

FILED
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IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ROBERT LOWELL ALEXANDER
AND LAVONNE JOY ALEXANDER

UPON THE PETITION OF)
ROBERT LOWELL ALEXANDER,)
)
Petitioner-Appellant,)
)
AND CONCERNING)
)
LAVONNE JOY ALEXANDER,)
)
Respondent-Appellee.)

Filed November 24, 1981

1-308
2-66069

Appeal from Polk District Court, Robert O. Frederick.

Petitioner-husband appeals from the economic provisions of the parties' decree of dissolution. AFFIRMED IN PART AND MODIFIED IN PART.

Joseph L. Marks of Marks, Marks & Marks, Des Moines, for petitioner-appellant.
Dan Stamatelos of Stamatelos and Smith, Des Moines, for respondent-appellee.

Submitted to Oxberger, C.J., and Donielson, Carter, Snell, and Johnson, JJ.

PER CURIAM

Petitioner-husband appeals from the economic provisions of the parties' decree of dissolution. We affirm in part and modify in part.

Petitioner, Robert Lowell Alexander, is an over-the-road truck driver, who has had a serious drinking problem for several years. Robert has an annual income of approximately \$22,000. Respondent, LaVonne Joy Alexander, is a general contractor in the Des Moines area. LaVonne's annual income was not included in the record. Robert was fifty years old at the time of trial and LaVonne was forty-five.

The parties were married in 1955. They have three sons, only one who is directly affected by the trial court's decree. That son, Rodney, is unable to care for himself due to a drug overdose that occurred in 1978. The parties have been separated since October of 1977 when LaVonne moved into an apartment with her boyfriend.

The bulk of the parties' assets are six pieces of real property located in Des Moines. Five of those properties are income producing, the sixth is occupied by LaVonne and her son Rodney. The six properties are worth approximately \$98,000 with approximately \$41,000 of mortgages. The record does not indicate the relative assets each party brought into the marriage. However, the record does show LaVonne inherited \$12,000 from her parents during the marriage, which was used to make down payments on three of the properties.

The trial court awarded LaVonne custody of Rodney, all six of the properties, her 1977 Chevrolet van and \$50 per week child support. In all, LaVonne was awarded property with an equity of approximately \$52,000. Robert was awarded his personal belongings, a 1968 Ford truck and \$800 in his credit union account. LaVonne is to pay all of the mortgages on the six properties and \$4880.78 of the parties' debts to various hospitals. Robert is responsible for the balance of the parties' installment obligations listed on Robert's financial statement.

Robert is appealing the trial court's property division contending it is inequitable and asking to be awarded the property located at 1240 Fourth Street in Des Moines.

Our review of this case is de novo. Iowa R. App. P. 4. We are not bound by the trial court's findings of fact, but we give weight to the findings, especially regarding the credibility of witnesses. Iowa R. App. P. 14(f)(7). In reviewing each individual economic provision of dissolution decree, we consider all the provisions together as an integrated whole. See In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976). In reviewing

the property provision of a dissolution decree, we consider the factors articulated in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except fault. In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972).

In response to Robert's argument, we are guided by the notion that although an equal division of the assets is frequent, there is no requirement that parity between the parties be effected. In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980); In re Marriage of Conley, 284 N.W.2d 220, 223 (Iowa 1979). The test for an acceptable allocation of assets is whether the distribution constitutes an equitable and just award under the particular circumstances of the parties. Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976); Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968); In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972). We conclude that the trial court's award should be modified.

We are sensitive to the fact LaVonne and her sons contributed substantially more labor in improving the properties. We also recognize three of the properties were purchased from funds inherited by LaVonne from her parents, and Robert appropriately asserts no interest in those properties. See 598.21(2), The Code 1979; see also In re Marriage of Callenius, 309 N.W.2d 510 (Iowa 1981). As to the three remaining properties, the record indicates Robert did in fact assist in refurbishing them. Robert also financially contributed to the improvements, although the amount is uncertain. *Considering both parties' financial situations, employment outlooks, health prospects and contributions to the marriage, we feel a more equitable property division is as Robert requests and accordingly award Robert the property located at 1240 Fourth Street in Des Moines. In all other respects the trial court's decree is affirmed.*

AFFIRMED IN PART AND MODIFIED IN PART.

All judges concur except Oxberger, C.J., and Johnson, J., who dissent.

OXBERGER, C.J., (dissenting.)

I would affirm the trial court.

Johnson, J., joins this dissent.