

FILED

JAN 25 1990

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-605 / 89-351

IN RE THE MARRIAGE OF DOTTA M. BISSONNETTE AND JAMES R. BISSONNETTE

Upon the Petition of
DOTTA M. BISSONNETTE,

32

Appellant,

And Concerning
JAMES R. BISSONNETTE,

Appellee.

Appeal from the Iowa District Court for Floyd County,
Gilbert K. Bovard, Judge.

Appellant appeals the economic provisions of a district
court decree of dissolution. **AFFIRMED.**

Judith O'Donohoe of Eggert, Erb, Ott, O'Donohoe and
Frye, Charles City, for appellant.

Roger L. Sutton of Sutton Law Office, Charles City, for
appellee.

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

SCHLEGEL, P.J.

Dotta Bissonnette appeals the economic provisions of a district court decree of dissolution. We affirm the district court.

James and Dotta Bissonnette were married in July 1966. Two children, now adults, were born of the marriage.

Throughout the marriage, James has worked in auto sales and management, primarily for his father's dealership in Charles City. Upon his father's death in 1989, James has operated the Charles City Chevrolet dealership.

Dotta, a high school graduate, has been primarily a homemaker during the marriage. She has some health problems at this time.

The parties permanently separated in October 1983 and Dotta filed a petition for dissolution of marriage. Following a trial, the district court entered its findings of fact, conclusions of law, and decree.

The district court first established the nonmarital property to be awarded the respective parties. Dotta was awarded about \$37,580 and James was awarded about \$121,943 in nonmarital property. Of the marital property, James was awarded a majority of the assets, primarily involving his business. Dotta was awarded a property settlement of \$125,000 with an immediate cash payment of \$30,000, plus a car with a value of \$20,000. The remaining \$75,000 was to be paid in 120 monthly payments at 8% interest.

Spousal support of \$325 per month was awarded to Dotta until she died, remarried, or cohabited with an unrelated male, or reached age 65, whichever first occurred. Dotta has appealed following this degree, seeking an increased property settlement award and interest rate, spousal support past 65, and attorney fees for this appeal.

Our review in cases such as these is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We are not bound by these determinations, however. Id. Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

Dotta contends she is entitled to a greater portion of the marital assets. The partners in a marriage are "entitled to a just and equitable share of the property accumulated through their joint efforts." In re Marriage of Havran, 406 N.W.2d 450, 452 (Iowa App. 1987). The distribution of the property of the parties should be that which is equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(1). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983). We find the value placed on the assets by the trial court to be well within the permissible range

of evidence and will not disturb it on appeal. See In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973); In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984).

The trial court properly considered the factors in Iowa Code section 598.21(1). Upon examination of the record and the trial court's findings, we hold that the property division was equitable under the circumstances of this case. The division appears inequitable upon its face, however, it is the business that will generate the income necessary to support both parties for the rest of their lives. Splitting the business down the middle could result in substantial problems in maintaining it as a profitable enterprise. The trial court recognized this dilemma and divided the assets appropriately. We affirm the trial court's division of assets.

Dotta also contends the alimony payments should be continued past her 65th birthday. Alimony is not an absolute right; an award depends upon the circumstances of each particular case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3). See In re Marriage of Hayne, 334 N.W.2d 347, 350 (Iowa App. 1983). The trial court awarded sufficient alimony but chose to limit the duration to her 65th birthday. This limit is unusual but not inequitable. Dotta will receive social security benefits

to replace the lost alimony. These benefits should allow her to maintain her standard of living.

Dotta also challenges the district court's authority to award her interest on the periodic cash payments at a rate below that set by Iowa Code section 535.3. Iowa Code section 598.21(1) mandates that the district court shall equitably divide all property between the parties. Pursuant to that objective, we have permitted awards which do not bear interest. See In re Marriage of Richards, 439 N.W.2d 876, 883 (Iowa App. 1989); see also In re Marriage of Pittman, 346 N.W.2d 33, 37 (Iowa 1984). Based on these cases and the provisions set out in Iowa Code section 598.21(1), we hold that courts may award interest in a dissolution action less than that called for in Iowa Code section 535.3 if equity so dictates. Upon our review of the record we find the interest rate awarded by the district court is equitable.

Finally, Dotta requests attorney fees on appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). James was required to defend the trial court's decision, however he does have a greater earning potential than Dotta. This greater earning potential requires that he assist in the expenses of this appeal. We award Dotta attorney fees in the amount of \$1,000. Costs are taxed to James.

AFFIRMED.