FILED
DEC 28 1977
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

Upon the Petition of	)	
ROBERT D. DANICO,	)	Filed December 28, 1977
Appellee,	)	
And Concerning	)	219
VICTORIA J. DANICO,	)	2-58721
Appellant.	)	

Appeal from Scott District Court - Max R. Werling, Judge.

Respondent wife appeals the economic provisions of the dissolution of marriage decree. - Affirmed.

Robert D. Danico, pro se, Appellee.

Victoria J. Danico, pro se, Appellant.

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

PER CURIAM

Respondent, Victoria J. Danico, appeals the economic provisions of the dissolution of marriage decree. Specifically, she alleges the property settlement was inequitable and that the trial court erred in failing to award alimony. She also asks for attorney fees on this appeal. Our review is de novo. Rule 4, Rules of Appellate Procedure.

In matters of property settlements and alimony, we are guided by the criteria set forth in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except that the fault concept has been eliminated by In re Marriage of Williams, 199N.W.2d 339, 345-46 (Iowa 1972). Further, precedents are of little value and determination of what is right depends upon the facts of each case. In re Marriage of Romig, 207 N.W.2d 780, 783 (Iowa 1973). While we give weight to the trial court's findings of fact, we are not bound by them. Rule 14(f)(7), R. App. P.

Victoria and petitioner, Robert D. Danico, were 58 and 55 respectively and had been married 32 years at the time of trial. The parties' children were adults, self-supporting and there was no issue as to custody or support. At the time of the marriage, Robert had no appreciable assets, while Victoria had accumulated approximately $12,000 in savings. The parties used these savings and a substantial inheritance from Victoria's father to accumulate a modest estate. However, the parties disagree as to the value of the marital assets as well as to the relative degrees of their own contribution. At the time of the dissolution, Victoria requested the appointment of a master for the purpose of appraising real estate and auditing the various corporate books in order to value the Danico assets. The court ordered each parcel of real estate separately appraised and each corporation's value was determined using the actual value of the real estate as appraised. Using these figures, the trial court found the Danicos' net worth to be in excess of $381,000.

The trial court awarded Victoria the parties' residence, an apartment complex and some personal property. The house was valued at $52,500 and the apartment complex at $375,000 with a mortgage of $178,785. The total value of the property received by Victoria under the decree was $251,905. Robert received the remainder

of the parties' investment property and some personal property. He was also ordered to pay all other outstanding debts not specifically enumerated in the decree. The value of the assets awarded to Robert was $129,203.

Victoria's principal concern on appeal concerns the property settlement. She argues that it is inequitable because she did not receive, as a set-off from the marital assets, the amount she contributed in the form of an inheritance from her father. She claims the trial court erred in cancelling the promissory notes issued from Robert to Victoria which represent the amount of the inheritance contributed and used in building the Danicos' estate. At the time of trial the unpaid principal and interest amounted to $93,121.84. Even if we accept Victoria's premise that her inheritance should be set-off, the property settlement is not inequitable. The set-off would reduce the marital estate from $381,108 to $287,986.16. If it were evenly divided, Robert's share would be $143,993.08 and Victoria's share, including her inheritance, would be $237,114.92. Under the decree, Victoria actually received $251,905.

Her second complaint is that the land owned by Middle Road Investment, Inc. was undervalued by the appraisers by $515,000 based on its currently listed sale price of 70 cents per square foot. Robert's 10% ownership would amount to $51,500 assuming Victoria's estimation is correct. This would increase the marital assets from $287,986 to $339,486, excluding Victoria's inheritance. Assuming Victoria's share was $251,905 less her inheritance or $158,783, Robert's share would then be $339,486 less $158,783 or $180,703. This gives Robert 53.2% and Victoria 46.8% of the marital assets without including the $93,121.84 representing her inheritance. Clearly the property settlement from this standpoint is neither inadequate nor inequitable even if we assume the assets awarded to Robert have the greatest growth potential as they also have the greatest risk of loss.

Victoria's third contention is that the trial court erred in not awarding her alimony. Although alimony and property settlements have different purposes, they are closely related in determining the amounts to be allowed. In re Marriage of Cook, 205 N.W.2d 682, 684 (Iowa 1973).

Victoria was awarded the apartment complex which was the only substantial

income producing asset owned by the Danicos. The apartment complex had gross rentals in excess of $50,000 in 1973, while the other assets produced negligible income. Robert's assets do not indicate the capacity for sufficient income production to justify or support an award of alimony that would equal the prospective income produced by the apartment complex. Further, the parties' joint federal income tax returns show adjusted gross income of $3,017.56 in 1971, $3,834.00 in 1972, and $2,587.00 in 1973. From a review of the record, we find the trial court correctly applied the **Schantz** criteria in denying alimony.

Victoria's fourth contention is that the trial court erred in using the income from the apartment complex as a source for the payment of attorney fees. During the pendency of the dissolution, a receiver was appointed to operate the complex. In the decree, the trial court terminated the receivership and ordered the balance on hand, after payment of receivership costs, paid one-half to each party's attorneys. Victoria argues that since the apartment complex was set-off as her asset, she in effect is paying Robert's attorneys out of her income.

We reject this argument. Until the time of the decree, the income from the parties' assets was jointly owned. In effect, it was an additional asset for disposition by the court. Victoria cites no authority for her argument except In re Marriage of Zoellner, 219 N.W.2d 517, 523-24 (Iowa 1974), which appears to be counter to her position.

Victoria's final request is for attorney fees for this appeal. The criteria for such an award is set forth in In re Marriage of Jennerjohn, 203 N.W.2d 237, 245 (Iowa 1972). From a review of the record, Robert's ability to pay, Victoria's ability as well as the factors set forth in **Jennerjohn** we find that Victoria should pay her own attorney fees for this appeal.

Affirmed.