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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-296 / 91-1458

IN RE THE MARRIAGE OF ROGER DALE RENKEN AND DORALENE RENKEN

Upon the Petition of

ROGER DALE RENKEN,

Petitioner-Appellee/Cross-Appellant,

And Concerning

DORALENE RENKEN,

Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Butler County, John S. Mackey, Judge.

The wife appeals and the husband cross-appeals from the economic provisions of the parties dissolution decree. **AFFIRMED AS MODIFIED.**

Donald B. Redfern of Redfern, Mason, Dieter, Larsen & Moore, Cedar Falls, for appellant.

G. A. Cady III of Hobson, Cady & Cady, Hampton, for appellee.

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

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HABHAB, J.

Roger and Doralene Renken were married in January 1973. This was a second marriage for both parties. Roger brought assets worth about $18,000 to the marriage, and Doralene brought assets worth about $9,000.

Roger was born in 1940. He began working for the Asgrow Seed Company in 1966. He is presently plant manager for the facility in Parkersburg, Iowa. Roger's annual income from this employment is $53,130. He has net income of $2,855 per month. Roger also receives an annual bonus of approximately $2,500 per year.

Doralene was born in 1935. By the agreement of the parties, she quit working outside the home in 1975. In 1987, Doralene started to work at Sears Roebuck & Company. She is a part-time assistant manager. Her annual income from this employment is $9,267. She has net income of $623 per month. Doralene has a high school degree. She has been taking classes in the areas of business and accounting at American Institute of Commerce in Cedar Falls. The evidence showed that in a full-time entry-level accounting position Doralene could increase her annual income to between approximately $10,400 to $12,480.

The parties own twelve acres of land which contains their homestead and on which they maintain a hog operation. At one point the parties were severely in debt due to the hog operation, and they have been working to

retire that debt. During the years 1986 to 1990 they lost an average of $11,683 each year in the hog operation.

The parties also own an undivided one-half interest in a Canadian fishing cabin. The property is owned with another couple. The property has a fair market value of $8,000. The total value of the boats and furnishings kept at the cabin is $2,500.

The district court issued its dissolution decree on September 12, 1991. Doralene was awarded net assets worth $33,550. This included her car, one-quarter of the Canadian property, one-half of Roger's 401K plan, and household goods. Roger was awarded net assets worth $55,638. This included the acreage, his car, one-quarter of the Canadian property, one-half of his 401K plan, equipment for the hog operation, and household goods.

The court did not award any spousal support, but in recognition of Doralene's lesser earning capacity, the court ordered Roger to pay her a property settlement of $10,000. Roger may pay in installments of $318 per month for three years. Roger was also ordered to maintain his present life insurance naming Doralene as the beneficiary. In addition, Roger was ordered to pay $6,000 toward Doralene's attorney fees. Doralene appealed and Roger cross-appealed.

I. Scope of Review

Our scope of review in dissolution cases is de novo. In re Marriage of Craig, 462 N.W.2d 692, 693 (Iowa App. 1990). While not bound by the trial court's determination of factual findings, we will give them considerable weight, especially when considering the credibility of witnesses. Id.

II. Alimony

Doralene contends she should have been awarded alimony. She asks for $1,750 per month. She believes the district court did not recognize the full extent of Roger's income. She states that Roger receives income from the hog operation. She points out that Roger receives many benefits from his employment, including health insurance, contributions to his 401K plan, and the use of a pickup truck. As a part-time employee, Doralene does not receive any benefits from Sears. She also states that because of her age and the job market, it will be difficult for her to find a full-time accounting position.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. In re Marriage of Whelchel, 476 N.W.2d 104, 110 (Iowa App. 1991). When determining the appropriateness of alimony, the court should consider the earning capacity of each party. In re Marriage of Oler, 451 N.W.2d 9, 13 (Iowa App. 1989). Also,

the ability of the one spouse to pay should be balanced against the needs of the other spouse. Id.

We note that Doralene's present income is much less than Roger's. Also, because of her age and the fact that she has been out of the job market for several years, it will be difficult for Doralene to greatly increase her income. We also note that at trial Roger agreed to pay alimony, but argued it should not exceed $200 per month. Taking all of these factors into consideration, we conclude Roger should pay alimony of $500 per month until either Doralene retires, remarries, or cohabits with an adult male who is not a relative, or upon the death of either party, whichever occurs first.

III. Property Distribution

Doralene also contends the distribution of property was inequitable to her. She believes the court undervalued the farm assets, which resulted in Roger receiving more of the parties' assets. Doralene asks for the Canadian cabin and an additional $11,000 from Roger's 401K plan. She claims she needs these assets to assure she will have a sufficient fund for retirement.

The partners in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. Russell, 473 N.W.2d at 246. The Iowa courts do not require an equal division or percentage

distribution. Id. The determining factor is what is fair and equitable in each particular circumstance. Id.

We agree with the district court's valuation of the assets. Where the value placed on an asset by the district court is well within the permissible range of the evidence, we will not disturb it on appeal. Id. Considering the $10,000 property settlement to Doralene, she was awarded net assets worth $43,550 and Roger was awarded net assets worth $45,638. We determine the district court's distribution of the parties' property is equitable, and we affirm on this issue. We affirm the $10,000 property settlement, but modify the district court's conclusion that it should be in lieu of alimony.

IV. Life Insurance

In his cross-appeal, Roger claims he should not be required to maintain term life insurance for the benefit of Doralene until she reaches the age of sixty-five. He states that because no alimony was awarded, the insurance is not needed to secure any obligation to Doralene.

We have modified to award Doralene alimony, and Roger may elect to pay the property settlement in installments. We conclude that Roger should maintain an amount of life insurance sufficient to pay Doralene the $10,000 plus the accumulated total of alimony payments payable to her until she reaches the age of sixty-two. If Roger should predecease Doralene, and the $10,000 property settlement

has not been paid, she may collect the unpaid balance from the life insurance proceeds. Also, if Roger predeceases her, she may collect from the life insurance proceeds an amount equal to the unpaid alimony payments which would be payable to her until she reached the age of sixty-two. We modify the dissolution decree to incorporate this modification.

V. Trial Attorney Fees

Roger claims he should not be required to pay $6,000 toward Doralene's appellate attorney fees.

Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Hunt, 476 N.W.2d 99, 103 (Iowa App. 1991). To overturn an award the complaining party must show that the trial court abused its discretion. Id. We conclude the district court did not abuse its discretion here. We affirm the award of trial attorney fees.

VI. Appellate Attorney Fees

Doralene also asks for attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. Id. We determine Roger should contribute $500 toward Doralene's appellate attorney fees. Costs of this appeal are assessed one-half to each party.

AFFIRMED AS MODIFIED.