FILED
JAN 24 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MARGERY C. NOVOTNY AND LEO E. NOVOTNY

Upon the Petition of)

MARGERY C. NOVOTNY,)

Petitioner-Appellee,) Filed January 24, 1984

And Concerning)

LEO E. NOVOTNY,)

Respondent-Appellant.)

IN RE THE MARRIAGE OF LEO E. NOVOTNY AND MARGERY C. NOVOTNY

Upon the Petition of)

LEO E. NOVOTNY,) 3-410
2-69574

Petitioner-Appellant,)

And Concerning)

MARGERY C. NOVOTNY,)

Respondent-Appellee.)

Appeal from Iowa District Court for Tama County - L. Vern Robinson, Judge.

Respondent appeals from the provisions of a dissolution decree ordering him to pay alimony and dividing the parties' property. AFFIRMED AS MODIFIED.

William L. Springer, Marshalltown, Iowa, for appellant.

William Hill, Marshalltown, Iowa, for appellee.

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

Respondent appeals from the provisions of a dissolution decree ordering him to pay alimony and dividing the parties' property. We affirm as modified.

Petitioner Margery C. Novotny and respondent Leo E. Novotny were married in 1945. They were, respectively, fifty-six and fifty-nine years of age at the time of trial. They have four adult children who are not involved in this appeal. Leo works at a power company earning a net monthly income of approximately $1,200. Margery is a part-time bartender earning a net monthly income of $215. Margery testified that she is capable of working full-time but is unable to find other employment in the small town of Garwin and she does not wish to move or commute outside of that community.

The trial court ordered Leo to pay $200 every two weeks as alimony. Margery was awarded a car, a silver coin collection, household goods, appliances, antiques, and the food in the freezer. The court awarded Leo a pickup truck, a gun collection, a flat iron collection, his insurance policy, his pension plan at the power company, and his bank accounts. Each party was directed to pay certain debts.

The parties' major asset is a house which they held in joint tenancy. The trial court severed the joint tenancy and awarded each party one-half interest in the real estate as tenants in common. The court provided that Margery could use the house as long as she desired. The court directed that when she no longer resided there, the home should be sold and the net proceeds divided equally. In order to offset the fact that the real property could not be sold immediately, the court ordered the jointly-held mutual funds to be liquidated and the proceeds divided so that Leo receives two-thirds and Margery one-third.

Our review of this equitable action is **de novo**. Iowa R. App. P. 4. While we are not bound by the findings of the trial court, we do give weight to them, especially where the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7).

I. Alimony. The factors to be considered by the court when awarding alimony are found in Iowa Code section 598.21(3). Considering these factors, particularly Margery's age, education, and skills, we find that it is unlikely she will become self-supporting. Leo is financially able to contribute to her support. The amount of alimony ordered by the trial court is reasonable. The alimony is to terminate on the death of either party or Margery's remarriage.

II. Property Division. The trial court divided the real property equally and made an equitable, although not equal, division of the parties' personal property. After reviewing the criteria enumerated in Iowa Code section 598.21(1), we approve the trial court's decision. However, we do not agree that the parties' major asset should be set aside for Margery's sole use and enjoyment. We understand Margery's desire to remain in the home, but it is unfair to prevent Leo from receiving any enjoyment of his interest in this asset. When the alimony provision of the decree is considered, Leo's net monthly income will be approximately $800 and Margery's net monthly income will be approximately $600. There is not a sufficient disparity between the incomes of the parties to justify awarding one party sole benefit of the house. Therefore, we order that the real property be sold as soon as possible and the proceeds, after deducting all costs relating to the sale of the property, be divided equally between the parties.

AFFIRMED AS MODIFIED.