FILED
OCT 27 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF SUSAN CAROL CLEMENT and ELDON THEODORE CLEMENT

Upon the Petition of	)	
SUSAN CAROL CLEMENT,	)	Filed October 27, 1981
Petitioner-Appellee,	)	
And Concerning	)	
ELDON THEODORE CLEMENT,	)	1-301 2-65815
Respondent-Appellant.	)	

Appeal from Plymouth District Court - David J. Blair, Judge.

Respondent-husband appeals and petitioner-wife cross-appeals from the economic provisions of the decree dissolving their marriage. AFFIRMED.

J. Patrick Ryan and Edward J. Keane of Margolin, Ryan, Gildemeister & Willie, Sioux City, Iowa, for respondent-appellant.

Maurice B. Nieland of Sioux City, Iowa, for petitioner-appellee.

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

PER CURIAM

Respondent-husband, Eldon Theodore Clement, appeals and petitioner-wife, Susan Carol Clement, cross-appeals from the economic provisions of the decree dissolving their marriage. Both assert trial court's division of property was inequitable. Petitioner also asserts that she should have been awarded alimony and attorney fees at trial. In addition, petitioner seeks attorney fees on this appeal. We affirm trial court's decree.

The parties were married on April 19, 1973. It was the second marriage for each. No children were born of the marriage, although petitioner, at the time of trial, had one minor child from her previous marriage. Both parties are teachers with net incomes of approximately $900 per month. In a decree filed September 8, 1980, trial court awarded respondent a 1976 Chevy Blazer, a 1973 Chevy Nova, a paint van of little value, a pool table, and $10,000 from the approximately $60,000 net proceeds received from sale of the parties' home. Petitioner was awarded a 1973 automobile and the balance of the home proceeds after payment of bills for garage door and dishwasher repair. The court awarded no alimony and ordered each party to pay his or her own debts, including legal fees. Court costs were equally divided.

I. Scope of Review. Our review is **de novo.** Iowa R. App. P. 4. We will examine the entire record and determine anew those rights on issues properly presented. In re Marriage of Horstmann, 263 N.W.2d 885, 888 (Iowa 1978) (quoting In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974)). While we give weight to the trial court's findings, especially with regard to credibility of witnesses, we are not bound by them. Iowa R. App. P. 14(f)(7).

II. Division of Property. Both parties challenge the $10,000 cash award to respondent. Respondent contends that the proceeds from sale of the house should be equally divided between the parties based on equal contributions by both to the acquisition and preservation of the marital assets. Petitioner alleges that she should receive all the proceeds and the pool table since it was purchased with money that she received from her parents as a Christmas gift.

Our determination of the property division is governed by section 598.21, The Code 1981. We reject any rule based on a percentage division of the assets and must determine what is equitable under the specific facts of this case. In re Marriage of Callenius, No. 64389, slip op. at 10 (Iowa, filed Aug. 26, 1981).

Trial court's findings state: "The evidence shows that petitioner's efforts have been instrumental in acquiring and preserving such assets as the parties now possess, and that such efforts have been substantially superior to respondent's." We agree with these findings. However, even considering petitioner's extraordinary contributions, we nonetheless find no reason to disturb trial court's award of $10,000 to respondent. Respondent's efforts, though arguably minimal, nonetheless deserve recognition. We further find that petitioner agreed to the purchase of the pool table as a gift to the entire family. Thus, we conclude it was appropriate for trial court to award the pool table to respondent based on expected use and enjoyment.

III. Alimony. Petitioner, on cross-appeal, asserts that she should have alimony in the amount of $100 per month for a period of two years. Although allocations for alimony, support, and property have different purposes, the court can properly consider how the property has been divided in assessing the needs and resources of the parties in fixing alimony. In re Marriage of Peterson, 227 N.W.2d 139, 142 (Iowa 1975).

The record reflects that the parties have substantially equal earning abilities. Petitioner makes no showing that her current income is insufficient to meet her needs; she has not sacrificed any career opportunities during the course of this marriage; she has received, as her equitable share, nearly $50,000 in cash proceeds from sale of the parties home. In light of these factors, we conclude trial court properly found petitioner was not entitled to alimony.

IV. Attorney Fees. Petitioner seeks attorney fees both at trial and on this appeal. Attorney fees are not recoverable as a matter of right, but depend upon one party's financial needs and the other party's ability to pay. In re Marriage of Burham, 283 N.W.2d 269, 278 (Iowa 1979). Trial court has considerable discretion in awarding such fees at trial. In re Marriage of Winegard, 257 N.W.2d 609, 618 (Iowa 1977). Likewise on appeal, our primary consideration in making the determination of an award of attorney fees is the parties' resources. In re Marriage of Williams, 303 N.W.2d 160, 167 (Iowa 1981). Assessing the parties' resources in this case, we conclude petitioner is entitled to no award of attorney fees.

We thus affirm all provisions of trial court's decree. Costs of this appeal are assessed against respondent.

AFFIRMED.

All judges concur except Donielson, J., who dissents.

DONIELSON, J. (dissenting)

I dissent.

It is clear from the record that petitioner was superior to respondent as a money manager. Petitioner took great pains to document where all of her income was spent while respondent never even balanced his check book. Petitioner claims that she made the entire downpayment of $13,000.00 on the parties' home (respondent claims he contributed $2,000.00) and that she made all the house payments (respondent claims he gave her money from time to time which helped with the payments and paid other family expenses). Respondent also claims that the $18,000.00 he received from the sale of his previous home was used to pay a $3,500.00 debt which petitioner owed to her father, to purchase new appliances for the parties' home, and to pay other miscellaneous family expenses.

The parties' home was purchased for $35,000.00 in 1973 and was sold shortly before trial for $80,000.00. This leaves $55,000.00 plus interest, approximately $60,000.00, to be divided. In my view, the bulk of the accumulated equity was due to inflation, not due to the tangible efforts of either party. In fact, any appreciated value in the house not caused by inflation is due largely to the improvements that respondent made to the house (eg. painting, sodding the lawn, remodeling the basement, and refinishing the recreation room). I would give respondent $20,000.00 of the proceeds from the sale of the home.