FILED
SEP 29 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

EARL W. ANDERSEN,

Petitioner-Appellant,

vs.

JOAN L. ANDERSEN,

Respondent-Appellee.

Filed September 29, 1981

1-197
2-65423

Appeal from Woodbury District Court - Lawrence W. McCormick, Judge.

Petitioner-husband appeals from the economic provisions of the parties dissolution decree asserting that he should have been awarded a larger portion of the marital property; respondent-wife seeks attorney fees on appeal. AFFIRMED.

Richard L. McCoy, Sioux City, for petitioner-appellant.

N. Richard Willia of Margolin, Ryan, Gildemeister & Willia, Sioux City, for respondent-appellee.

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

Petitioner-husband, Earl W. Andersen, appeals from the economic provisions of the decree dissolving his marriage to respondent-wife, Joan L. Andersen. He asserts that he should have been awarded a larger portion of the marital property. We affirm trial court's judgment.

The parties' forty-one year marriage was dissolved by a decree entered June 6, 1980. Petitioner was sixty years of age and respondent, fifty-seven. Nine children, all of whom were adults at the time of the trial, were born to the marriage. Petitioner was employed as a diesel mechanic, earning approximately $6.50 per hour. Respondent, although employed at various unskilled jobs throughout the marriage, had not been employed outside the home for several years. The parties' family physician diagnosed petitioner as having coronary heart disease and a diaphragmatic hernia. Petitioner testified that the doctor told him he should slow down and that his present work was too hard for him. The same doctor also diagnosed respondent as having coronary heart disease. She suffered a heart attack in 1976 and testified to serious health problems since that time. The doctor's letter, entered into evidence at trial, stated that respondent is permanently disabled and unable to hold gainful employment.

Trial court's decree awarded no alimony to either party. Respondent received the parties' encumbrance-free home, valued at $21,000, subject to a $9,000 judgment in favor of petitioner. She also received a commercial building, formerly used by petitioner for his diesel repair business, valued at $60,000, subject to a $44,259 encumbrance. A lease on the property paid approximately $1,000 per month, but payment on the encumbrance, together with taxes and insurance, resulted in a net figure of approximately $391 per month. Petitioner received other real property and accounts receivable valued by trial court to be approximately $8,100. In summary, petitioner received assets valued at approximately $46,136 and was required to assume indebtedness of approximately $14,136, leaving a net award to him of approximately $32,100. Trial court's decree awarded respondent assets valued at approximately $88,725 and indebtedness totaling $54,460, for a net award of $34,265.

I. Scope of Review. Our review of dissolution proceedings 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 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. Petitioner's primary challenge to the inequity of trial court's award centers on 1) his contention that the accounts receivable are contingent and probably worthless, 2) respondent's receipt of the commercial property, and 3) respondent's receipt of more than half of the equity in the parties' home. Considering all relevant factors which trial court and this court must balance, we find trial court's award to be equitable and will not disturb it on this appeal. Particularly relevant is the fact that no alimony was awarded. Also important, is the state of respondent's health, which renders her incapable of any gainful employment. On the other hand, while petitioner may not be in the best of health, the record supports the conclusion that he is capable of earning $6.50 per hour and will be able to do so in the future. Further, although petitioner claims the accounts receivable are worthless, there is no other evidence in the record to support this bare assertion. Thus, the relative difference in the awards of property to the parties was less than $2,200. We believe this is an equitable division under the facts and, therefore, affirm trial court's award.

III. Attorney Fees. Respondent requests an award of attorney fees for this appeal. The primary consideration in this regard is the parties' resources. In re Marriage of Williams, 303 N.W.2d 160, 167 (Iowa 1981). After reviewing the entire financial situation of both parties, including the fact that respondent received a savings account with a $2,500 balance, we conclude no award is warranted.

Based on the foregoing, we affirm trial court's judgment. Costs of this appeal are assessed against petitioner.

AFFIRMED.