FILED
MAY 28 1992
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-549 / 91-0523

IN RE THE MARRIAGE OF ARDITH E. OLSON AND GERALD L. OLSON

Upon the Petition of

ARDITH E. OLSON,

734

Appellee,

And Concerning

GERALD L. OLSON,

Appellant.

Appeal from the Iowa District Court for Fayette County, Peter Van Metre, Judge.

Gerald Olson appeals from certain economic provisions of the decree of dissolution entered by the district court. **AFFIRMED.**

J.D. Villont of Donohue Law Office, P.C., West Union, for appellant.

Jeffrey E. Clements, West Union, for appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

HABHAB, J.

Gerald and Ardith Olson were married on June 29, 1965. The Olsons have three children, all of whom were adults at the time of dissolution trial. The parties lived in West Union, Iowa, during the marriage.

Gerald was forty-nine years old at the time of the district court's decree. He was employed during most of the marriage as a truck driver/route salesman. He presently works for H & H Institutional Foods where he earns $8.39 per hour. He has had some overtime in the past which has increased his net monthly income to about $1,350. Gerald testified he has health problems, but has not received medical treatment for them.

Ardith was almost forty-four years old at the time of the district court's decree. She did not work outside the home during most of the marriage, except for some work as a seamstress. She still earns about $60 per month for her work as a seamstress. Also, Ardith began to work outside the home in about 1982. She presently works in the deli department of a supermarket, where she earns $4.80 per hour; her net monthly income from this employment is $546.

The district court found Gerald was very secretive about his finances throughout the marriage. Further, Gerald gave Ardith $40 per week for groceries to feed the children. She was expected to pay for the clothing and school expenses of the children, and some of the utilities from her earnings as a seamstress.

At the same time, Gerald acquired a substantial gun collection, several boats, a vintage airplane, a snow mobile, and other items. After the parties moved from a small mobile home to a house, Gerald paid an $18,000 balloon payment on the house in cash. Also, during the marriage Gerald inherited an 85-acre farm, some household goods, and $3,000 cash.

The district court awarded Gerald almost all of the parties' assets and debts. Ardith was awarded some household goods and a 1970 Plymouth. Gerald was ordered to pay Ardith a property settlement of $25,000. Gerald was also ordered to pay Ardith $200 per month for thirty-six months as transitional alimony. This obligation is to terminate upon the death of either party or Ardith's remarriage. Gerald now appeals.

Our scope of review in dissolution cases is de novo. In re Marriage of Craig, 462 N.W.2d 692, 693 (Iowa App. 1990). While not bound by the trial court's determination of factual findings, we will give them considerable weight, especially when considering the credibility of witnesses. Id.

Gerald contends Ardith has no need for transitional alimony. He believes she can support herself. Gerald also believes Ardith's standard of living has improved since the parties separated, because she can now spend her money as she pleases. He argues Ardith is not entitled to a better

standard of living now than she had while the parties were married.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. In re Marriage of Whelchel, 476 N.W.2d 104, 110 (Iowa App. 1991). Alimony is an allowance to the ex-spouse in lieu of a legal obligation to support that person. In re Marriage of Oler, 451 N.W.2d 9, 13 (Iowa App. 1989). When considering the appropriateness of alimony, the court should consider the earning capacity of each party. Id. Also, the ability of the one spouse to pay should be balanced against the needs of the other spouse. Id.

We affirm the district court's award of $200 per month for thirty-six months as alimony to Ardith. The fact that Gerald diverted most of the parties' income to his own uses, thus causing a reduced standard of living for Ardith, should not now excuse him from paying alimony. Gerald has the ability to pay alimony. Ardith will need some financial help for a time to help her set up a new household.

Gerald also contends the district court erred in its division of the parties' property. He claims the court should not have divided his inherited property or property he brought to the marriage. Gerald states that if these items are set aside to him, the remaining marital assets have a value of $34,000. He asks that Ardith's property settlement be reduced to $17,000.

The partners in a 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). The Iowa courts do not require an equal division or percentage distribution. Id. The determining factor is what is fair and equitable in each particular circumstance. Id.

We agree with Ardith that even if Gerald's inherited property is set aside to him, he received marital assets valued at $51,150. This includes the homestead, vehicles, guns, airplane, motorcycle, boats, snowmobile, and Gerald's pension. Gerald admits Ardith received marital assets valued at $1,200. Considering the property settlement of $25,000, Gerald was awarded $26,150 and Ardith was awarded $26,200. We conclude this property division is equitable. We affirm the property division as set forth by the district court.

Costs of this appeal are assessed to Gerald.

AFFIRMED.