FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF WALTER LeROY POHL AND PRISCILLA ANN POHL

Upon the Petition of)
WALTER LeROY POHL,)
Petitioner-Appellee,)
And Concerning)
PRISCILLA ANN POHL,)
Respondent-Appellant.)

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Filed March 23, 1988

8-99
87-1028

Appeal from the Iowa District Court for Story County (4680), M.D. Seiser, Judge.

Respondent wife appeals from the dissolution of marriage decree. **AFFIRMED AS MODIFIED.**

Jane M. Mathison of Pasley, Singer, Pasley, Holm, Timmons & Mathison, Ames, for appellant.

Jere C. Maddux of Newbrough, Johnston, Brewer, Maddux & Nadler, Ames, for appellee.

Considered en banc.

PER CURIAM

This appeal is from the dissolution of a 30-year marriage. Respondent (Priscilla) contests the property division and claims she should have been awarded spousal support and attorney fees for trial, and she requests attorney fees on appeal. Walter, at age 48, took early retirement from John Deere Company effective May 30, 1986. At time of trial Walter remained retired and was in good health. Priscilla was employed three days a week and suffered from degenerative arthritis. Her take-home pay is $430 per month. In addition to Priscilla's salary, she earns $400 per month from her farm land and $100 monthly from investments. Walter receives $1,744 net a month retirement income. The parties' five children are grown and on their own.

The trial court awarded Priscilla her interest in $49,000 worth of farm land and $16,000 in investments and savings, which reflect her inheritance. She was also awarded the equity in the parties' house, valued at $32,000, household furnishings, a 1983 automobile, money due from the sale of another auto, her life insurance, bank accounts, and her IRA. Walter was awarded his John Deere retirement, credit union savings account valued at $4,800, a Ford truck valued at $9,675, his life insurance, a draft account worth $1,356, stock worth $708, his IRA, and items of personal property. Priscilla's share in the trial court's division of the parties' assets exceeded in value ($9,300) over Walter's share. This does not include Priscilla's inheritance or Walter's pension.

Our review is de novo. Iowa R. App. P. 4.

After considering and balancing all of the relevant factors enumerated in section 598.21 of the Iowa Code, we modify the decree and provide for Walter to pay Priscilla $400 per month alimony until she remarries or cohabits with another man or the death of either Walter or Priscilla. Also, Priscilla shall

remain named as the designated survivor of Walter's retirement pension annuity. The trial court's decree is affirmed in all other respects.

Each party shall pay his or her own attorney fees on appeal. Costs of appeal are taxed against Walter.

AFFIRMED AS MODIFIED.

Oxberger, C.J., and Schlegel, Hayden, and Sackett, JJ., concur; Habhab, J., and Donielson, J., dissent.

HABHAB, J. (dissenting)

I respectfully dissent. I would affirm the trial court.

Property division and alimony must be considered together and cannot be determined in isolation from each other. In re Marriage of Griffin, 356 N.W.2d 606 (Iowa App. 1984). The trial court did precisely that.

In determining the division of marital assets, the trial court took into consideration the question of alimony for Priscilla along with the claim she made to Walter's pension. In awarding the marital assets, Priscilla was given a larger portion of the marital assets in lieu of alimony. The trial court handled the always delicate issue of alimony in that manner to avoid, as the trial court put it, "the possibility of further litigation between the parties."

Quoting further from the trial court's ruling:

> It is doubtful if she would be entitled to alimony if she received one-half of his pension, because in that case she would have $1,150 from his pension, $400 a month from the farm, $400 a month from her earnings, and $100 a month from her investment income, whereas Mr. Pohl would only have $1,150 a month in income. She would also have a substantially greater net worth than Mr. Pohl would have.
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> Because of her health and the length of their marriage, Mrs. Pohl would be entitled to alimony except for the fact that the income from her earnings, from her privately held property and the award to the homestead place her in substantially a better economic position than Mr. Pohl. Because of the right to social security, disability benefits this is true even if her health should deteriorate. The larger property settlement in lieu of alimony will avoid the possibility of further litigation between the parties. It is appropriate in light of the factors that should be considered in such cases. Section 598.21(3).

For us to now award her alimony would be inequitable. I would affirm the trial court.

Donielson, J., joins this dissent.