FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF TERRY L. GEROT AND RONALD E. GEROT

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UPON THE PETITION OF
TERRY L. GEROT,

Petitioner-Appellee,

AND CONCERNING
RONALD E. GEROT,

Respondent-Appellant.

Filed November 20, 1984
4-372
84-132

Appeal from the Iowa District Court for Webster County, Carl D. Baker, Judge.

Respondent-husband appeals from economic provisions of the parties' dissolution decree, asserting that both the property division and the alimony award were inequitable. AFFIRMED AS MODIFIED.

Claire F. Carlson and Steven W. Hendricks of Kersten, Opheim, Carlson & Trevino, Fort Dodge, for respondent-appellant.

Kurt L. Wilke of Bennett, Wilke & Tarbox, Fort Dodge, for petitioner-appellee.

Considered by Oxberger, C.J., Snell, and Sackett, JJ.

The property and alimony provisions of the trial court's divorce decree are challenged by the petitioner on appeal, Ronald Gerot. He also says child support payments should have been ordered paid directly to his son in college and not to respondent, Terry Gerot. We affirm as modified.

Ronald says the property settlement is inequitable and that he should have been given the parties' homestead, rather than selling it and splitting the proceeds with respondent, as ordered by the court. He also says it was inappropriate to award respondent $100 per month in alimony in light of his numerous debts and her ability to work.

The parties have few liquid assets and much of their money is tied up in furnishings and various personal property. The homestead has declined in value because it has fallen into a state of disrepair. It is now worth $57,500 by the court's figures. We agree with the trial court that this figure more accurately reflects the value of the property than figures presented by respondent. The mortgage on the house at the time of trial was $55,736. This leaves an equity in the house of only $1764. With extensive repair, the house could be worth $75,000 or more. The court determined, however, that the mortgage payments of $600 per month were a drain on Ronald's income and ordered the house sold. Each party was awarded the personal property in their possession. The property in Ronald's possession, less liens on vehicles he was awarded, and appliances which would be sold with the house, plus profit from the sale of the house, totals $862 in assets. Terry was awarded her half of the equity in the house, furnishings worth $12,600, a 1977 Lincoln, all of which total $14,851. She was ordered to pay debts including several charge accounts, doctors bills and one-half of the debt owed to a country club, resulting in liabilities of $2107. Ronald was ordered to pay the rest of the considerable debts owed. He faces sizable medical bills and various liabilities totaling $24,080 in debts. However, he receives insurance through his work, which his employer indicated pays nearly all of his medical bills. If these costs are

deducted from the liabilities, along with deductions for bills listed which Ronald says were paid by the time of trial, and subtracting the debt listed for a car which is now repossessed, he owes $8120. Even considering these factors, Ronald is left with most of the debts, and Terry retains many of the couple's assets. This results in a net worth to Terry of $12,744, and a negative net worth to Ronald of $7258.

Ronald does not challenge the allocation of debts and properties, but says he should have been given the homestead. While the court indicated that the mortgage payments strained Ronald's already tightly stretched income, we note that Ronald also receives some income from use of the house. He testified that his niece, her husband and two children, his mother, and a friend live in the house with him. He receives $200 to $300 per month from these boarders, and they also assist in paying utilities. This means Ronald is actually paying less than $300 per month in mortgage payments, and has a portion of his utility bill paid. It was never disclosed at trial the exact amount of the contribution. Considering the benefits that Ronald receives from use of the house, and the small equity the parties would receive if it were sold, we hold that Ronald should be awarded the house. This will also equalize the imbalance in the property settlement somewhat.

Terry claims the house was a gift to her because part of the money used to purchase the home came from the sale of a house bought at a low price from her father. The first house was purchased for $13,000 from her father shortly after the couple married, and was sold later for $41,500. This profit, along with money received by Ronald as compensation for a car accident he was involved in, allowed them to buy the homestead. There is no evidence to suggest that the property was a gift, even though purchased at a low price, and if it were a gift, that it was limited to Terry and not given to the couple.

We are similarily unpersuaded by claims various possessions awarded to Terry were either on loan from her parents or were gifts to their children, and not marital property.

The court awarded alimony to Terry, noting that her income was smaller than Ronald's. When he works, he earns $466 per month, but he is now disabled as the result of diabetes, four strokes, an operation on his neck because of hardening of the arteries, high blood pressure, and a hearing problem. He now receives $900 per month in worker's compensation and $250 per month from a disability insurance contract he purchased. He receives another $200 to $300 per month from boarders. His expenses total $2340, according to his financial affidavit. However, we note that he has included payments from medical expenses and health insurance, which are paid by the coverage offered by his employer, the City of Fort Dodge. Even deducting these amounts, Ronald's income does not meet his expenses, and he will be short $270 per month. Terry earns $678 per month, including $300 per month child support ordered paid to her. Her expenses total $1210, leaving her short $561.60 per month.

The factors considered in determining the award of alimony are codified at section 598.21(3) of the Iowa Code. Considering all these factors, including the large number of debts ordered paid by Ronald, the number of assets awarded to Terry, his poor health compared to her fair health, and the fact that she is employed, we hold that no alimony is warranted in this case. We order alimony awarded of $1.00 per year, however, so that the question of alimony may be presented in the future if the circumstances of the parties should significantly change.

The couple has two children, Gina, a senior in high school; and Ty, twenty-one years old, who attends Creighton University. Child support of $300 per month is to be paid to Terry. We believe the trial court had sufficient reason to order child support paid to Terry rather than directly to Ty, and decline to disturb the trial court award in this respect.

Terry has requested Ronald pay her appellate attorney fees and contribute to costs. Considering the factors set out at In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981), the parties shall pay their own attorney fees. Each party shall pay half of the costs incurred on appeal.

AFFIRMED AS MODIFIED