

FILED

DEC 30 1981

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF DOCK L. BLANKENSHIP AND RUBY L. BLANKENSHIP

Upon the Petition of	)	
DOCK L. BLANKENSHIP,	)	
Petitioner-Cross-	)	Filed December 30, 1981
Appellant,	)	
And Concerning	)	
RUBY L. BLANKENSHIP,	)	1-310
Respondent-Appellant.	)	2-66150

Appeal from Poweshiek District Court - Phillip R. Collett, Judge.

Respondent wife appeals and petitioner husband cross-appeals from economic provisions of the parties' dissolution decree. Respondent asserts that the trial court's award to her of property, attorney fees, and child support should be increased and that she should be granted alimony. Petitioner asserts that respondent should have been awarded less property, attorney fees, and child support and that an award of alimony would be unjustified. AFFIRMED AS MODIFIED.

Donald J. Charnetski of Tomasek, Vogel & Charnetski, Grinnell, for respondent-appellant.

Roger W. Sunleaf of McNeil & Sunleaf, Montezuma, for petitioner-cross-appellant.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONELSON, J.

Respondent wife appeals and petitioner husband cross-appeals from economic provisions of the parties' dissolution decree. Respondent asserts that the trial court's award to her of property, attorney fees, and child support should be increased and that she should be granted alimony. Petitioner asserts that respondent should have been awarded less property, attorney fees, and child support and that an award of alimony would be unjustified. We affirm as modified.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. Our responsibility is to review the facts as well as the law and to determine rights anew from the credible evidence on properly presented and preserved issues. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977). While we give weight to the findings of the trial court, especially where the credibility of witnesses is involved, we are not bound by them. In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974); 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 on the particular facts of this case. In re Marriage of Kehrli, 241 N.W.2d 923, 926 (Iowa 1976).

I.

The parties were married in 1960 and petitioner filed his petition for dissolution of marriage on March 22, 1978. The trial court's dissolution decree was filed on December 11, 1980. The decree awarded respondent custody of the parties' ten year old child, child support of \$45.00 per week, and \$1000.00 toward her attorney fees, but no alimony. Respondent was also awarded the following property valued at \$83,050.00: the family home and six lots; a 1975 Ford Torino; a \$3000.00 savings certificate; household goods; a lake home including lots; a 1952 Ford truck; carpeting purchased after the parties' separation; a mower; all her personal effects; and \$13,000.00 in cash. The remaining property valued at \$99,400.00 was awarded to petitioner. This property primarily consists of the petitioner's auto towing and repair business (valued at \$84,000.00) and a number of more or less personal items.

II.

The respondent asserts on appeal that the trial court's valuation of the assets and distribution of the property was not equitable. She claims that the house awarded to her was overvalued, that petitioner's business property was undervalued, and that some of the items of property that the petitioner retained were not valued at all (i.e., a 1962

Mercury and a wrecked Corvette).

A justified property division is one that is equitable under the circumstances. In re Locke, 246 N.W.2d 246, 251 (Iowa 1976); In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975). Although frequently an equal division of assets is made, there is no mechanical rule that dictates this result. In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980); In re Marriage of Conley, 284 N.W.2d 220, 223 (Iowa 1979). The factors to be considered in achieving a fair and equitable determination of the property rights of the parties are set forth in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968) (modified to exclude fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972)). When asked to review an individual economic provision of a dissolution decree, we consider all the provisions together as an integrated whole. See In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976). There was conflicting evidence as to the value of the property each party received. If there were any errors in valuation they were off-setting. We believe the trial court's valuation of property and property division was equitable under the circumstances and affirm.

III.

Respondent asserts that the child support awarded was not sufficient and that she should be awarded alimony. At the time of trial, respondent was forty-three years old and had a high school education. She did work outside the home during the parties' marriage, but since 1969 she has had health problems which prevent her from doing heavy lifting and thus limits her employability. In 1979, she earned \$3,442.00 as a babysitter and does not have any other good employment prospects unless she commutes a considerable distance to a neighboring town. While it is true that petitioner also has health problems, he is an employer, not an employee, and can tailor his work to his capabilities. We find that the child support award is sufficient; however, we believe that the decree should be modified to give respondent \$250.00 per month in alimony until respondent remarries or until the death of either party. Petitioner's financial picture is somewhat confused, but it appears he has an income in excess of \$13,000.00 per year and this is sufficient to pay alimony of \$250.00 per month.

IV.

Respondent has requested that petitioner be ordered to pay a larger portion of her attorney fees than the \$1000.00 the trial court awarded. In evaluating such a request, we consider the needs of the party making the request, the ability of the other party to

pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Erickson, 228 N.W.2d 57, 59 (Iowa 1975); In re Marriage of Stom, 226 N.W.2d 797, 800 (Iowa 1975). We deny petitioner's request, but affirm the trial court's prior award of attorney's fees.

The costs of this appeal shall be equally divided.

AFFIRMED AS MODIFIED.