FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

9-369 / 89-11

IN RE THE MARRIAGE OF VIVIAN ANN TEGTMEIER AND FREDERICK W. TEGTMEIER

Upon the Petition of

VIVIAN ANN TEGTMEIER,

Appellant,

And Concerning

FREDERICK W. TEGTMEIER,

Appellee.

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

Appeallant appeals a dissolution decree, challenging economic provisions. **AFFIRMED AS MODIFIED.**

Timothy J. Luce of Randall, Anfinson & Luce, Waterloo, for appellant.

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

Considered by Donielson, P.J., and Schlegel and Hayden, JJ.

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SCHLEGEL, J.

The wife appeals a dissolution decree, challenging economic provisions. We affirm as modified.

The wife challenges her alimony and property awards as inadequate. She also contends the decree should have directed Frederick to contribute toward the tuition and college expenses of the adult daughter attending college. In addition, she contends the decree should have protected her property award by giving her a judicial lien against the assets awarded to Frederick. Finally, she requests attorney's fees on appeal.

The parties were married in 1957. Their three children are all adults, although one is a college student under 22 years of age.

Frederick is a supervisor at John Deere Waterloo Tractor Works, earning a gross salary of over $4400 per month. Vivian was not employed outside the home during most of the marriage, but she has held a clerical job since December 1985. She presently grosses $265 per week.

In addition to their employment, the parties own and operate a 120-acre farm. In recent years the farm has produced net income averaging about $6000 per year. The farm real estate was valued by an appraiser at $197,000 and is apparently free from debt.

The dissolution decree awarded the farm to Frederick, along with farm equipment valued at over $20,000. Each

party was awarded a vehicle, personal effects, and investments of small value. Frederick was directed to pay Vivian $86,000 as a division of property. He was also directed to pay her alimony of $350 per month for 121 months or until she dies, remarries, or cohabits. The decree made no provision for attorney's fees or for the support of the adult daughter attending college.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

I. Property Division. Appellant contends that the trial court failed to consider certain assets when dividing the marital property. She argues that the crops in the field worth over $50,000 should have been added to the assets. Appellee responds that it was the common practice of the parties to pay off the operating loan of $55,000 with the proceeds from the crops. It is apparent that the value of the crops are offset by the amount of the outstanding loan of $55,000. Each partner in the marriage is "entitled to a just and equitable share of the property accumulated through their joint efforts." In re Marriage

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of Havran, 406 N.W.2d 450, 452 (Iowa App. 1987). The distribution of the property of the parties should be that which is equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(1). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983).

The criteria in Iowa Code section 598.21(1) were properly considered in this instance. Under these circumstances the trial court's division of property was equitable.

II. Alimony. Appellant also contends the provision for alimony in the amount of $350 per month is insufficient. We consider property division and alimony together in evaluating their individual sufficiency. In re Marriage of Dahl, 418 N.W.2d 358, 359 (Iowa App. 1987); In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984). When determining the appropriateness of alimony, the trial court must consider (1) the earning capacity of each party, and (2) present standards of living and ability to pay balanced against relative needs of the other. In re Marriage of Estlund, 344 N.W.2d at 281.

When considering the amount of the property division, we find it is not sufficient without an additional increase in the amount of alimony. In addition the award of alimony was insufficient by itself when considering the earning potential of the husband compared to the appellant. The award of alimony is to be increased to $500 per month.

III. College Expenses. Appellant also contends that the trial court should have awarded continued child support or partial payment of tuition expenses of the parties child under the age of 22. By statute, divorced parents may have an obligation to support their children while attending college. In re Marriage of Byall, 353 N.W.2d 103, 107 (Iowa App. 1984). This obligation depends largely on the circumstances of each case. In re Marriage of Vrban, 293 N.W.2d 198, 203 (Iowa 1980). In re Marriage of Hoak, 364 N.W.2d 185 (Iowa 1985). The circumstances of this case show that both parents have contributed substantially to the college expenses of their children. A specific award is not necessary in this situation. We do order that the parents continue to contribute to the support of their children in college to the same extent that they are now doing so, until the children reach the age of 22 years.

IV. Judicial Lien. Appellant requests that a judicial lien be created against the property awarded to the appellee to protect the appellant against a discharge in bankruptcy. The circumstances of this case do not require the creation of a judicial lien.

V. Attorney Fees. Finally, appellant requests attorney fees on appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to consider the

needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). Neither party in this case is destitute. However, the appellee has a substantial income and is far more able to bear the burden of present expenses. Appellant is awarded attorney fees in the amount of $1,000.

AFFIRMED AS MODIFIED.