FILED
SEP 3 0 1987
CLERK SUPREME COURT

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**IN THE COURT OF APPEALS OF IOWA**

**IN RE THE MARRIAGE OF KENT HUTCHESON AND MARJORIE RUTH HUTCHESON**

Upon the Petition of )

**KENT HUTCHESON,** )

Petitioner-Appellant, )

And Concerning )

**MARJORIE RUTH HUTCHESON,** )

Respondent-Appellee. )

Filed September 30, 1987

7-390
86-1439

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Appeal from the Iowa District Court for Lee County (No. CD 839(N) 1085), Robert Bates, Judge.

Petitioner husband appeals and respondent wife cross-appeals from the decree dissolving the parties' marriage. **AFFIRMED.**

Gordon M. Liles of Fort Madison for appellant.

Michael J. Schilling of Burlington for appellee.

Considered by Oxberger, C.J., and Snell and Sackett, JJ.

**PER CURIAM** 122

In this appeal, the petitioner husband and respondent wife both challenge the economics of the decree dissolving the parties' marriage. The husband asserts the trial court should not have awarded the wife a lump sum property settlement. On cross-appeal, the wife asserts: (1) that she is entitled to a larger property settlement; (2) that the trial court should have awarded her rehabilitative alimony; and (3) that the trial court should have awarded her attorney fees. She also requests fees for this appeal. We affirm.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. While we are not bound by the findings of the trial court, we do give weight especially where the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7). As in all cases of this type, precedent is of little value and our decision must ultimately depend upon the facts of this particular case. In re Marriage of Giles, 338 N.W.2d 544, 545 (Iowa App. 1983).

The first issue raised by the parties concerns the property settlement. Respondent asserts she is entitled to a larger share of the marital assets. Petitioner claims respondent is not entitled to any property settlement whatsoever.[1] In its decree, the trial court categorized the parties' assets according to the time of their acquisition in relation to the marriage. The division was approximately even with the respondent receiving a larger share in lieu of an alimony award. Based on our review of the record and the parties' arguments,

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[1]The parties' arguments, both at trial and on appeal, are based in large part upon the individuals' conduct during the marriage. Unfortunately, in some dissolution actions the parties feel compelled to reduce the proceedings to an ugly display of name-calling and mud-slinging. This court has no interest in this type of conduct and does not condone it.

we feel that, under the principles delineated in Iowa Code § 598.21 and Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), the property division made by the trial court was fair and equitable to both parties. We, therefore, do not disturb it and affirm that portion of the trial court's decree.

The respondent next asserts that she should have been awarded alimony for two years after the dissolution. The trial court gave the respondent an increased property settlement in lieu of alimony because the court found respondent was capable of functioning and performing well in a variety of jobs. The respondent worked during the marriage as her husband's legal secretary and has sufficient educational experience and training to maintain her current earning capacity. We note the marriage's duration was six years and that the marriage did not adversely affect the earning capacity of the respondent. The trial court's denial of alimony is also affirmed.

Finally, respondent argues she should have been awarded attorney fees for defending the action, and should also be awarded fees for this appeal. The trial court awarded the respondent $250.00 in temporary fees but denied further awards. The petitioner asserts the respondent should be denied all fees because she extended the trial by conducting personal attacks and presenting evidence on extraneous and irrelevant matters. As we noted earlier, some dissolutions become unpleasant and unsavory, but attorneys fees awards are based on the parties' respective abilities to pay. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). It is clear that petitioner has a superior ability to pay and we feel he should contribute to the respondent's appellate fees. We order the petitioner to pay $1,000.00 of the respondent's appellate fees. We affirm the trial court's award of trial attorney fees.

**AFFIRMED.**