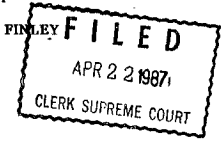
IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF LARRY RICHARD FINLEY
AND CRYSTAL ANN FINLEY



Upon the Petition of)

LARRY RICHARD FINLEY,)

Petitioner-Appellant,)

vs.) Filed April 22, 1987 32

And Concerning) 7-135
86-1116

CRYSTAL ANN FINLEY,)

Respondent-Appellee.)

Appeal from the Iowa District Court for Sac County (No. DM 707), James C. Smith, Judge.

Petitioner husband appeals from the decree dissolving the parties' marriage, asserting that the trial court should not have awarded respondent wife alimony, that the trial court's division of the parties' equity in their house was inequitable, and that the trial court should have provided for the interest on respondent wife's property settlement to accrue at a rate of 10% rather than 11%. **AFFIRMED.**

Lon R. Tullar of Sac City for appellant.

Darwin Bunger and Frank J. Comito of Kurth & Bunger, Carroll, for appellee.

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

PER CURIAM

In this appeal, petitioner Larry Finley challenges the economic provisions of the decree dissolving his ten-year marriage to respondent Crystal Finley. Larry has raised three issues for review: (1) that the trial court erred in awarding Crystal temporary alimony; (2) that the court improperly apportioned the equity in the parties' marital home; and (3) that the court erred in ordering Larry to pay interest of eleven percent per annum on the balance of the property settlement owed to Crystal. We affirm.

Larry first contends that the trial court erred in granting Crystal an award of temporary alimony. The criteria governing the granting of alimony are set forth in section 598.21(3) of the Iowa Code. When determining the appropriateness of alimony, we consider (1) the earning capacity of each party, and (2) their present standards of living and ability to pay balanced against their relative needs. In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983). Our examination of the record in the instant case in light of these principles persuades us that the trial court committed no error in granting Crystal alimony. In reaching this conclusion, we think that the following facts are particularly significant. Initially, we note that Larry's net monthly earnings are far greater than Crystal's. The record discloses that Larry receives a net monthly income of $870, a $749 net monthly pension and $122 per month for service-related disabilities, or a total of $1,741 per month; by contrast, Crystal receives only $961 per month for her full-time employment. Furthermore, Crystal's expenses exceed Larry's because she is required to pay medical expenses in order to receive treatment for her diagnosed colon cancer. Moreover, Larry was awarded the parties' marital home which has only a small encumbrance; Crystal, on the other hand, is required to pay monthly rent until she can finance a home for herself. In these circumstances, we conclude

that the alimony award fashioned by the trial court properly responds to both parties' needs. The trial court ordered Larry to pay Crystal $250 per month for a period of twenty-four months, $200 per month for the following twelve months; and $150 per month for a final twelve-month period. We think that this award allows Crystal to meet her monthly expenses without unduly burdening Larry. Accordingly, we conclude that it should be affirmed.

This brings us to Larry's second assignment of error. Larry maintains that the trial court inequitably distributed the parties' marital property because of the manner in which the court divided the equity in their marital home. The record discloses that although the parties stipulated that the fair market value of their home was $32,000, the trial court assigned the home a value of $40,000. Our de novo review of the record, Iowa R. App. P. 4, persuades us that the trial court's valuation is both equitable and within the permissible range of the evidence. See In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973). The trial court concluded that although the re-sell value of the home at the time of trial was only $32,000, its actual value, as assessed by the Sac County Assessor, was in excess of $45,000. The reason for this disparity in value, as noted by the trial court, was the depressed housing market in the Auburn area at the time of the trial. As a result of the economic situation extant in that locale, the court concluded that the fair market or re-sell value of the home did not represent an accurate indication of the value of the home. We agree. We think that the trial court's finding is particularly appropriate where, as here, Larry requested that he be awarded the home so that he could continue residing in it and did not plan to sell it. In these circumstances, valuing the home at its depressed market value would have the result of forcing Crystal to absorb the entire loss of value while Larry continued to enjoy the use of the home. We find no error in the trial court's attempt to subscribe a more

equitable and accurate value to the home; the supreme court has explicitly recognized that the present economic situation in the housing market is a proper criterion for the court to consider in dividing marital property. See In re Marriage of Bevers, 326 N.W.2d 896, 900 (Iowa 1982). Consequently, we decline from disturbing the $40,000 figure assigned to the home by the trial court.

Relatedly, we find no error in the trial court's order requiring Larry to pay Crystal the sum of $10,000 to compensate her for her equity in the home. Larry argues that when the $12,121.85 encumbrance on the home is considered, Crystal was awarded a disproportionate amount of the equity. In refuting this argument, we reiterate our above conclusion that the $32,000 fair market value does not accurately reflect the actual value of the home; when the actual value subscribed by the trial court is considered, Crystal in fact received a relatively small award. In addition, we disagree with Larry's contention that his contribution to the home exceeded Crystal's, thereby requiring that he receive a greater portion of the equity. We have repeatedly recognized that in dividing marital property, we will consider both spouses' contributions to the marriage as a whole. See In re Marriage of Lattig, 318 N.W.2d 811, 814 (Iowa App. 1982). In this connection, we note that although Larry may have contributed a greater financial and physical effort to the construction of the home, Crystal's earnings during this time provided the parties' primary income. In these circumstances, we find no error in the distribution formulated by the trial court.

One issue remains for our consideration. The trial court ordered Larry to satisfy Crystal's $10,000 equity in the home by paying her $2,000 yearly installments plus interest at the rate of eleven percent. Although Larry did not challenge the eleven percent rate of interest in his motion to enlarge the

trial court's findings, he argues in this appeal that this rate improperly exceeds the statutory interest rate on judgments, which is limited to ten percent. See Iowa Code § 535.3 (1985). Although we note that this alleged error may be meritorious, see In re Marriage of Lattig, 318 N.W.2d at 816-17, we are precluded upon appeal from addressing issues that were not properly presented and preserved for appellate consideration. See In re Marriage of Phipps, 379 N W.2d 26, 27 (Iowa App. 1985) (appellate court determines issues properly presented and preserved). In this vein, we find this case indistinguishable from the supreme court's opinion in Iowa National Bank v. Davis, 188 Iowa 346, 349-50, 174 N.W. 692, 694 (1919). There, the court held that the appellant's failure to challenge in a motion to correct the imposition of an excessive rate of interest on a judgment precluded appellate review of the alleged error. Similarly, we are precluded from addressing the error asserted in the present case.

AFFIRMED.