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IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF
AUGUST H. KOEHLER AND MARY R. KOEHLER

Upon the Petition of)

AUGUST H. KOEHLER,)

Petitioner-Appellant/)
Cross-Appellee,

)

And Concerning

) 8-227
MARY R. KOEHLER, 87-1206

)

Respondent-Appellee/
Cross-Appellant.)

Appeal from the Iowa District Court for Dallas County (CD2552), Robert O. Frederick, Judge.

Petitioner-husband seeks to modify the division of the parties' marital property and to deny respondent-wife alimony and attorney fees; respondent-wife cross-appeals seeking additional alimony and attorney fees incurred on appeal. **AFFIRMED.**

Leslie Babich of Babich, Bennett & Nickerson, Des Moines, for petitioner-appellant/cross-appellee.

Patrick H. Payton, Des Moines, for respondent-appellee/cross-appellant.

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

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SCHLEGEL, P.J.

In this appeal from the economic provisions of a dissolution decree, petitioner-husband seeks to modify the division of the parties' marital property and to deny respondent-wife alimony and attorney fees. On cross-appeal, respondent-wife seeks additional alimony and attorney fees incurred on appeal.

Our review of this equity action 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, but we are not bound by them. Iowa R. App. P. 14(f)(7). We affirm.

Petitioner husband, August H. Koehler, and respondent wife, Mary R. Koehler, were married on July 3, 1969. No children were born of the marriage. The marriage was dissolved on August 4, 1987. The divorce decree provided for the division of their marital assets and liabilities, for the award of alimony to Mary in the amount of $1,200 per month until August reaches age 65 and $500 per month thereafter, and for the award of attorney fees to Mary.

I. On appeal, August first contends that the trial court's property distribution was grossly inequitable. In our determination of this matter, we are guided by certain principles. The distribution of the parties' property in a dissolution action should be that which is equitable under the circumstances upon consideration of the criteria

codified in Iowa Code section 598.21 (1987). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983). Under this statute, the ultimate question is whether the distribution of the property is equitable; there is no rule based upon strict percentage division of assets. In re Marriage of Lattig, 318 N.W.2d 811, 814 (Iowa App. 1982). Division of property is based upon each marital partner's right to a just and equitable share of the property accumulated as the result of their joint efforts. In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981).

1. **Koehler Insurance Agency (All Lines).** The main issue at trial focused upon the value of the parties' insurance agency, Koehler Insurance, also known as All Lines Insurance. August contends the trial court was in error in finding that the insurance agency was valued at $200,000 at the time of trial. He urges that the court erred in refusing to rely on his expert's testimony that the insurance business was worth approximately half that amount.

The record indicates that the court heard testimony from August's expert, Mr. Alan D. Reyerson, the only expert testimony presented at trial. Mr. Reyerson completed an evaluation, based upon information supplied by August, of All Lines which was received into evidence. Based upon a weighted composite of three different "tests" utilized to value the business, Reyerson determined the pre-tax fair

market value of All Lines to be $104,178. To rebut this testimony, Mary presented evidence that, based upon her husband's financial representations both to her and to her husband's bank prior to the filing of the Petition for Dissolution, the business had a pre-tax value of $200,000.

Upon our review of the record, we believe that the trial court's valuation is well within the permissible range of evidence and we are not inclined to disturb it. See In re Marriage of Hoak, 364 N.W.2d 185, 192-3 (Iowa 1985) (citing In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973)). Although Reyerson was the only expert presented at trial, the court is at liberty to accept or reject his testimony, see Schantz v. Schantz, 163 N.W.2d 398, 404 (Iowa 1968), based upon the broad range of evidence presented at trial. Hoak, 364 N.W.2d at 193. We are particularly concerned here with the evidence in this case which indicates that Reyerson's evaluation of All Lines was based upon information supplied by August, and we are thus inclined to be somewhat suspect of his findings, particularly in view of the trial court's negative characterization of August's credibility. See In re Marriage of Vrban, 359 N.W.2d 420, 423 (Iowa 1984). Moreover, the evidence indicates that August himself, a man with years of experience in the insurance business, valued the business at $200,000 only months prior to the filing of this action.

Upon consideration of Mary's active involvement in and dedication to this business, we affirm the trial court's property award of $100,000 plus interest to Mary, as and for her one-half interest in All Lines Insurance. The court's failure to figure in the potential tax liability in determining the value of the insurance agency for division is without error. See Marriage of Hayne, 334 N.W.2d 347, 353 (Iowa App. 1983).

2. **Homestead.** August also claims that the trial court erred in failing to award him one-half of the net equity in the parties' homestead. The trial court awarded Mary the entire homestead subject to the existing mortgages based upon the finding that August cashed the parties' Keogh retirement savings plan ($52,000) and used the funds for personal use and the purchase of a $10,044 annuity for himself.

Upon our review of the record, we believe the trial court made an equitable disposition of the parties' homestead. The record indicates that the parties purchased their home during their marriage and that the equity value in the homestead was $53,381 at the time of trial. The record also shows that the parties' retirement fund was valued at $52,000, prior to its demise. Evidence presented at trial failed to substantiate August's claims that he had a cash flow problem and needed the money for his insurance agency. To the contrary, the record shows that August,

without the knowledge or consent of his wife, used much of the money for his own personal use. Upon consideration of these factors and Iowa Code section 598.21 (1987), we affirm the award of the homestead to Mary.

II. August next claims that the trial court erred in granting Mary $1,200 per month in alimony until August reaches 65 years of age, and $500 thereafter. In our determination of this issue, we note that property division and alimony must be considered together in evaluating their individual sufficiency; they are neither made nor subject to evaluation in isolation from one another. In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984). Moreover, when determining the appropriateness of alimony, we must consider the earning capacity of each party, present standards of living, and ability to pay balanced against relative needs of the other. In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983).

The record here shows that Mary, 60 years old at the time of trial, suffers from borderline glaucoma and depression. The evidence also indicates that Mary, who has no formal education beyond high school, has had many years of secretarial and clerical experience. For a good share of those years, Mary contributed financially to the marriage, including the building of All Lines Insurance. Although she voluntarily retired in 1985, the evidence indicates that Mary would have a difficult time finding a

job due to her age and health problems. The record further indicates that Mary's projected living expenses will be $1,184 per month.

August, 62 at the time of trial, is apparently able to work despite some health problems, and indicated that he plans to continue working in his insurance business, which he described as "growing," until the age of 65. Tax records from 1980 indicate that August's income from his business has increased, for the most part, over the years, and the evidence shows that his income will continue to increase in the next few years. The record indicates that he earned $31,268 in 1986 from his business.

We affirm the trial court's award of alimony to Mary. We further hold that the trial court did not err in ordering August to continue to pay alimony upon his retirement in the amount of $500 per month. See In re Marriage of Hayne, 334 N.W.2d at 353.

The trial court's award of attorney fees to Mary is affirmed. The parties shall pay their own attorneys' fees on this appeal, and each party shall pay one-half of the costs of this appeal.

We accordingly find no merit in the issues raised in Mary's cross-appeal.

We affirm the trial court's rulings in this matter in toto.

AFFIRMED.