FILED
MAY 22 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF GLORIA YVONNE TURNER AND THEODORE BENJAMIN TURNER

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UPON THE PETITION OF **GLORIA YVONNE TURNER,**	)	Filed May 22, 1984
Petitioner-Appellee,	)	4-144 / 83-802
AND CONCERNING **THEODORE BENJAMIN TURNER,**	)	
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Black Hawk District Court--Dale S. Missildine, Judge.

Respondent-husband appeals from the decree dissolving the parties' marriage. MODIFIED IN PART; REVERSED IN PART.

Gene Yagla of Lindeman & Yagla, Waterloo, for respondent-appellant.

Harry W. Zanville of Reed, Merner, Sabbath, Strever, Zanville, Oppold & Hansen, Waterloo, for petitioner-appellee.

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

Respondent-husband appeals from the decree dissolving the parties' marriage. We modify the trial court's ruling in part and reverse in part.

I. Scope of Review

Our review is de novo. Iowa R. App. P. 4. We are not bound by the trial court's findings of fact, but we give them weight, especially with regard to the credibility of witnesses. Iowa R. App. P. 14(f)(7).

II. Alimony

When determining the appropriateness of alimony, the trial court must consider: (1) the earning capacity of each party, and (2) present standards of living and ability to pay balanced against the needs of the other spouse. In re Marriage of Hitchcock, 309 N.W.2d 432, 437-38 (Iowa 1981). Each case must be decided on its own peculiar set of circumstances and precedent is of little value. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976).

At the time of trial, Theodore was earning approximately $31,000 a year as a pattern maker at John Deere; Gloria was receiving $150 per week plus commissions at Carma Lou's House of Music and expected to earn about $18,000 a year. Theodore was 64 years old and planned on retiring within the year, at which time his retirement income would be approximately $1275 a month. Gloria was 57 years of age and would not retire for another five to eight years, at which time her retirement income would be somewhere between $257 and $322 per month. This is a 38-year-old marriage. The court ordered Theodore to pay alimony to Gloria in the amount of $5000 a year for the next ten years, such payment amounting to almost one-third of Theodore's yearly retirement income.

We have considered the alimony provision in relation to the property provision and we find the alimony award to be inequitable.

Gloria was awarded $25,300 as her share of the equity in the family home, over $20,000 in liquidated assets, and her half of various other assets as they matured totaling approximately $19,000. Gloria was allowed to keep certain jewelry, furs, and personal property. A year prior to trial, Gloria obtained a $45,000 inheritance from her mother. Theodore has made no claim to Gloria's inheritance.

We find that as long as Theodore's earning capacity is $31,000, he can afford a $5000 a year alimony payment. However, we do not believe he should be ordered to pay that amount after he retires and his income drops substantially. Gloria's cash assets will total over $100,000. We believe these assets are capable of earning sufficient interest income that when added to her earned income or retirement income would allow her to live comfortably.

The alimony issue involves the wife's need by way of support and the husband's ability to pay toward that support. In re Marriage of Jones, 309 N.W.2d 457, 460 (Iowa 1981). Our de novo review convinces us that Gloria has little or no need of support and Theodore, upon retirement, has little ability to pay such support.

We find the circumstances of this case warrant a modification of the decree and an order that the alimony payments cease upon Theodore's retirement at age 65.

II. Life Insurance

The trial court awarded Theodore the life insurance policies to keep fully paid and in force, with the stipulation that Gloria was to be the irrevocable beneficiary. We consider the policies with cash values to be part of the property the parties accumulated through their joint efforts. As such we find an equal division of those assets to be proper. Therefore, we hold that Theodore has the option of either liquidating the five insurance policies with cash values and giving

Gloria one-half of the amount received, or to pay her one-half of the present cash value within 90 days and keep the policies himself with no stipulations as to who the beneficiaries can be.

The other insurance, two U.S. Serviceman's policies with no cash value, are awarded solely to Theodore with no designation as to who must be the beneficiary.

III. Attorneys Fees

The trial court ordered each party to pay his or her own attorney fees and one-half the costs of the action. Gloria admitted paying $1380 out of joint accounts for her attorney fees. Gloria shall reimburse Theodore $690 for the portion of his money that was used to pay her attorney fees.

Furthermore, we order each party to pay his or her own attorney fees on appeal and one-half of the costs of appeal.

MODIFIED IN PART; REVERSED IN PART.