

IN THE COURT OF APPEALS OF IOWA

FILED

DEC 23 1986

CLERK SUPREME COURT

IN RE THE MARRIAGE OF J. W. BOYD AND BERNICE M. BOYD

Upon the Petition of)

J. W. BOYD,)

Petitioner-Appellant,)

And Concerning)

BERNICE M. BOYD,)

Respondent-Appellee.)

Filed December 23, 1986

6-342
86-186

36

Appeal from the Iowa District Court for Linn County (No. DM 12684)

- William L. Thomas, Judge.

Petitioner husband appeals from the decree dissolving the parties' marriage.

AFFIRMED.

Mark H. Rettig of Hines, Pence, Jackson, Day & Powers, Cedar Rapids,
for appellant.

Craig W. Hickok of Hickok & Dolezal, Cedar Rapids, for appellee.

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

DONIELSON, J.

37

Petitioner husband appeals from the decree dissolving the parties' marriage. He asserts (1) that respondent wife's alimony award is excessive, (2) that the trial court should not have required him to designate respondent wife as the beneficiary on the life insurance policies he was awarded, and (3) that the trial court's disposition of the parties' furniture and appliances was inequitable. We affirm.

Petitioner J. W. Boyd and respondent Bernice M. Boyd were married in 1945. They have one child who is now grown. J.W. is currently 59 years old, and Bernice is 67 years old. J.W. received eight years of formal education, while Bernice has received eleven years. J.W. has experienced increasing health problems in recent years, having quadruple heart bypass surgery within the past four years and high blood pressure. Bernice is apparently in good health.

J.W. is employed at Transport America, a trucking firm. In 1984, J.W. earned \$17,857.62 from his employer, \$365.88 in interest income, and \$9,619.20 from a pension from a prior employer, which J.W. receives in monthly installments of \$701.28. J.W.'s income in 1985 was significantly reduced to \$8,630.91 at the time of trial.

Bernice has not worked outside the home since 1967 and was the parties' household's primary caretaker. Bernice has very limited work experience. Bernice is currently receiving \$270.00 per month from social security and additionally received \$450.00 per month in temporary support during the pendency of the action.

In its dissolution decree, the trial court directed J.W. to pay Bernice alimony of \$600.00 per month until she remarried or died. The trial court awarded J.W. two cars, some tools, his checking account, three insurance policies totalling \$16,000.00, and his pension. The trial court ordered J.W. to keep the insurance

policies on his life in force and to designate Bernice as beneficiary so long as he was obligated to pay her alimony. The trial court awarded Bernice all the parties' furniture and appliances, two bank accounts, a time certificate valued at approximately \$700.00, and two insurance policies totalling \$7,500.00. The trial court stated that if Bernice wanted to dispose of any of the furniture or appliances, she was to give J.W. the first option to purchase the item and that the proceeds from any sale were to be divided equally. The trial court also ordered the parties' house sold and the net proceeds equally divided. J.W. has appealed from the dissolution decree.

The standard of review which we employ in an equitable proceeding is de novo. Iowa R. App. P. 4. Thus, it is our responsibility to review the facts and the law and to determine anew the rights of the parties where the issues have been properly presented and preserved. In re Marriage of Phipps, 379 N.W.2d 26, 27 (Iowa Ct. App. 1985). Although we give weight to the trial court's findings, particularly where the credibility of witnesses is concerned, we are not bound by them. Iowa R. App. P. 14(f)(7).

There are no hard and fast rules governing economic issues in a dissolution action, and because precedent is of little value, our decision must ultimately rest on the particular facts of each issue. In re Marriage of Vrban, 359 N.W.2d 420, 423 (Iowa 1984). When determining the appropriateness of alimony, the trial court must consider the earning capacity of each party, present standards of living and ability to pay balanced against the relative needs of the other. In re Marriage of Hitchcock, 309 N.W.2d 432, 436-37 (Iowa 1981). In considering the fairness of the alimony provision in a dissolution decree, we look to the factors listed in Iowa Code section 598.21(3) (1985), which provides a list of factors that must be considered in ordering support payments. In re Marriage of Passick, 375 N.W.2d 284, 285 (Iowa Ct. App. 1985). In balancing the needs

of both parties, we note that the property division and alimony must be considered together in evaluating their sufficiency; neither should be evaluated in isolation from one another. In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa Ct. App. 1984).

J.W. argues in the present case that because his income has been greatly reduced and because his health problems may force him to take an early retirement, the trial court's award of \$600.00 per month alimony was excessive. J.W. also contends the alimony award is excessive in light of the property settlement awarded Bernice.

J.W. earns \$817.56 net per month from Transport America and \$701.28 per month from his pension, for a total of \$1,518.44 per month. J.W. claims monthly expenses of \$247.44 for a house payment, \$520.00 per month for food, \$75.00 for clothing, \$132.00 for car and transportation expenses, \$224.00 for medical expenses, and \$200.00 in utilities, for a total of \$1,495.44 per month. J.W. was ordered by the trial court to assume payments on a note to the First National Bank in Iowa City in the sum of \$7,011.46 and to pay Bernice \$500.00 towards her attorney fees.

Bernice receives approximately \$257.00 per month from social security. At the time of trial, Bernice's only other source of income was the \$450.00 per month temporary support received from J.W. Bernice claims monthly expenses of \$200.00 for food, \$180.00 in utilities, \$39.00 for medical, dental, and prescription expenses, \$40.00 for clothing, \$93.50 in miscellaneous expenses, \$25.00 for residential maintenance, \$78.00 for life insurance and other various expenses, for a total of \$802.48 in monthly expenses. Bernice additionally claims that she will need \$50.00 per month to obtain health insurance.

From the aforementioned facts, it is obvious that J.W. has the greater earning capacity and should substantially contribute to the support of Bernice.

J.W. and Bernice were married for 40 years, during which time Bernice was the primary caretaker of the parties' child and home. Bernice has had very limited work experience during the parties' marriage, and at 67 years old, it is highly unlikely that Bernice will be able to obtain any gainful employment. Upon examination of all the factors enumerated in Iowa Code section 598.21(3), we believe that the trial court's alimony award of \$600.00 per month was equitable under all the circumstances. We note that while J.W. contends that he may incur increased medical expenses in the future and that as a result of his medical problems he may be forced to retire early, we believe any speculation as to the amount of these expenses and loss of wages would be inappropriate at this time. Should an unforeseen loss of income or increase in expenses occur at some later date, such issues could be handled at that time. See In re Marriage of Bornstein, 359 N.W.2d 500, 502 (Iowa Ct. App. 1984).

J.W. next contends that the trial court erred by restricting J.W.'s right to designate the beneficiary on the life insurance policies which he was awarded. In its decree, the trial court restricted J.W.'s right to designate the beneficiary on his life insurance policies by making the following award:

Any life insurance policy owned by the Petitioner which insures his life shall be kept in force and shall designate the Respondent as the primary beneficiary so long as the Petitioner is obligated to pay alimony.

Following J.W.'s motion to expand the court's findings pursuant to Iowa Rule of Civil Procedure 179(b), the trial court further revised the insurance policy provision by providing that "[a]ny life insurance policy which is currently owned by the Petitioner and which insures his life shall be kept in force by the payment of premiums when due and shall designate the Respondent as the primary beneficiary so long as Petitioner is obligated to pay alimony." J.W. contends that

when viewed in the light of all other awards of property and alimony, the insurance provision of the divorce decree is unfair. We disagree.

By listing the insurance policies in question in the parties' list of assets, the parties therefore contemplated that the property interests in those policies were to be disposed of by the dissolution court. Sorensen v. Nelson, 342 N.W.2d 477, 480 (Iowa 1984). The trial court was thus empowered to dispose of the interests under those policies in any manner which was equitable under the circumstances. Id.; see also In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa Ct. App. 1983). Divorce does not per se void a wife's insurable interest in the life of her former husband. Sorensen, 342 N.W.2d at 479. As the Iowa Supreme Court stated in Lynch v. Bogenrief, 237 N.W.2d 793, 797 (Iowa 1976), "[i]f one has a reasonable expectation of advantage in the continuation of another's life, an insurable interest exists." The Lynch court went on to hold that "a divorced wife receiving alimony, as a creditor and as one having an advantage in the continued life of her former husband, has an insurable interest in his life." 237 N.W.2d at 797.

It is plain that the trial court in the present case, upon reviewing the enumerated factors set forth in Iowa Code section 598.21 (1985), determined that Bernice was entitled to receive an insurable interest in the life insurance policies carried on J.W.'s life. Given the fact that Bernice will unlikely find suitable employment enabling her to become self-supportive and that Bernice was married to J.W. for over forty years, we believe that the trial court was correct in designating Bernice as the beneficiary of the life insurance policies taken on J.W.'s life.

J.W. finally contends that the trial court erred in the disposition of the parties' property and that such disposition is inequitable under the circumstances. In its initial decree, the trial court awarded all of the parties' furniture and

appliances having a total value of approximately \$2,650.00. It is apparent from the record that both J.W. and Bernice had agreed that before Bernice gave away the furniture or sold it, J.W. would have an opportunity to select those items that he may need. The trial court, however, ordered that any items not needed by Bernice were to be sold and the proceeds equally divided.

A division of property is based on 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 at 437. Iowa courts, however, have recognized that equality need not be achieved with mathematical exactness. In re Marriage of Conley, 284 N.W.2d 220, 223 (Iowa 1978). We believe that upon an examination of those factors listed in Iowa Code section 598.21(1) (1985), the trial court's disposition of the parties' furniture was equitable under the circumstances. Such division was well within the range of permissible evidence in achieving an equitable division of property, and we are therefore not inclined to disturb it. See In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973).

AFFIRMED.