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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JUDY M. THOMPSON
AND RICHARD L. THOMPSON

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Upon the Petition of)
JUDY M. THOMPSON,
)
Petitioner-Appellee,
)
And Concerning
RICHARD L. THOMPSON,) 8-351
87-1085
Respondent-Appellant)

Appeal from the Iowa District Court for Story County (DM-4073), Carl D. Baker, Judge.

The husband appeals a dissolution decree, challenging the awards to the wife of property, alimony, and attorney fees. **AFFIRMED.**

Richard O. Parker and Jerrold L. Handsaker, Nevada, for the respondent-appellant.

Donald G. Juhl, Nevada, for the petitioner-appellee.

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

OXBERGER, C.J.

Respondent-appellant Richard L. Thompson appeals his dissolution decree. He contends the property, alimony and attorney fee awards were inequitable. We affirm.

The parties were married in 1964. At the time of trial Richard was fifty years old and Judy was forty-three. Richard has owned and operated an auto salvage yard in the town of McCallsburg since 1956. Judy has helped Richard crush cars, and she also performed bookkeeping duties at the business. As a part of this business, Richard owns a number of unrestored but restorable antique automobiles. In addition to the salvage yard real estate, he also owns several other commercial and residential properties in McCallsburg. The trial court assigned a total value of $100,000 to Richard's auto salvage business and real estate.

Richard's net income per month is $544. In recent years Richard reported gross business income ranging from $20,000 to $44,000 and net income ranging from $3,000 to $10,000. Richard claims substantial business and personal debts. However, these debts are owed to a friend and to his mother. There is some dispute as to whether interest was charged on these debts.

Judy was employed as a machine operator throughout much of the marriage. She left this employment to seek a higher hourly wage. Judy is now employed as a "homemaker health

aide" for the disabled and elderly and earns $5.57 per hour from her part-time work. In 1986 her wages totaled $5,400. Judy also assisted with the salvage yard operation during the marriage. Judy and Richard incurred no cost for housing during the marriage as they lived in a house owned by Richard's mother.

The dissolution decree awarded Richard all his interest in the commercial and residential real estate, subject to all debts. To compensate Judy for her share of marital property, the decree ordered Richard to pay her a property settlement of $50,000, with a $10,000 lump sum to be paid immediately and the remainder to be paid in installments. Because Richard had a poor record of paying pretrial temporary support, the decree directed an auction of the auto salvage assets and other real estate in the event Richard was not timely with the $10,000 lump sum payment. In a series of posttrial orders, the court found Richard had failed to pay the $10,000 and directed a sale of the assets in question. The decree also directed Richard to pay Judy alimony of $100 per month for a period of twelve months and $1,500 toward attorney fees.

A justifiable property division is one that is equitable under the circumstances. Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976); In re Marriage of Stewart, 356 N.W.2d 611, 612 (Iowa App. 1984). In light of the fact the auto salvage is a family business and Judy assisted Richard

in this business, we find the property settlement as devised by the trial court to be equitable under these facts. See In re Marriage of Callenius, 309 N.W.2d 510, 515 (Iowa 1981) (reasonable to award a farm which is the family business to the spouse who operated it and fix the award and schedule payments to the other spouse).

Richard contends the trial court erred in a posttrial order extending the time of the sale of Richard's business assets and real estate. We find that Richard has mischaracterized the court's actions. Through a series of posttrial motions filed by both parties, the date of sale originally set by the trial court was not timely. After limited remand ordered by a justice of the supreme court, the trial court entered an order setting a more timely date for the sale of the property.

We find that the posttrial order was neither a motion for new trial or a motion to enlarge and amend. It was rather an order to carry out its judgment. This becomes a question of jurisdiction. Jurisdiction confers the power upon a court to take cognizance of and to decide cases in law, equity, or special proceedings, and to carry its judgments and decrees to execution. See Western Grocery Co. v. Glenn, 226 Iowa 1374, 286 N.W. 441 (1939). Accordingly, we do not agree with appellant's contention.

The factors which govern an award of alimony are found in section 598.21(3)(a)-(j) of the Iowa Code. The trial

court ordered Richard to pay Judy alimony of $100 per month for a period of twelve months or until Judy remarries. We find this award to be appropriate under these facts.

Richard also appeals the award of attorney fees which directed Richard to contribute $1,500 toward Judy's attorney fees. Judy seeks attorney fees on appeal. Attorney fees are not recoverable as a matter of right but rest within the trial court's discretion and depend upon one spouse's financial needs and the other spouse's ability to satisfy them. See In re Marriage of Orgren, 375 N.W.2d 710, 714 (Iowa App. 1985). We affirm the attorney fee award of the trial court. We award Judy attorney fees on appeal of $500.

AFFIRMED.