

IN THE COURT OF APPEALS OF IOWA

No. 0-319 / 89-1191

FILED

OCT 23 1990

CLERK SUPREME COURT

IN RE THE MARRIAGE OF HAGAN E. GIBBS, JR. AND
CAROLE N. GIBBS

128

Upon the Petition of
HAGAN E. GIBBS, JR.,

Appellee/Cross-Appellant,

And Concerning
CAROLE N. GIBBS,

Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Black Hawk
County, William G. Klotzbach, Judge.

Appellee appeals the economic provisions of the
district court's decree dissolving her marriage to
appellant. **AFFIRMED.**

Harry W. Zanville and Joseph W. Zanville, Waterloo, for
appellant.

D. Quinn Martin of Martin, Nutting, Miller, Keith,
Pedersen & Scully, Waterloo, for appellee.

Considered by Oxberger, C.J., and Donielson and
Schlegel, JJ.

SCHLEGEL, J.

Respondent-appellant Carole Gibbs challenges several economic provisions of the judgment dissolving her marriage. Petitioner-appellee Hagan Gibbs Jr. cross-appeals. We affirm.

The parties were married December 21, 1957. At the time of the marriage, both parties were 23 years old, and each had two years of college education. Between 1958 and 1971 the parties had four children. Carole completed her B.S. degree in 1968, and Hagan finished his college degree in 1975.

Carole has worked outside the home since 1968 in various high school teaching positions. She now has a masters degree. Hagan has held several civil service positions and presently is an air traffic controller. Hagan's monthly income as defined by the supreme court's child support guidelines is \$2,418.37. Carole's monthly income is \$1,802.

Both parties are in good health. Carole, however, suffers from diabetes. Disputed evidence also indicates that Carole requires periodontal treatment for a condition exacerbated by her diabetic condition.

Our scope of review in this equitable matter is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of fact, but like its conclusions of law, we are not bound by them. Iowa R. App. P. 14(f)(7).

Carole's first assignment of error is that the trial court should have provided for an equitable division of the parties' respective pensions. Upon our de novo review of the entire record, we find that the trial court's division was equitable.

Meager evidence as to the present and future value of the parties' retirement benefits was presented to the trial court. The record reflects that Carole's contribution to the Iowa Public Employees Retirement System (IPERS) is approximately \$10,000 with approximately \$8,000 in interest accrued. Although not clear from the record, we are aware that Carole's employer also contributes to her retirement account and that it contributes several percent more of Carole's wages than she does, which would raise her entitlement under IPERS considerably. Carole will also be eligible to receive social security benefits. Hagan has contributed approximately \$38,000 to his civil service retirement fund. His employer does not make contributions, and he is not eligible for social security benefits.

We recognize and support the notion that pension benefits earned by the parties during the marriage are marital property and generally should be distributed equitably. See In re Howell, 434 N.W.2d 629, 631 (Iowa 1989); In re Voss, 396 N.W.2d 801, 803 (Iowa App. 1986). We also recognize that IPERS and similar public retirement plans may be included. Howell, 434 N.W.2d at 631-32; In re Byall, 353 N.W.2d 103, 106 (Iowa App. 1984). Nevertheless,

as we have indicated many times, in making an equitable distribution, we need not seek mathematical precision. In re Conley, 284 N.W.2d 220, 223 (Iowa 1979). While we do not necessarily agree with Hagan's calculations, neither do we find merit in Carole's contention that the trial court's judgment is inequitable. Based on our de novo review of the record, we find the distribution of the pensions to be equitable.

Carole's second assignment of error is that the trial court improperly divided the parties' debts by doing so without regard to whether the debts were incurred before or after the parties separated. Specifically, Carole argues that the trial court should not have included as a marital debt \$1,500 charged by Hagan on jointly held credit cards, a \$760 personal loan to Hagan, and \$8,200 that Hagan borrowed to purchase a car. Carole contends all these debts were incurred after separation.

Having reviewed the entire record de novo, we conclude that it is fair and equitable for Carole to bear a share of these debts. In re Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983). We base our decision primarily on the particular circumstances of the parties presently before us. In re Weidner, 338 N.W.2d 351, 356 (Iowa 1983); see also Conley, 284 N.W.2d at 223. Taking into consideration all of the circumstances and all of the provisions of the decree before us, we conclude that the parties will bear an equitable share of the debts in light of the assets they take from the marriage.

Carole's third assignment of error is that the trial court should have allowed the minor child to remain in the house until she graduates from high school and that it should have increased child support after the sale of the home. We note that the child in question, Kimberly, has now attained the age of majority and has graduated from high school. The issue of the child remaining in the house is therefore moot. We find appellant's argument for additional child support for that period during which the child was or would have been deprived of the family home to be without merit. Upon our de novo review, we find the child support obligation to be fair and equitable. Estlund, 344 N.W.2d at 280; Weidner, 338 N.W.2d at 356; Conley, 284 N.W.2d at 223.

Carole's last assignment of error is that the trial court failed to award her spousal support. We consider property division and spousal support together in evaluating their individual sufficiency. In re Dahl, 418 N.W.2d 358, 359 (Iowa App. 1987). Carole claims she has demonstrated a need based on her health condition. Spousal support, or alimony, is not an absolute right; an award depends on the circumstances of each particular case. In re Fleener, 247 N.W.2d 219, 220 (Iowa 1976). The discretionary award of spousal support is made after considering those factors listed in Iowa Code section 598.21(3).

Our de novo review of the record reveals no basis for awarding spousal support to Carole. Given the parties' respective incomes and shares in the property division, neither rehabilitative nor reimbursement alimony appears appropriate. See In re Francis, 442 N.W.2d 59, 63-64 (Iowa 1989). While we remain sensitive to the idea that marriage is not a commercial transaction, In re Downing, 210 N.W.2d 436, 437 (Iowa 1973), we do not think it is appropriate in this case to require Hagan to share Carole's medical or other living costs perpetually. It is clear that Carole is self-supporting and has ample property and benefits on which to draw for such costs. We affirm the trial court's denial of spousal support.

Hagan's cross-appeal challenges the trial court's judgment requiring Hagan to contribute up to \$10,000 to pay joint indebtedness to the extent such indebtedness is not extinguished by proceeds from the sale of the home and lawn mower. After our de novo review, we conclude that the arrangement is fair and equitable under the circumstances. Similarly, we find the trial court's judgment awarding any surplus from the sales to Carole to be fair and equitable. Weidner, 338 N.W.2d at 356; Estlund, 344 N.W.2d at 280. Given the property and debt allocations and the lack of any significant support obligations, we find the order to be a just one.

Upon our de novo review, we affirm the trial court in all respects. Each party will bear one-half the cost of

this appeal, and the parties will pay their own attorney's fees.

AFFIRMED.