FILED
FEB 26 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF HARLAN K. BAKER AND ROBERTA LOCKWOOD BAKER

Upon the Petition of)
HARLAN K. BAKER,) Filed February 26, 1980
Petitioner-Appellee,)
and Concerning)
ROBERTA LOCKWOOD BAKER,) 0-2
Respondent-Appellant.) 2-61889

Appeal from Story District Court - M. D. Seiser, Judge.

Respondent appeals the economic provisions of the decree dissolving her marriage to petitioner. AFFIRMED.

C. A. Pasley of Ames, Iowa, for respondent-appellant.

Jere C. Maddux of Ames, Iowa, for petitioner-appellee.

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

PER CURIAM

Respondent Roberta Baker appeals the economic provisions of the decree dissolving her marriage to petitioner, Harlan Baker. We affirm.

Roberta and Harlan were married in 1968. It was the second marriage for both parties. At the time of their marriage Roberta and Harlan were ages 40 and 42 respectively. Each party adopted the other's youngest child,[1] and at the time of trial only one child, Robert, had failed to achieve majority. The trial court awarded custody of Robert to Harlan, but awarded child support of $300 per month to Roberta while Robert continued to reside with her.[2] The decree ordered the parties' residence property to be sold within six months after Robert completes his secondary education with the net proceeds to be divided equally between them. Of the remaining marital assets, Roberta was awarded the following items: the Relax-A-Lot business and the $16,000 worth of certificates of deposit securing the indebtedness thereon; the Oran Mutual Telephone stock valued at $3,000; the $3,400 remainder due on the contract sale of the parties' previous business; and various items of personal property and home furnishings. Harlan received the following marital property: his retirement fund, with the present value for the portion accruing during the parties' marriage being approximately $17,500;[3] the life insurance policies having a cash surrender value of $500; an income tax refund of $4,700; a boat and trailer, a motorcycle and a golf cart having a combined value of $2,500; and various items of personal property and home furnishings. Additionally, each party was awarded the automobile in their possession. Although no award of permanent alimony was provided, the trial court required Harlan to make house payments[4] on the parties' residence property until it was sold and then to provide Roberta temporary financial assistance of $300 per month through March 1979, $200 per month through March 1980, and $100 per month through December 1980.

On appeal Roberta contends the trial court erred in failing to award her additional marital property and permanent alimony. Our review is **de novo**. Iowa R. App. P. 4. In

---

1 At the time of the marriage, Harlan had four minor children living with him and Roberta had two minor children living with her. Harlan adopted Sean Allen Baker, born March 14, 1959, and Roberta adopted Robert James Baker, born December 1, 1960.

2 The child support payments are to terminate at such time as Robert, who was age seventeen at the time of trial, either completes his secondary education, marries, or becomes self-supporting.

3 The major portion of this fund has accumulated since the parties were married. Its face value is approximately $35,000, but the present value of these benefits is substantially less.

4 The monthly payments Harlan was required to make were: $118.17 mortgage; $24.41 house insurance; and $141.62 taxes.

order to determine a fair and equitable division of the marital assets, we apply the guidelines of Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), as modified by In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972). Although alimony and the allocation of property rights have a different purpose, they are closely related in the matter of determining the amount to be allowed. Schantz, 163 N.W.2d 405. The question becomes whether the property award and alimony, when taken together, constitute an equitable award. In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975). In reviewing the evidence presented, we give weight to the trial court's findings of fact but we will not abdicate our function as a trier de novo on appeal. Iowa R. App. P. 14(f)(7).

As a basis for her claim that she is entitled to an additional award of property Roberta asserts the remaining gifts to her from her father, $16,000 worth of certificates of deposit[5] and $3,000 worth of Oran Mutual Telephone stock, should be set off for her and the remaining marital assets should be divided equally between the parties. The contributions of each party to the net worth of property acquired "by labor or otherwise" is a relevant factor in the postmarital criteria for determining an equitable division of the marital property. Schantz, 163 N.W.2d at 405. Although the trial court may give special consideration to the spouse who received a gift when dividing up specific items of marital property, the value of the gift may be considered in computing the value of the property available for distribution. See Locke v. Locke, 246 N.W.2d 246, 252-53 (Iowa 1976).

The trial court attempted to divide the total marital property equally between the parties. On the basis of the record before us, we believe the trial court's distribution of assets was equitable. This was a second marriage for both parties, lasting approximately ten years. The record indicates both parties contributed assets of substantially equal value to the marriage. At the time of trial, both parties enjoyed relatively good health. Harlan was employed as an associate professor at Iowa State University with taxable income of $28,770. Roberta, a former school teacher,[6] was

---

[5] The record discloses Roberta received $24,000 in gifts from her father in 1970. She converted these gifts into cash and invested in certificates of deposit. The $16,000 is the amount of these certificates remaining.

[6] Roberta had taught in the Ames public schools for many years prior to her marriage to Harlan. She continued to teach for approximately two and a half years after their marriage. She allowed her teaching certificate to expire after she quit teacher. Although she could regain the certificate with further education, the evidence indicates it would be unlikely she would find a teaching position.

operating Relax-A-Lot, an unprofitable health club business.[7] Due to the continued improvement of the monthly income statements, Roberta had expressed a desire to operate the business for an additional two years in the hope she could make it into a profitable enterprise. The trial court provided for assistance payments from Harlan to allow her the opportunity to do so. In light of the circumstances of the marriage, we decline to distrub the trial court's distribution of property.

We conclude that this is not a proper case for an award of permanent alimony. Roberta was awarded an unprofitable business that has been showing steady progress in the quest for profitability. Should this business endeavor not prove to be successful, Roberta testified that she felt she would be able to secure employment in a bank. We believe Roberta appears to have sufficient skills so as to be able to provide adequately for herself and to be self-sufficient. We have considered all issues presented and find no basis for reversal.

AFFIRMED.

---

[7] The trial court found this business was "not profitable, at this point, by any accounting standard." Our review of the evidence supports this conclusion.