FILED
JAN 29 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF LELA LORRAINE THOMPSON AND JOHN C. THOMPSON

Upon the Petition of)

LELA LORRAINE THOMPSON,)

Petitioner-Appellant,)

And Concerning)

JOHN C. THOMPSON,)

Respondent-Appellee.)

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Filed January 29, 1986

5-573
84-1291

Appeal from the Iowa District Court for Winnebago County - John F. Stone, Judge.

Petitioner wife appeals from the decree dissolving the parties' marriage, asserting that (1) the property division is inequitable, and (2) her alimony award is inadequate. **AFFIRMED AS MODIFIED.**

Robert S. Kinsey III of Brown, Kinsey & Funkhouser, Mason City, for petitioner-appellant.

R. Michael Sweesy, Mason City, for respondent-appellee.

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

Petitioner Lela Lorraine Thompson and respondent John C. Thompson were married in 1969. This was Lela's second marriage and John's third marriage. No children were born of the marriage; however, John has one adult son from his first marriage.

Lela is 62 years old. She suffers from high blood pressure and Alzheimer's disease. She worked for Avon Products, Inc. as a district sales manager before the marriage and for seven years during the marriage. In 1976 she became disabled and stopped working. She receives social security disability benefits of $576 per month and disability benefits from Avon of $413 per month until she reaches 65. At age 65, her Avon retirement plan will pay her $569 per month.

John is 65 years old. During the marriage he operated three closely-held corporations—Thompson Credit, Inc., Thompson Credit Co., and Thompson Agency. Thompson Credit Co. is a small loan business and is still owned by John but inactive. John still owns Thompson Credit, Inc., a tax preparation business, and he works there part-time. John sold Thompson Agency, an insurance business, in 1981 and will continue to receive $35,000 annually for several years from that sales contract. John receives social security benefits of $526 per month and income from his part-time employment and interest of approximately $1,500 per month.

The trial court made the following division of the parties' property:

WIFE

Asset	Value
Annuity	$ 46,730.00
Pontiac	3,500.00
Life insurance	2,000.00
Bank account	5,000.00
Jewelry	20,000.00
Art prints	2,500.00
½ Kruse contract	2,750.00

½ Rogness contract	25,325.00
	$107,805.00
Less American Express debt	448.00
	$107,357.00

HUSBAND

Asset	Value
Forest City residence	$ 55,000.00
IRA	44,213.76
Thompson Credit Co. stock	23,700.99
Thompson Credit, Inc. stock	11,390.82
Proceeds from agency sale	131,209.21
Four checking accounts	558.46
½ Kruse contract	2,750.00
½ Rogness contract	25,325.00
Stamp collection	200.00
Forest City Golf Club stock	425.00
Government life policy	93.27
Anderson draft	7,712.07
K Street property	(debt exceeds value)
	$302,578.58
Less listed debts	116,651.68
	$185,926.90

The trial court ordered the furniture the parties acquired during the marriage to be sold and the proceeds divided equally. The trial court further directed John to pay $200 per month alimony until Lela remarries or dies and $2,798 of Lela's attorney fees. Lela has appealed asserting that the property division was inequitable in several respects, and that she is entitled to increased alimony and appellate attorney fees.

Our review is de novo. Iowa R. App. P. 4 (1983). We are not bound by the findings of the trial court, but we give them weight. Iowa R. App. P. 14(f)(7) (1983).

Property Division. Iowa Code section 598.21(1) (1985) requires the court to equitably divide all property of the parties and lists criteria for consideration. We reject any rule based on a percentage division of the assets. In re Marriage of Lattig, 318 N.W.2d 811, 814 (Iowa Ct. App. 1982). We are not bound to achieve

a precisely equal division in property awards. In re Marriage of Anderson, 243 N.W.2d 562, 564 (Iowa 1976). "Division of property is based on each marital partner's right to a just and equitable share of the property accumulated as the result of their joint efforts." In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981).

> As an additional factor in dividing appreciated property acquired before the marriage, we consider whether the appreciation which occurred during the marriage was fortuitous or due to the efforts of the parties. The underlying premise of our analysis is that an equitable property division of the appreciated value of the property should be a function of the tangible contributions of each party and not the mere existence of the marital relationship.

In re Marriage of Lattig, 318 N.W.2d 811, 815 (Iowa Ct. App. 1982).

Lela argues that the trial court made the following errors in its property division: (A) the court awarded the home to John without some lien or share to Lela who made the same house her home from 1969 to 1984, during which time the indebtedness against the home was paid off, improvements were undertaken, and substantial appreciation occurred; (B) the court awarded John the entire proceeds from the sale of the insurance agency and the corporate stock value in the other businesses; (C) the court awarded John the K Street property without any lien or share to Lela; and (D) the court awarded John his stocks, stamp and coin collections, and life insurance policies without any lien or share to Lela.

A. Residence. John moved into the Forest City home in 1955. At the time of the parties' marriage, the home showed a net equity of less than $2,500 ($20,000 FMV less $17,527.65 mortgage balance). During the marriage some improvements were made to the home and it was valued on John's 1982 financial statement at $70,000. The mortgage indebtedness decreased from $12,507 in 1974 to zero at the time of trial. Lela placed a $75,000 value on the home

at the time of trial, while John testified that the value was only $55,000. No formal appraisals were done.

The parties were married for 15 years. During the marriage they resided in the Forest City home. The earnings of both went into a joint account from which debts, including mortgage indebtedness, were paid. Lela also helped to raise John's son from his first marriage and maintained their home. Additionally, in May of 1974, John transferred title of the homestead to Lela without consideration, believing that this would protect it from business creditors.

We find that the home appreciated during the marriage due to the efforts of both John and Lela. Accordingly, an equitable division of the Forest City property requires a distribution to Lela of some interest therein. Because Lela intends to move to Colorado Springs, it is appropriate that John retain possession of the homestead. However, we order that Lela is entitled to $25,000, payable in equal installments over a five-year period at 10% per annum interest.

B. K Street Property. Prior to the marriage, John inherited a one-third interest in this commercial building from his father. During the marriage he purchased the remaining two-thirds interest from his siblings for $9,000. The property was jointly held by Lela and John and used as an office for John's corporations. John's 1980 financial statement valued this property at $25,000 less indebtedness of $8,195, or $16,805. John's 1982 financial statement showed a $63,044 net value for this property. The building was extensively remodeled sometime in 1980-1982 and at the time of trial, the parties' financial statements showed a debt of $4,000 on the property. Lela placed a net value of $71,000 on the property at the time of trial, while John estimated only a $30,735 net value. However, John also testified that he put approximately $35,000 into the remodeling project for the building and still owed that amount to Forest

City Bank & Trust. The trial court, therefore, found that the indebtedness against the property exceeded its value.

We find that the trial court's valuation of the K Street property was within the permissible range of the evidence.

C. Sale Proceeds. John was awarded the proceeds from the sale of his insurance agency ($131,201.21), the stock and value of his other two corporations ($35,091.81), and a debt claimed by John to be an asset of his businesses ($7,712.07). Lela contends that she is entitled to a dollar share in John's businesses and accounts receivable at the appropriate valuations reflected in John's 1981 and 1982 financial statements.

Where one party brought property into the marriage which appreciated in value during the marriage, there need not necessarily be division. Lattig, 318 N.W.2d at 815. This is especially true where the increased value is due to economic factors. Id. The other spouse is also not entitled to share in a portion of the enhancement of value of separate property where she did not contribute to that appreciation and was not jointly responsible for the property in question. Id. at 816.

John owned all three closely-held corporations prior to the marriage. He solely was responsible for all indebtedness incurred in the operation of these businesses. The record does not demonstrate that Lela in any way contributed to the maintenance of the corporations.

In light of the substantial property awarded to Lela and the allocation of over $116,000 of indebtedness to John, we conclude that the trial court did not err in awarding these business interests to John.

D. Stamp and Coin Collections. John also brought stamp and coin collections into the marriage. He testified at trial that he gave the coin collection valued at $6,000 to $7,000 to his son. He also sold stamps for $750 after the

dissolution action started, leaving $200 of stamps remaining in his collection. Lela contends that the trial court incorrectly valued these collections. She argues that John valued the stamp collection in 1982 at $10,000 and the coin collection at $20,500 at that time. Lela further argues that the value of life insurance policies which John transferred to a trust created by his will in 1980 should have been included in the parties' marital property and reflected in the division.

If the purpose of transferring one's assets prior to a dissolution of marriage is to protect oneself from the monetary consequences of a dissolution decree, the court may look to the amount transferred in determining an equitable result in the dissolution proceeding. In re Marriage of Cerven, 335 N.W.2d 143, 146 (Iowa 1983). However, in this case, there is no evidence that John made the property transfers to his son to relieve himself of any obligation to support Lela or to lower the value of the marital property subject to division. We conclude that the trial court did not err in excluding the value of property transferred to John's son or placed in trust under John's will.

Alimony. The criteria to be considered in awarding alimony have been codified in Iowa Code section 598.21(3) (1985). While payment of alimony is not an absolute right, it is awarded out of fairness, according to the peculiar circumstances of each case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). Alimony is awarded based on the earning capacity of the parties and present standards of living balanced against the relative needs of the parties. In re Marriage of Hitchcock, 309 N.W.2d 432, 436-37 (Iowa 1981). The spouse with the lesser earning capacity is entitled to be supported, for a reasonable time, in a manner as closely resembling the standards existing during the marriage as possible. In re Marriage of Hayne, 334 N.W.2d 347, 351 (Iowa Ct. App. 1983). Two of the factors to be given great weight in such a determination are the

duration of the marriage and the ability of the supported spouse to engage in gainful employment. In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972).

Lela contends that the alimony award of $200 per month until she remarries or dies is inadequate. She argues that she is entitled to maintain the life-style to which she became accustomed during the marriage, which included extensive traveling to Hawaii, Acapulco, Washington, D.C., and Florida; frequent dining out; a new Cadillac every two years; credit cards at the best stores; and fine clothes. She further asserts that her monthly expenses exceed $2,000, which includes $750 monthly rent for an apartment in Colorado Springs. Therefore, Lela requests alimony of at least $500 per month to meet her needs.

The parties were married for fifteen years. John's monthly income is approximately twice as large as Lela's. John receives $1,994.75 per month, while Lela receives $989 per month. Both parties will also receive payments from two contracts which will afford them additional income annually.

We recognize that the parties enjoyed a high standard of living during their income-producing years. However, now both parties are retired and life-styles must be adjusted accordingly. John is allocated over $116,000 of debt in the dissolution decree. Given this indebtedness and his reduced income, we cannot justify increasing Lela's alimony award to $500 per month. However, in light of the length of the marriage, the age and physical health of Lela, and the disparity in the parties' earnings, we conclude that the alimony awarded by the trial court is appropriate.

The motion for allowance of credit for alimony paid during appeal has been submitted as ordered by the Iowa Supreme Court. The motion is considered and denied.

Attorney Fees. In evaluating a request for attorney fees on appeal, the court must consider the needs of the party making the request and the ability of the other to pay. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981). We order John to pay $750 of Lela's attorney fees incurred on appeal. Costs are assessed to John.

AFFIRMED AS MODIFIED.

Snell, P.J., and Hayden, J., concur; Oxberger, C.J., dissents.

I would award the wife an additional $20,000, the amount she brought in to the marriage.