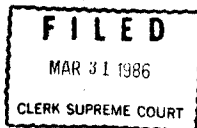


IN THE COURT OF APPEALS OF IOWA



**IN RE THE MARRIAGE OF RALPH ARNOLD JACOB
BACHMANN AND JUANITA RUTH BACHMAN**

Upon the Petition of)
JUANITA RUTH BACHMAN,)

Filed March 31, 1986 **6**

Petitioner-Appellant,)
)

5-725
85-1043

And Concerning)
RALPH ARNOLD JACOB BACHMANN,)

Respondent-Cross-Appellant)

Appeal from the Iowa District Court for Crawford County (No. 1006) James
L. McDonald, Judge.

Petitioner appeals and respondent cross-appeals from economic provisions
of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Robert L. Brink, of Nash, Eller & Brink, Denison, Iowa, for
petitioner-appellant.

William Q. Norelius, Denison, Iowa, for respondent-cross-appellant.

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

Petitioner Juanita Bachmann and respondent Ralph Bachmann were married in 1942, while Ralph was in the armed services and Juanita was in nurse's training. After leaving the service Ralph worked for the Iowa Department of Social Services in Denison until his retirement in 1979. He also operated a 110 acre farm, one-third of which Ralph inherited shortly after the marriage and two-thirds of which he purchased from his two sisters in 1946. Juanita did not complete nurse's training and, during the marriage, worked primarily as a housewife and mother to the parties' eight children. She also assisted with farm chores and for several years maintained sole responsibility for their dairy herd. From 1975 through 1984 she received some income from driving a person to Sioux City for medical treatment. Since April of 1977, she has been employed as a nurse's aide at a nursing home and had gross income of approximately \$540 per month at the time of trial. Ralph receives \$1,143 per month in social security and IPERS benefits. In addition he receives some rental income from twenty acres of the farm which is rented on a 50/50 crop share basis. The parties' only minor daughter, Sylvia, was a junior in high school at the time of trial. At the time of trial, Juanita was 62 years old and Ralph was 70 years old. Both parties are in good health.

Juanita was awarded physical custody of Sylvia under a joint custody arrangement. No child support was awarded because the child receives \$401 monthly in social security and an education fund was set aside for her in the amount of \$36,298.52. Each party was awarded an undivided half-interest in the farm valued at \$75,000 with Juanita having lifetime use of the home and Ralph having lifetime use of the farm buildings. Each party was also awarded a half-interest in various bank accounts, totalling about \$60,000 each, two vehicles, a half-interest in two loans made to two of the children, and the insurance policies that each held in their own names. Ralph was awarded farm machinery and tools with a stipulated

value of \$10,450. The trial court found that two bank accounts containing funds intended for the educational expenses of the two youngest children belonged to the children and were not marital assets subject to division.

Juanita was awarded alimony of \$150 per month terminable upon her remarriage. At the time of trial, she expected to receive approximately \$350 per month in social security benefits if she retired at age sixty-five.

Juanita has appealed asserting that the property division was inequitable and that additional alimony should be awarded. Ralph filed a notice of cross-appeal but failed to file a statement of issues presented for review. In his brief, he argues that the trial court erred in failing to treat the educational funds for the children as marital property subject to division.

Our review is de novo. Iowa R. App. P.4 (1985). We are not bound by the findings of the trial court, but we give them weight. Iowa R. App. P. 14(f)(7) (1985).

Property Division. Juanita contends that Ralph was awarded \$23,540 more in property than she was, therefore, the property division was inequitable. She argues that because the parties were married for over forty-two years, the property division should be more nearly equal. Juanita desires a one-half interest in Ralph's insurance policies and the farm machinery and tools.

Iowa Code section 598.21(1) (1985) requires the court to equitably divide all property of the parties and lists criteria for consideration. We reject any rule based on a percentage division of the assets. In re Marriage of Lattig, 318 N.W.2d 811, 814 (Iowa Ct. App. 1982). We are not bound to achieve a precisely equal division in property awards. In re Marriage of Anderson, 243 N.W.2d 562, 564 (Iowa 1976). "Division of property is based on each marital partner's right to a just and equitable share of the property accumulated as the result of their joint efforts." In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981).

In light of the fact that Juanita receives the exclusive right to occupy the family home, which is completely paid for, during her lifetime we find that the trial court's award of a greater amount of personal property to Ralph is reasonable and appropriate. We further find no inequity in the trial court's allocation of the educational funds to the parties' children.

Alimony. Juanita contends that the trial court erred in awarding her alimony of only \$150 per month. She argues that the trial court failed to take into account the fact that Sylvia's social security of \$401 per month terminates in July of 1986, when she turns eighteen. Juanita concedes the alimony of \$150 per month is sufficient until July of 1986, but requests an increase on that date.

The criteria to be considered in awarding alimony have been codified in Iowa Code section 598.21(3) (1985). While payment of alimony is not an absolute right, it is awarded out of fairness, according to the peculiar circumstances of each case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). Alimony is awarded based on the earning capacity of the parties and present standards of living balanced against the relative needs of the parties. In re Marriage of Hitchcock, 309 N.W.2d 432, 436-37 (Iowa 1981). The spouse with the lesser earning capacity is entitled to be supported, for a reasonable time, in a manner as closely resembling the standards existing during the marriage as possible. In re Marriage of Hayne, 334 N.W.2d 347, 351 (Iowa Ct. App. 1983). Two of the factors to be given great weight in such a determination are the duration of the marriage and the ability of the supported spouse to engage in gainful employment. In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972). In addition, where a spouse has sacrificed her earning ability in order to make a home for the family and the other spouse has profited thereby, alimony is justified. In re Marriage of Sanders, 255 N.W.2d 109, 111 (Iowa 1977). However, once the dependent spouse's standard of living is assured, there is no reason, in equity, for the supporting

spouse to provide still more. In re Marriage of Hayne, 334 N.W.2d 347, 351 (Iowa Ct. App. 1983).

These parties were married for over forty-two years. Ralph's monthly income is approximately twice as large as Juanita's. Ralph receives around \$1,150 a month while Juanita receives \$540 per month. Moreover, when Juanita retires at age sixty-five, she expects to receive social security of only \$350 per month. Juanita contributed greatly to the marriage by raising eight children, caring for their home, and working on the farm. While Juanita is in good health, at sixty-two years of age, she cannot anticipate increasing her earning capacity beyond what it is presently. In light of the length of the marriage, Juanita's age, and the disparity in the parties' earning capacities, we conclude that Juanita is entitled to have her alimony increased to \$350 per month upon her retirement, to terminate upon her death, or remarriage.

AFFIRMED AS MODIFIED.