FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF PATRICIA A. WILLIAMS
AND WILLIAM P. WILLIAMS

Upon the Petition of)
PATRICIA A. WILLIAMS,)
Petitioner-Appellant,)
And Concerning)
WILLIAM P. WILLIAMS,)
Respondent-Appellee.)

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8-643
88-565

Appeal from the Iowa District Court for Dubuque County (No. 5895), Robert J. Curnan, Judge.

Petitioner appeals from certain economic provisions of her dissolution decree. **AFFIRMED AS MODIFIED.**

Russel A. Neuwoehner of Zwack, Blum & Neuwoehner, Dubuque, for petitioner-appellant.

James J. Roth and Mary M. Schumacher of Roth & Schumacher, Dubuque, for respondent-appellee.

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

DONIELSON, J. 342

Petitioner appeals from certain economic provisions in the dissolution decree entered in district court. Petitioner claims the trial court erred by: 1) finding that the possibility of a negotiation with the second and third lienholders was speculative; 2) failing to order the respondent to pay for a home improvement; 3) not awarding her a lump sum property settlement for assets she brought to the marriage; and 4) denying her motion for a new trial.

Patricia Williams and William Williams were married on May 3, 1980. This was the second marriage for both parties. They each had children by their prior marriages, but none in this marriage. Patricia brought several assets to the marriage, including a home with equity of $11,000. She was thirty-seven years old at the time of trial and works for John Deere, earning about $26,000 per year. Patricia had also just opened an aerobics workshop. William was forty-one years old at the time of trial. He brought primarily debts to the marriage. He owns Willie Williams Sports, for which he receives $13,725 per year in sales commissions. In order to finance William's new store, the parties took out a home improvement loan for $3,000 from Dupaco Credit Union and a second mortgage from the Small Business Administration for $100,000. The business was not successful, and both parties have been through bankruptcy. The personal debts to Dupaco and the

SBA have been cleared by bankruptcy, but the loan amounts are a lien against the homestead. The residence has a market value of about $40,000.

Our review of this matter is de novo. Iowa R. App. P. 4. The court gives weight to the fact findings of the trial court, but is not bound by them. Iowa R. App. P. 14(f)(7).

The ultimate question presented on appeal is whether the property distribution was equitable. Determination as to what is equitable is dependent upon the facts of each case, precedents having relatively little value as guides for the resolution of problems in a situation which may be quite unique. In re Marriage of Wallace, 315 N.W.2d 827, 830 (Iowa App. 1981). Our guidance primarily comes from the factors listed in Iowa Code section 598.21 (1987), which provides in pertinent part:

> 1. Upon every judgment of annulment, dissolution or separate maintenance the court shall divide the property of the parties and transfer the title of the property accordingly. . . . The court shall divide all property, except inherited property or gifts received by one party, equitably between the parties after considering all of the following:
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> a. The length of the marriage.
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> b. The property brought to the marriage by each party.
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> c. The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services.
>
> d. The age and physical and emotional health of the parties.

e. The contribution by one party to the education, training or increased earning power of the other.

f. The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.

* * *

m. Other factors the court may determined to be relevant in an individual case.

Petitioner brought assets to the marriage valued at approximately $23,000. See Iowa Code § 598.21(1)(b). Respondent brought significant liabilities including $19,750 in overdue bills and notes, plus a $33,600 child support obligation. These liabilities were paid as a result of petitioner's contribution to the marriage. An equitable distribution requires that petitioner receive credit for the assets she brought to the marriage.

Respondent's claim to this property as commingled marital property is not consistent with the law. Ordinarily, where the marriage lasts a very short time, the claim of either party to property owned by the other prior to the marriage is minimal at best. See Wallace, 315 N.W.2d at 831; In re Marriage of Steenhoek, 305 N.W.2d 448, 453 (Iowa 1981) (5-year marriage prior to separation; court gave husband credit for property he brought into the marriage). "If there were wide disparities between the assets of the

parties at the time of the marriage, . . . the length of the marriage is a major factor in determining what the respective rights of the parties with respect to such property are at the time of dissolution," Wallace, 315 N.W.2d at 831.

The parties were married in May 1980. They separated approximately two years prior to their hearing in February 1988. In essence, the marriage lasted six years and was of short duration. Furthermore, there was a significant disparity in the parties' financial conditions. Therefore, petitioner is entitled to credit for the assets which she brought to the marriage.

The trial court correctly found that the parties' residence was encumbered by the original mortgage that existed at the time of marriage, a home improvement loan to Dupaco Credit for $3,000, and a second mortgage lien for a Small Business Administration (SBA) indebtedness of $100,000. This debt is no longer a personal obligation of the parties as a result of bankruptcy proceedings; however, the Dupaco and the SBA loans continue to be liens upon the residence. The house is valued at $40,000. The trial court further stated that the house "has no equity and faces a possibility of future foreclosure--from all practical standpoints, its primary value is that of a place to reside . . . ."

These two liens and many of the other liabilities that resulted in bankruptcy and the use of pertinent assets arose because of respondent's business which failed. The trial court said that petitioner must share in these debts just as she would have shared in any benefits.

We agree that petitioner must share in the marital debts. In re Marriage of Johnson, 299 N.W.2d 466, 467 (Iowa 1980). However, the trial court's distribution leaves petitioner paying more than her share. By failing to give her credit for the property she brought to the marriage, the court has put an undue burden on petitioner.

There are no significant assets in the marriage. The trial court distributed what property there is as follows: Petitioner is awarded the 1986 Chevy Spectrum (subject to indebtedness), the proceeds from insurance coverage on the 1979 Mercury Capri (subject to indebtedness), her own pension benefits, bank accounts, clothing, jewelry, personal effects and the personal property in her possession. She was also awarded all interest in her aerobic workshop (subject to indebtedness) and the residence (valued at $40,000, with no equity and subject to $103,000 in liens). Petitioner is responsible for the indebtedness on her property described above.

Respondent is awarded the personal property in his possession, his own clothing and personal effects, his interest in Willie Williams Sports, and his life insurance

policies. Respondent is responsible for the indebtedness to Roth & Schumacher and for the encumbrances on his insurance policy.

We affirm this distribution with one modification. We order respondent to pay petitioner a property settlement of $10,000. This will be done at the rate of $250 per month with 10% interest per year until the entire obligation is paid. See Iowa Code § 535.3 (1987 Supp.).

The decision of the district court terminating the marriage of the parties is affirmed with the modification described above. Respondent shall pay the attorney fees and costs of this appeal.

AFFIRMED AS MODIFIED.