.

AFFIRMED WITH MODIFICATION.