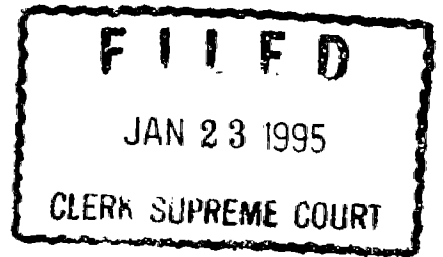


IN THE COURT OF APPEALS OF IOWA

No. 4-586 / 94-0266



IN RE THE MARRIAGE OF CARYL A. FOSTER AND
JAMES E. FOSTER

200200

Upon the Petition of
CARYL A. FOSTER,
Petitioner-Appellant,

And Concerning
JAMES E. FOSTER,
Respondent-Appellee.

Appeal from the Iowa District Court for Bremer County,
Paul W. Riffel, Judge.

Caryl A. Foster appeals from the decree of dissolution
of marriage. **AFFIRMED.**

Gerald B. Carney of Carney & Gohlke, Waverly, for
appellant.

John S. Tremaine, Sumner, for appellee.

Heard by Hayden, P.J., and Sackett and Huitink, JJ.,
but decided en banc.

PER CURIAM

In this appeal petitioner-appellant Caryl A. Foster challenges the economic provision of a decree dissolving her twenty-two year marriage to respondent-appellee James E. Foster. Caryl contends the property division was not equitable and the trial court should not have ordered her alimony automatically terminate on remarriage. We affirm as modified.

Caryl and James were married in 1971. They have three children. The oldest child is now an adult. Wendy, born February 25, 1975, will be a student at Hawkeye Community College. Amy, born December 27, 1977, is in high school and in her mother's physical care.

James, forty-four at the time of trial, has a high school education and is a self-employed trucker. He has annual income of between \$50,000 and \$60,000.

Caryl, thirty-eight at the time of trial, has a general education degree. During the marriage, Caryl cared for the home and the children and held no full-time employment outside the home.

The trial court divided the parties' property and debts; ordered James to pay child support for Amy of \$672 a month and pay Wendy's tuition at Hawkeye Community College. James was ordered to pay Caryl alimony of \$500 a month for five years, the alimony to terminate on Caryl's death or remarriage or James's death.

000001

Caryl contends the property division was not equitable. She contends James received some \$20,000 more in equities than did she and she should have an offsetting \$10,000 cash award. James admits the property division was not equal but contends the difference between what each received was \$10,000, not \$20,000. James justifies the fact the division is not equal by pointing to the trial court's reason for not making an equal division, that being, he needed certain business assets in order to generate the necessary income to pay alimony and child support and to support himself.

The partners in the marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. In re Marriage of Russell, 473 N.W.2d 244, 246 (Iowa App. 1991). We do not require an equal division or percentage distribution. Id. Rather, the determining factor is what is fair and equitable in each circumstance. Id. The distribution of the property should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1991). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983). We consider property division and alimony together in evaluating their individual sufficiency. In re Marriage of Dahl, 418 N.W.2d 358, 359 (Iowa App. 1987); In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984).

This is a situation where a more equal property division is equitable. We modify to provide James pay

000212

Caryl a property settlement of \$5000 to be paid in annual installments of \$1000; the first installment due six months from the date of this decision. Interest shall accrue on unpaid balances from the date of the decree at the rate of five percent per annum. In all other respects, we affirm the property division.

Caryl next contends the alimony she received should not terminate on her remarriage. She asks either that we provide alimony not terminate or we strike the provision alimony automatically terminate, thereby allowing the issue to be determined by the factors existing should she remarry.

Spousal support is provided for under Iowa Code section 598.21(3). Whether spousal support is justified is dependent on the facts of each case. See In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). In assessing a claim for alimony, we consider the property division and alimony together in determining their sufficiency. See In re Marriage of Lattig, 318 N.W.2d 811, 815 (Iowa App. 1982). Entitlement to spousal support is not an absolute right. In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976). An alimony award is justified when the distribution of the assets of the marriage does not equalize the inequities and economic disadvantages suffered in marriage by the party seeking the alimony who also has a need for support. In assessing Caryl's claim, we look at all the factors of 598.21(3).

000000

We affirm the trial court in all respects.

AFFIRMED.

All judges concur except Sackett and Huitink, JJ., who concur in part and dissent in part.

SACKETT, J. (concurring in part; dissenting in part)

I concur in part and dissent in part. I concur with the majority in all respects except I would strike the provision the alimony terminate on remarriage.

Where alimony is ordered in Iowa, the rule is a subsequent remarriage of the spouse receiving the alimony does not automatically terminate the alimony obligation but, for it to continue, the receiving spouse must show extraordinary circumstances require the alimony payments continue. See In re Marriage of Shima, 360 N.W.2d 827, 828 (Iowa 1985); In re Marriage of Schober, 379 N.W.2d 46, 47 (Iowa App. 1985). I agree with Caryl that it is not fair to prejudge at this time the circumstances that may exist should she remarry. I would strike the provision the alimony terminate on remarriage.

Huitink, J., joins this partial dissent.