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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF SHIRLEY E. SCHURING AND JERRY D. SCHURING

Upon the Petition of **SHIRLEY E. SCHURING,**	)	220
Petitioner-Appellee,	)	
And Concerning **JERRY D. SCHURING,**	)	8-573 / 88-305
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Marion County (No. DM 7-188), Van Wifvat, Judge.

Respondent appeals certain economic provisions in his dissolution decree. **AFFIRMED AS MODIFIED.**

William F. Fanter, of Bradshaw, Fowler, Proctor & Fairgrave, Des Moines, for respondent-appellant.

Robert A. Hutchinson and Michael R. Blaser, of Brown, Winick, Graves, Donnelly, Baskerville & Schoenebaum, Des Moines, for petitioner-appellee.

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

SACKETT, J.

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In this appeal from a dissolution decree we address the issue of whether the property division made by the trial court was equitable and in doing so address challenges to valuations established by the trial court.

Petitioner-appellee Shirley E. Schuring and respondent-appellant Jerry D. Schuring were married in 1971. They have three children, a son born in 1978 and twins born in 1981. The decree was filed in January 1988. Shirley was employed full time outside the home during the early years of the marriage. She has worked part-time since the children's births. At the time of trial she was earning about $300 per month. However, in September 1988, during the pendency of this appeal, the younger children became first grade students. The evidence shows once the children went to school all day she would be able to increase her income. Jerry is employed as Production Manager at Challenge Racing Enterprises. His annual salary is $35,000.

The parties had accumulated assets in excess of $100,000 through their joint efforts. A substantial portion of their net worth is in the form of an equity in their personal residence. The trial court valued the parties' property and made an allocation of assets. Shirley was given the personal residence, several vehicles and household furnishings. Jerry was given several

vehicles, a New York Life retirement account and a $20,000 lien on the personal residence. The lien did not draw interest and was payable in 2001, or when the house was sold or when Shirley remarried. By the trial court's calculations, in so apportioning the property it had awarded property to Jerry of $58,500 less a $7,000 debt and property to Shirley of about $69,000 less a $20,000 lien, leaving a net to Jerry of $51,500 and a net to Shirley of $48,000. Both parties appear to agree a nearly equal division of marital assets is equitable.

Jerry challenges the property award because he contends the treatment and/or valuation of several items by the trial court resulted in his receiving an inequitable distribution and when the assets are properly valued the division made by the trial court resulted in Shirley receiving substantially more assets than he did.

The real issue is not to analyze the disposition of each asset but to consider the property division as a whole to determine if it is equitable under the facts of this case. In re Marriage of Byall, 353 N.W.2d 103, 106 (Iowa App. 1984); In re Marriage of Lattig, 318 N.W.2d 811, 814 (Iowa App. 1982). There need be neither an equal division nor a percentage division of the property. In re Marriage of Hoak, 364 N.W.2d 185, 194 (Iowa 1985). We reject any rule based upon a percentage division of the property. In re Marriage of Webb, 426 N.W.2d 402, 405 (Iowa 1988); In re

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Marriage of Wiedemann, 402 N.W.2d 744, 749 (Iowa 1987); In re Marriage of McNerney, 417 N.W.2d 205, 209 (Iowa 1987).

The issue is what is equitable under the circumstances. Hoak, 364 N.W.2d at 194. However, to do so we must address the values given assets by the trial court. Jerry first challenges the amount allocated to his New York Life retirement account. The account went to Jerry as part of his property award. The trial court determined if liquidated with penalties and taxes, the account value would be $5,494. The trial court then valued the account at $13,500, the amount of money currently held in the fund. Jerry challenges the trial court's final valuation as incorrect and also contends the trial court did not treat him fairly on this issue when it turned around and reduced the agreed to value on the personal residence given to Shirley by over $8,000 for what it determined to be liquidation costs.

A retirement fund should be considered in the property division based on current worth. See In re Marriage of Bevers, 326 N.W.2d 896, 900 (Iowa 1982); Byall, 353 N.W.2d at 106. We should make a determination of the assets of the marriage at the time of trial. See Locke v. Locke, 246 N.W.2d 246, 252 (Iowa 1976); Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968). Factors to consider in valuing retirement accounts include adjustment to current value. See In re Marriage of Schissel, 292 N.W.2d 421, 427 (Iowa

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1980). We agree with Jerry the trial court's consideration of the New York Life retirement account at a value of $13,500 was inequitable to him. We consider the value to be $5,494 in assessing the equitability of the entire award. Having so determined, we need not address his argument that considering sale expenses in valuing the home treated him inequitably.

Jerry next contends the trial court treated him inequitably in awarding the house to Shirley and fixing his share as a lien without interest. He wants the home sold and the proceeds now divided. Iowa Code section 598.21(1)(g) (1987) directs the court in dividing the property of a marriage to consider the desirability of awarding the family home for a reasonable period to the party having physical care of the children. In re Marriage of Lovetinsky, 418 N.W.2d 88, 89 (Iowa App. 1987). Such an award provides some stability to a home situation for the children and allows them to stay in the same school district and maintain contacts with friends. Id.

The evidence indicates the children of this marriage will benefit by being able to stay in the same home in the same neighborhood. Their standard of living is higher and their need for support less if their father's equity remains in the home. The problem, of course, is Jerry is forced to leave a substantial portion of his net worth in the home. Where possible assets should be divided. In re

Marriage of Mentel, 359 N.W.2d 505, 506 (Iowa App. 1984). In In re Marriage of Woodward, 426 N.W.2d 668, 670 (Iowa App. 1988) the court found no inequity in determining the wife's equity should remain in the mobile home until the youngest child in the husband's physical care reached eighteen and the wife was making no other contribution to the children's' well-being.

As in Woodward, we consider the fact Jerry's equity remains in the house, also, as it relates to the support of his children who will be living there. However, unlike the noncustodial parent in Woodward, Jerry is paying a substantial amount of child support. We agree with his contention that a $20,000 lien that draws no interest and may not be payable until 2001 does not have a current worth of $20,000. In making this determination, we have considered the dictates of In re Marriage of Conley, 284 N.W.2d 220, 223 (Iowa 1979) where the court noted a farm and a commercial building are investments which traditionally are an effective hedge against inflation as contrasted to an interest-free installment which they found most susceptible to the ravages of inflation.

Having determined the value of the New York Life retirement account should be modified and Jerry's lien has a current value of less than $20,000, we find the property award made by the trial court results in Shirley receiving substantially more than half of the assets of the

marriage. We do not consider this equitable and find it should be modified. We have determined Shirley's income potential will increase when all the children are in school on an all-day basis. We have considered Jerry's equity in the house as it relates to his child support obligation.

We modify Jerry's lien against the house to increase it to $25,000. We direct, commencing January 1, 1989, the lien shall draw interest at the rate of ten percent per annum, payable biannually. In all other respects we affirm the trial court.

Each party shall pay his or her own attorney fees on appeal.

AFFIRMED AS MODIFIED.

Hayden, P.J., concurs; Habhab, J. concurs in part and dissents in part.

HABHAB, J. (concurring in part and dissenting in part)

I concur in all respects with the result reached by the majority except that part which requires interest on Jerry's $25,000 lien. This lien is imposed against the marital home. The home is necessary to house the children of this marriage. It is not an income-producing asset. Therefore, I would not assess interest on that amount. To that extent, I dissent.