FILED
AUG 27 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JOANNE K. SWANSON AND TOBIN BARD SWANSON

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Upon the Petition of
JOANNE K. SWANSON,

Petitioner/Appellee/Cross-Appellant,

And Concerning
TOBIN BARD SWANSON,

Respondent/Appellant/Cross-Appellee.

Filed August 27, 1986

6-250
85-1457

Appeal from the Iowa District Court for Dallas County (No. 2161) - James W. Brown, Judge.

Respondent Tobin Swanson appeals from his dissolution decree. **AFFIRMED AS MODIFIED.**

Robert H. Laden, of Hyland, Laden & Pearson, Des Moines, and Thomas P. Schlapkohl, Des Moines, for appellant.

F. H. Becker, of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, Des Moines, for appellee.

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

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SACKETT, J.

Respondent Tobin Swanson appeals from his dissolution decree contending: (1) the property award is inequitable; (2) the alimony award is inequitable; (3) the child support is excessive; and (4) he should have been granted additional visitation. We affirm as modified.

Joanne Swanson and Tobin Swanson were married in 1971. They have two daughters born in 1977 and 1980. At the time of trial Tobin was 41 and Joanne 39. When they married Joanne was a teacher and Tobin an attorney. She has a bachelor's degree plus six hours. Joanne taught until 1976. Since 1976, she has remained in the family home and assumed the majority of the responsibility for the parties' two children. Since the parties' separation she has worked in a department store, done substitute teaching and taken courses to be recertified as a teacher. Tobin, who holds a law degree, has remained gainfully employed as an attorney throughout the proceedings.

Neither party entered the marriage with any appreciable assets. At the time of trial they had accumulated over $300,000 in marital assets. The trial court valued the assets and according to the trial court's calculations awarded $155,807 in property to Joanne and $171,174 in marital property to Tobin. Tobin contends the award is inequitable and contends the valuations made by the trial court are incorrect. He further protests the fact Joanne received nearly all the parties' liquid assets. He contends the disposition of assets made by the trial court resulted in Joanne's receiving $150,618 in assets and his receiving $125,959, and that these figures are unfair and he should receive 60 percent of the assets and Joanne 40 percent.

Iowa Code §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 assets. In re Marriage of Lattig, 318 N.W.2d 811, 814 (Iowa App. 1982). The question is always what is an equitable and just award in a given set of circumstances. In re Marriage of Callenius, 309 N.W.2d 511, 514 (Iowa 1981). A justified property division is one that is equitable under the circumstances. In re Marriage of Stewart, 356 N.W.2d 611, 612 (Iowa App. 1984).

We affirm the property award made by the trial court.

Tobin was ordered to pay alimony of $500 per month for 12 years. Tobin contends the alimony award is inequitable. We consider property division and alimony together in our valuation of their sufficiency. See In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984).

Tobin had income from professional services of:

$68,500	in	1980
83,000	in	1981
79,000	in	1982
62,720	in	1983
43,000	in	1984

The trial court determined he should earn $70,000 annually. Tobin contends this assumption is too high. We are not as optimistic about his income potential as is the trial court. We note his partnership situation has changed and his income has decreased. We determine his income from professional services will remain at the 1984 level.

We find, as did the trial court, based on the length of the marriage, family responsibilities assumed and career opportunities lost that Joanne should receive rehabilitative alimony. We modify the alimony award by the trial court and provide it shall terminate in five years.

The trial court ordered child support of $400 per month per child. Tobin complains it is too high. The same legal obligation rests upon both husband and wife, not necessarily equally but proportionately according to their ability

and circumstances. In re Marriage of Byall, 353 N.W.2d 103, 108 (Iowa App. 1984). We modify the child support award and order Tobin to pay $300 per month per child.

Tobin also complains he should have midweek overnight visitation. We affirm the visitation award made by the trial court.

We deny Joanne's request for attorney fees. Appellate court costs are taxed one-half to each party.

AFFIRMED AS MODIFIED.