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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ARLEEN C. DeBERG AND KENNETH W. DeBERG

Upon the Petition of
ARLEEN C. DeBERG,

Petitioner/Appellee/Cross-Appellant

And Concerning
KENNETH W. DeBERG

Respondent/Appellant/Cross-Appellee.

Filed June 4, 1986

6-113
85-751

Appeal from the Iowa District Court for Buena Vista County (No. DM 1063) - Murray S. Underwood, Judge.

Respondent appeals and petitioner cross-appeals from the economic provisions of their dissolution decree. **AFFIRMED AS MODIFIED.**

John P. Duffy, of Connell & Duffy, Storm Lake, for appellant.

Steven D. Hamilton, Storm Lake, for appellee.

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

PER CURIAM

This case involves an appeal by Kenneth DeBerg and a cross-appeal by Arleen DeBerg from the economic provisions of their dissolution decree.

Arleen, age 58, and Kenneth, age 55, were married in 1971. The marriage was the second for both parties. At the time of the marriage Arleen had $14,000 in assets, Kenneth had $106,000.

Arleen has been employed as a nursing home administrator but currently is unemployed. At the time of trial she was hospitalized for a mental disorder.

Kenneth sells insurance on a commission basis. During the years 1980 to 1983 he had an average annual net income of $36,700. Kenneth is diabetic and claims he will be unable to maintain that level of income.

The trial court determined the parties had assets valued at $405,891.26, and the following debts: $17,531 for Arleen's medical bills and $5,000 for a promissory note. In addition, Arleen owned a house and lot in Battle Creek, Iowa, and Kenneth owned an undivided one-fourth remainder interest in a house and four lots in Little Rock, Iowa. This real estate had been given to each party by family and was not valued by the trial court.

The trial court divided the assets so Arleen received household goods, a car, an undivided one-half interest in the parties' joint real estate, approximately $80,000 in cash and approximately $6,000 in an IRA account. The value of these items was $155,475. Kenneth received the other one-half of the real estate, his office furniture, a car, stocks, an IRA account of $7,892, a profit sharing plan of $70,000 and a promissory note of $6,493. The value of these items was $248,945.

Kenneth was also ordered to pay Arleen another $10,000 in cash. The parties were each ordered to pay one-half of Arleen's medical bills and Kenneth

was ordered to pay the parties' $5,000 promissory note. In addition, Kenneth was ordered to pay Arleen $1,200 per month alimony until the death of either party or Arleen's remarriage. Additionally, Kenneth is required to designate Arleen as beneficiary and maintain a $12,500 life insurance policy while alimony is payable.

I. Property Division

Kenneth argues the award is inequitable because it fails to give him sufficient credit for the assets he brought into the marriage. Further he contends the award fails to give sufficient consideration to the fact his earnings were primarily responsible for the acquisition of the balance of the parties' assets. On cross-appeal, Arleen contends she received too few assets.

When reviewing the economic provisions of a dissolution decree, we consider all the provisions together as an integrated whole. In re Marriage of Lattig, 318 N.W.2d 811, 815 (Iowa 1982). As an additional factor in dividing appreciated property acquired before the marriage, we consider whether the appreciation which occurred during the marriage was fortuitous or due to the efforts of the parties. Id. The underlying premise of our analysis is that an equitable division of the appreciated value of the property should be a function of the tangible contributions of each party and not the mere existence of the marital relationship. Id. We are concerned with dividing the assets the parties now have. In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984). A justified property division is one that is equitable under the circumstances. In re Marriage of Stewart, 356 N.W.2d 611, 612 (Iowa App. 1984).

We affirm the division of property which essentially returns to each party the value of assets they brought into the marriage and divides the increase in assets equally between the parties. We modify the division by striking the

provision Kenneth pay Arleen an additional $10,000. In so doing we have considered the assets acquired during marriage have been divided equally. We note Arleen is also receiving a substantial sum of cash while the assets set off to Kenneth include items which may be subject to income tax on liquidation. Further, we note Arleen was awarded a $3,900 note owed by her son of a previous marriage and determined by the trial court to be without value.

We also modify the debt allocation and order Arleen to pay one-half of the $5,000 promissory note to Citizens National Bank. In all other respects the property division is affirmed.

II. Alimony

Kenneth contends the alimony award is excessive. Property division and alimony must be considered together in evaluating their individual sufficiency. In re Marriage of Griffin, 356 N.W.2d at 608. They are neither made nor subject to evaluation in isolation from one another. Id.

Iowa Code §598.21(3)(e)-(f) (1985) provides:

> 3. Upon every judgment of annulment, dissolution or separate maintenance, the court may grant an order requiring support payments to either party for a limited or indefinite length of time after considering all of the following:
> * * *
> e. The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, responsibilities for children under either an award of custody or physical care, and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.
> f. The feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and the length of time necessary to achieve this goal.

Arleen leaves the marriage at an economic disadvantage and should receive alimony. In assessing the alimony award we consider the following:

1 The parties have been married 15 years.
2 Both parties were employed during the marriage, but Arleen left her employment. She offered some assistance to Kenneth's business and assumed the majority of the household responsibilities.
3 Kenneth has income in excess of that necessary for his needs.
4 Kenneth was established in his career when the parties married.
5 Arleen is leaving the marriage with assets. These assets will generate income which can be used for her support.
6 Arleen is suffering from psychological problems for which she is currently hospitalized. This will cause her difficulty in seeking employment.
7 Arleen may need retraining to resume working in her current profession or to assume a new profession.
8 Kenneth has a stressful job. He has a large income because he works long hours. He has a diabetic condition and has indicated the need to decrease his workload.

We determine the alimony should be decreased to $600 per month to continue for 10 years. It should terminate on the death of either party, and on Arleen's remarriage. The court costs on appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.

All judges concur except Sackett, J., who specially concurs.

SACKETT, J. (specially concurring)

I agree with the majority in their decision to affirm the dissolution decree and property division as modified. I also agree with the majority's decision to decrease the amount of the alimony award. However, I would provide the alimony not terminate on remarriage. Arleen devoted 15 years to this marriage. She is suffering from psychological problems for which she is currently hospitalized and most likely will have difficulty obtaining employment. The alimony award being made to Arleen hopefully will assist her with reentry into the job market and will provide her the opportunity to become an economically productive person again. There is no justification for her losing on remarriage alimony awarded for marital service and sacrifice nor is there any less reason for her to seek to become an economically productive creature if she should remarry.