

IN THE COURT OF APPEALS OF IOWA

FILED

APR 20 1988

G. ROYSTER
CLERK SUPREME COURT

IN RE THE MARRIAGE OF DONNA M. ROYSTER AND DONALD G. ROYSTER

Upon the Petition of)

DONNA M. ROYSTER,)

Petitioner-Appellee,)

And Concerning)

DONALD G. ROYSTER,)

Respondent-Appellant.)

Filed April 20, 1988

8-100
87-1030

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Appeal from the Iowa District Court for Webster County (No. DM-3925),
Louie F. Beisser, Judge.

Respondent husband appeals the decree dissolving the parties' marriage.
AFFIRMED AS MODIFIED.

Richard Karr of Karr, Karr & Karr, Webster City, for appellant.

Kurt T. Pittner, Fort Dodge, for appellee.

Considered by Oxberger, C.J., and Schlegel and Hayden, JJ.

PER CURIAM

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Donald Royster appeals the decree dissolving the parties' marriage. He asserts: (1) that the trial court should not have awarded alimony, or at least should have provided for the alimony to terminate upon his death or Donna Royster's remarriage; (2) that the trial court should not have awarded Donna attorney fees; (3) that the property division is inequitable; and (4) that the trial court erred in valuing the parties' house. Donna requests attorney fees for this appeal. We affirm as modified.

We review de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially where the credibility of witnesses is concerned, but we are not bound by them. Iowa R. App. P. 14(f)(7).

The parties were married for thirty years and have three adult children. During the marriage, Donald farmed, drove a truck, and ran a seed corn business, while Donna took care of the children and assisted in the farming operation. Donna is fifty-one years old and is trained as a hairstylist. Donald is fifty.

Donald claims the trial court should not have awarded alimony and, at the very least, should have ordered the alimony to end upon his death or Donna's remarriage. He argues he does not have the financial ability to pay alimony. He makes the same argument in regard to paying Donna's attorney fees.

Upon our de novo review, we conclude Donald has the ability to pay Donna \$500 a month in alimony as ordered by the trial court. It is very difficult from the record to determine Donald's ability to pay. Donald is a farmer and has most of his money in equipment and other farm assets. The record does not reveal what Donald's monthly or yearly cash flow is. We therefore must base our analysis upon an examination of his net worth.

A review of the record reveals wide disparities in Donald's net worth depending on which financial statement is examined. Two financial statements

recently filed with local lenders show net worths of \$34,000 in April 1986 and \$110,950 in June 1986. The difficulty in determining Donald's net worth is further compounded by Donald's lack of credibility. We also conclude, as did the trial court, the financial statement given to the Farmers Savings Bank is the most accurate representation of Donald's financial condition.

This financial statement shows Donald's net worth to be \$109,658.60. Donald will also be receiving payments in the amount of \$20,000 from federal farm programs. Donald was unsure of what his 1987 payments would be. The record also shows Donald often deals in large cash transactions, and has little difficulty in securing credit or generating cash to service his debt.

Donna, on the other hand, is trained as a hairstylist and has a limited earning capacity. She is currently receiving instruction to become a hairstylist instructor. Employment opportunities, however, are bleak at this time. She needs an alimony award in order to survive. She has no retirement or pension plan to ease her retirement years. We therefore hold the trial court's award of alimony in the amount of \$500 a month to be fair and equitable. We do, however, modify the alimony award to end upon Donna's death, Donald's death, or Donna's remarriage.

We also find Donald has the ability to pay Donna's trial attorney fees. The trial court did not abuse its discretion in so ordering. See In re Marriage of Stanley, 411 N.W.2d 698, 702 (Iowa App. 1987).

Donald claims the property division was inequitable and that the trial court erroneously valued the parties' home. He seems to argue that since the house was attached to the realty, which is owned by Donald's father, the trial court should not have valued the property as highly.

We find no problems with the trial court's settlement. There is no specific percentage which must govern the division of assets on divorce; what is equitable

must be determined under the facts of each case. In re Marriage of Stickle, 408 N.W.2d 778, 781 (Iowa App. 1987). The trial court awarded Donald all the machinery, along with its associated debt. The parties' house was the main asset of the marriage. The court valued the home at \$60,000 after deducting the value of the father's realty. This value was the same as the value given by Donna's expert. It was within the range of values given at trial and we will not disturb it. See In re Marriage of Weidemann, 402 N.W.2d 744, 748 (Iowa 1987).

We also conclude it would be inequitable to not allow Donna to share in the house. These parties were married thirty years, Donna made a substantial contribution in accumulating the assets, and she is entitled to it.

Donna requests attorney fees for this appeal. Attorney fees on appeal are not a matter of right, but rest within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We determine Donald has the ability and should contribute to Donna's fees. We therefore order him to pay \$1,000 of Donna's appellate attorney fees. Costs are taxed to Donald.

AFFIRMED AS MODIFIED.