IN THE COURT OF APPEALS OF IOWA

No. 7-767 / 97-419

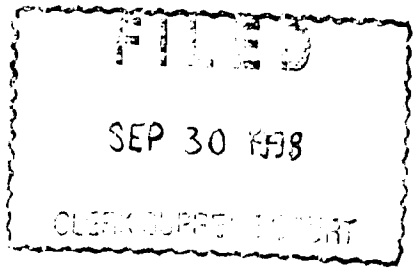
IN RE THE MARRIAGE OF JO ANNE JONES AND THOMAS BRUCE JONES

Upon the Petition of
JO ANNE JONES,

Petitioner-Appellee\Cross-Appellant,

And Concerning
THOMAS BRUCE JONES,

Respondent-Appellant\Cross-Appellee.



Appeal from the Iowa District Court for Black Hawk County, Robert E. Mahan, Judge.

Thomas Jones appeals, and JoAnne Jones cross-appeals, from the provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Marion L. Beatty of Miller, Pearson, Gloe, Burns, Beatty & Cowie, P.C., Decorah, for appellant.

Thomas W. Langlas of Gallagher, Langlas & Gallagher, P.C., Waterloo, for appellee.

Considered by Streit, P.J., and Vogel, J., and McCartney, S.J.* Mahan, J., takes no part.

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

McCARTNEY, S.J.

Thomas Bruce Jones (Thomas) appeals from the decree of dissolution entered by the district court. Jo Anne Jones (Jo Anne) cross-appeals from that decree.

We affirm the decree of dissolution as hereinafter modified.

The parties were married on June 19, 1971. Jo Anne was forty-five years of age at the time of trial in 1996; Thomas was forty-eight years of age at trial.

The parties have a daughter who was twenty-one years of age at the time of trial and a son who was eighteen years of age at that time.

Jo Anne filed her petition for dissolution of marriage in October of 1995. The district court, by decree, dissolved the marriage in December of 1996 and, by supplemental decree, provided for alimony to be paid to Jo Anne by Thomas and a division of the property of the parties. The issues on appeal are economic. Thomas asserts that both the alimony and division of property made by the district court are unwarranted under the record, and Jo Anne asserts that those provisions were inadequate.

The parties have accumulated substantial assets during the course of this twenty-five-year marriage. Thomas received his baccalaureate degree in 1970, and Jo Anne received a baccalaureate degree in 1973 and received a master's degree in 1991. Both are now and have been employed. Jo Anne is a foreign language teacher in the public school system, and Thomas is the president of a mutual insurance association. He also owns an insurance services company, presumably an agency. The agency is

a wholly-owned corporation and these two positions, together with some director's fees and farm income yield Thomas approximately $125,000 a year. Jo Anne earns $34,000 a year from her annual teaching contract together with various benefits including IPERS.

The parties have during their marriage acquired assets valued at approximately $1,642,000. They agreed on most all valuations of these assets with several exceptions. Expert testimony gave the insurance agency two separate values. The witness for Thomas valued it at $717,000, while the expert witness for Jo Anne valued it at $816,000. The district court accepted the lesser figure.

Jo Anne owns a farm valued at $140,000 and a savings account of $7,210. Both were gifts to her from her parents and are not marital assets.

In making the distribution of assets, the district court, by agreement of the parties, gave the agency to Thomas at $717,150. In addition thereto, the court awarded Thomas the homestead and a building lot with a combined value of $184,000 and two parcels of farmland and a machine shed at $169,700. Thomas also received farm equipment valued at $23,000. A retirement account possessed by Thomas was valued in excess of $300,000. Thomas received $100,239, the balance of $200,000 in this retirement account was awarded to Jo Anne.

Thomas also received current assets consisting of a checking account of $14,676, a small investment company account of $739, and grain worth $20,850. The balance of the grain held by the parties in the sum of $35,000 was awarded to

Jo Anne. As a consequence, Thomas received assets totaling approximately $1,230,354.

In addition to the vested interest in the retirement account of $200,000, Jo Anne received her IPERS account of $11,004 and two IRA accounts of $28,697. She received current assets as follows: Life Investors of $7,180; TransAmerica annualized value of $31,741; an account at A. G. Edwards brokerage firm of $5,484; two annuity accounts at American Mutual of $33,543; MidAmerican Energy common stock valued at $21,190; two certificates of deposit of $16,892; miscellaneous smaller investments of approximately $12,440; a checking account of $1,500; grain valued at $35,000. She also received an automobile of the value of $6,725.

Thus, Jo Anne received $411,396. In addition, she received the farm and account given to her by her parents of a total value of $147,200.

To equalize the marital property received by Jo Anne with that received by Thomas, who received $1,230,354, the district court granted Jo Anne a $300,000 cash settlement payable at the rate of $30,000 a year for ten years with interest on the unpaid balance at 6%.

Jo Anne contends the division is inadequate and Thomas contends it is too much.

The district court granted Jo Anne alimony, initially setting it at $1,000 a month for ten years and then, subsequent to a request made under Iowa Rule of Civil

Procedure 179(b), reduced that to five years. Thomas asserts this is too much while Jo Anne wants it returned to ten years at $2,000 a month.

The foregoing sets out in sufficient detail the issues between the parties.

Our review is de novo. We give considerable credence to the trial court findings because it has had the opportunity to observe the parties and judge their credibility. *In re Marriage of Steele*, 502 N.W.2d 18, 20 (Iowa App. 1993); Iowa R. App. P. 4.

Adding to the property Jo Anne receives now of a value of $411,396, the $300,000 in cash settlement gives Jo Anne $711,396. Thomas receives assets worth $1,230,354 and reducing that by the $300,000 cash settlement he is to pay reduces his property to $930,354. The difference between these two eventual settlements is $218,958. These marital assets were practically all acquired during this twenty-five year marriage. The parties were both quite young when married and they have together raised a family.

Under these circumstances an equitable division of property is required. *In re Marriage of Hitchcock*, 309 N.W.2d 432, 438 (Iowa 1981). In making such distribution we take into account any disparity in the earning capacities of the parties. *Id.* Absolute equality is not required. *In re Marriage of Webb*, 426 N.W.2d 402, 405 (Iowa 1988).

We find this discrepancy of $218,958 to be too large and we find that Thomas should pay an additional $80,000 over and above the $300,000 directed by the trial

court. This will give Jo Anne $791,396 and Thomas would be at approximately $850,354. This additional amount should be added to the $300,000 and paid to Jo Anne at the same rate of interest over the remaining years of the initial settlement as decreed by the district court. Parenthetically, we note that the district court chose an insurance agency value some $100,000 less than the value used by Jo Anne's expert witness.

Thomas maintains and has maintained and paid premiums on certain insurance trusts created for the two children and has further agreed to pay for post-secondary education. These two items will tend to equalize the distribution.

Excluding the cash settlement to be received by Jo Anne over a period of years, there are approximately $223,556 of assets that are not available to her at this time consisting of the retirement account, her IPERS, and IRA accounts. Thomas suggests that he will be in a relatively non-liquid position. However, within his solely-owned agency there are almost $400,000 in current assets, i.e. stocks, bonds, and various accounts. It was suggested during trial that Thomas, who receives the family home, would sell it as not being suitable for his current needs. This home has a value agreed upon by the parties of $175,000 and, presumably, that will be available to him in the event he chooses to live in smaller quarters. These two items add considerably to his liquidity.

Permanent alimony is designed to provide support for the other spouse in lieu of the legal obligation to provide such support. *In re Marriage of Spiegel,* 553

N.W.2d 309, 319 (Iowa 1996). It is not, however, an absolute right. *In re Marriage of Wessels,* 542 N.W.2d 486, 490 (Iowa 1995). We also take into account the distribution made of the property in assessing the resources of the parties in fixing alimony. *In re Marriage of Sparks,* 323 N.W.2d 264, 267 (Iowa App. 1982).

Jo Anne has received two degrees during the marriage, including a master's degree. She is gainfully employed and enjoys good health. In addition to that, she will have the income from the cash property settlement, the income realized from approximately $190,000 in assets initially received by her; her IPERS and IRA accounts and the retirement account generate income for her future use. She is relieved from educational expenses of the children except those which she wishes to assume voluntarily.

Her unearned income from investments, including the yield on her cash dissolution settlement (but excluding the income from her various retirement accounts), could reasonably result in $30,000-$35,000 a year. In addition to that, she has other income from her non marital assets.

Under these circumstances, we believe that support alimony at the rate of $1,000 per month for a period of thirty months is adequate. The property settlement and such alimony during this transitional period will give her a living standard comparable to that enjoyed during marriage. *In re Marriage of Wertz,* 492 N.W.2d 711, 714 (Iowa App. 1992).

Based upon the foregoing, we therefore affirm the judgment of the district court except as hereinbefore modified.

AFFIRMED AS MODIFIED.