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JAN 30 1981

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ALICE H. HOSKINSON,

)

Petitioner-Appellee,

)

Filed January 30, 1981

vs.

)

LAWRENCE HOSKINSON,

)

0-368

Respondent-Appellant.

)

2-64766

Appeal from Polk District Court - Rodney Ryan, Judge.

Respondent-husband appeals from economic provisions of the parties' dissolution decree asserting that trial court's property division was inequitable. AFFIRMED WITH MODIFICATION.

Brenda Drew Traylor, Des Moines, Iowa, for respondent-appellant.

Robert W. Brennan, Des Moines, Iowa, for petitioner-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Respondent-husband, Lawrence Hoskinson, appeals from economic provisions of the parties' dissolution decree. He asserts that trial court's property division was inequitable. Affirmed with modification.

The parties were married June 9, 1973. Their six and one-half year marriage was dissolved by decree filed March 5, 1980. No children were born to or adopted by the parties, although respondent had children from a prior marriage who had all reached majority by the time these parties married. At the time of the dissolution, petitioner was a fifty-two year old school social worker for four Des Moines schools, earning \$15,876 gross income per year. She has been working in this capacity for nine years. Formerly, petitioner was a nun. Respondent, age seventy-five, was retired throughout the parties' marriage. His income in 1979 from Social Security and his International Harvester pension fund totalled \$530.99 per month. Both parties were in good health.

During the marriage, petitioner was employed full time outside the home while respondent, being retired, assumed responsibility for most of the housekeeping. The parties put all of their monies into a joint account from which petitioner managed the parties' finances. The parties entered into a post nuptial property settlement agreement which provided that all property owned by either party prior to the marriage was to remain that party's separate property and that all property acquired after the marriage should be the separate property of the party acquiring it. At the time of the dissolution only petitioner's 1972 Thunderbird automobile and respondent's pension fund remained of the items listed by the parties in their post nuptial agreement. Many items of household furnishings given to petitioner by her mother, however, did remain.

Trial court awarded respondent his pension fund and social security benefits, the 1972 Thunderbird, and items of personal property as requested by respondent, including a coffeepot, a smoking stand, a table, and a choice between two television sets. Petitioner received the 1976 Fiesta automobile, the parties' home, which had been purchased for \$48,900 and was subject to a mortgage of approximately \$27,919.79, all remaining personal property not specifically awarded to respondent or voluntarily turned over to him, and cemetery lots acquired by the parties. The court further found that neither of the parties was entitled to alimony or any compensation from the other. Costs of the dissolution action were assessed to respondent. Respondent's appeal followed.

I. Scope of Review. Our review of dissolution proceedings is *de novo*. Iowa R. App. P. 4. We will examine the whole record and determine anew rights on those issues properly presented. In re Marriage of Horstmann, 263 N.W.2d 885, 888 (Iowa 1978) (quoting In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974)). While we give weight to trial court's finding of fact, especially with regard to credibility of witnesses, we are not bound by them. Iowa R. App. P. 14(f)(7).

II. Division of Property. Respondent alleges that trial court erred by failing to make a fair and equitable division of the parties' property. We agree. In dissolution proceedings, the court may make such property divisions as are justified. § 598.21, The Code 1979. Justified property divisions are those considered equitable under the given circumstances. In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975). The supreme court has rejected a mechanical rule that each spouse must receive one-half of the marital assets, but the court has recognized that an equal division of marital property is often equitable. In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980). Trial court's assessment of what constitutes an equitable division is to be given some weight. Iowa R. App. P. 14(f)(7). We are guided by the factors enumerated in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except fault, In re Marriage of Williams, 109 N.W.2d 339, 345 (Iowa 1972), in reaching an equitable determination of the parties' financial or property rights and obligations. Further, properties brought into the marriage or inherited may be considered in arriving at a proper division of the parties' assets. In re Marriage of Conley, 284 N.W.2d 220, 222 (Iowa 1979); In re Locke, 246 N.W.2d 246, 252-53 (Iowa 1976).

Respondent brought to the marriage cash assets of \$6,500, a 1973 Caprice automobile, numerous items of personal property, and his retirement pension. Petitioner brought a 1972 Thunderbird automobile and a Baldwin Organ. Petitioner also brought cash assets, although the evidence is conflicting over whether these assets totalled \$2,500 or \$10,000. From our review of the evidence, we find \$2,500 to be the more accurate total.

The evidence concerning monies petitioner received from her mother also is in conflict. She testified to receiving \$16,500 as her share of proceeds from the sale of her mother's house and \$5,000 insurance reimbursement for her mother's medical expenses which had been paid by the parties. From these monies petitioner claims to have made the down payment of \$19,100.88 on the parties' home, and purchased a microwave oven, three light fixtures, a washer and dryer, dishwasher, dehumidifier, three automatic door

openers, paint for rooms inside the home, a drain tub, as well as paying off the remaining balance due on an organ purchased in 1976 and spending \$5,000 to remodel a kitchen in a home earlier owned by the parties. In addition, petitioner testified that she paid the balance of \$1,627.80 due on the 1978 Fiesta from her inheritance and savings and held \$2,800 in certificates of deposit purchased from her inheritance. We agree with respondent that the purchases petitioner claims to have made solely from her inheritance monies certainly exceed the total inheritance. Further, we find that the \$5,000 insurance reimbursement cannot be considered as part of petitioner's inheritance. The evidence shows that the parties commingled their funds and that petitioner's mother's medical expenses were paid from these funds.

After reviewing the court's property division and the items voluntarily provided by petitioner to respondent, we agree with respondent that petitioner was awarded an inequitable share of the parties' assets. Petitioner unquestionably contributed substantially to acquisition of the parties' assets through her inheritance. She also earned \$15,876 in 1979. Respondent, on the other hand, brought more cash assets to the marriage (\$6,700 compared to her \$2,500 assets). Further, since he is seventy-five years of age, respondent's life expectancy is less than petitioners. Petitioner, on the other hand, has considerably more years of employment remaining.

While we agree with trial court's award of the house and all liabilities to petitioner, we find a lump sum award to respondent should be made to reflect respondent's contribution to acquiring the parties' assets. We note that installment payments of lump sum awards are unquestionably permissible. See In re Marriage of McDowell, 244 N.W.2d 238, 240 (Iowa 1976). Thus, in addition to trial court's award to respondent, we conclude petitioner shall pay to respondent an additional \$5,000.00 as a lump sum payment. Given petitioner's resources and respondent's age, however, annual installments of \$2,500 each for two years shall be made. The first payment shall be due May 1, 1981, and the final payment due May 1, 1982. Interest on the unpaid balance shall accrue at twelve percent per annum.

All provisions of trial court's decree not expressly modified by this opinion are affirmed. Costs of this appeal are assessed to petitioner.

AFFIRMED AS MODIFIED.