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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF CAROL JEAN McMILLAN and LARRY DEAN McMILLAN

UPON THE PETITION OF **CAROL JEAN McMILLAN,**	)	
Petitioner-Appellant,	)	Filed October 23, 1984
AND CONCERNING **LARRY DEAN McMILLAN,**	)	4-325 / 83-1515
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Marshall County, Paul E. Hellwege, Judge.

Petitioner-wife appeals from the economic provisions of the decree which dissolved the parties' marriage. AFFIRMED.

Barry S. Kaplan of Fairall, Fairall, Kaplan & Condon, Marhsalltown, for respondent-appellee.

James S. Blackburn Des Moines, for petitioner-appellant.

Considered by Oxberger, C.J., Snell, and Hayden, JJ.

OXBERGER, C.J.

Economic provisions of the parties' divorce decree are challenged by the petitioner-wife. The petitioner, Carol McMillan, says the property award was inequitable, that certain property in Kansas City should have been treated as a marital asset, that she should have received more equity interest in their Marshalltown home, and that she should have received more alimony. We affirm.

This is the parties' second divorce. They were first divorced in Kansas in June 1971. Custody of the parties' only child was given to Carol, property owned by them in Kansas was given to the respondent, Larry, and he was to pay Carol's parents $1000 for their loan to them to help pay for the house. Larry was to pay Carol $25 per week in child support, and various other personal property was distributed. Late in 1972 the couple resumed their marital relationship. Both have admitted they had a common law marriage. They lived in Kansas City until 1975 when they moved to Marshalltown and purchased a home there. The property in Kansas City was rented to Larry's brother.

In September 1983, the Marshall County district court dissolved the parties' common law marriage and awarded custody of the child to Carol. The Kansas City property was awarded to Larry. The court noted Carol was not interested in keeping the Marshalltown homestead as long as the property settlement was equitable and awarded that home to Larry as well. He was also given a 1974 Corvette worth $3800 and various personal property totaling $2587. Larry was also ordered to pay the couple's debts, with the exception of Carol's car loan, totaling $1801. Carol received $11,511 in an employee savings plan, a $4500 lien on the homestead to be paid off at $100 per month, a 1982 Chevrolet, and various personal property which totaled $1525. Carol and Larry disagree regarding the worth of the Marshalltown home, Kansas City property, and her 1982 Chevrolet.

Larry says the Kansas City house has an equity of only $9200 or less, while Carol says he has equity of $19,200. She disagrees with the fair market value figure of the Marshalltown house, saying the resulting equity is $20,964, and Larry says it is $10,964. Larry also says her car is worth $2250, while Carol says the 1982 Chevrolet is worth $775.

The court noted it considered the factors set out at the Code, including the fact that Larry had brought the Kansas City home into the second marriage. It set aside the property to him, but stated it would consider its value in awarding alimony. Carol is thirty-eight years old and has been a homemaker during the majority of the marriage, although she obtained her cosmotology license in Kansas and practiced there three months before the move to Marhsalltown. She is currently working at a clothing store approximately thirty hours per week. Her gross pay is $475 per month. Larry is thirty-nine years old and has become manager of the leasing division of Harkers Leasing Company in Marshalltown. His income has risen steadily, from $23,920 in 1978 to $39,365 in 1982. He also receives a bonus, and was paid $3000 additional money in 1978 and $8000 in 1982. He estimated his 1983 income at $42,000, but the court thought it would be closer to $45,110. The couple was married for a total of sixteen and one-half years, but the second marriage lasted approximately ten years. The couple's child is eighteen years old and will soon enter community college.

Alimony of $250 per month was awarded to Carol to be paid from October 15, 1983, to September 1985. The court stated its purpose in awarding alimony was to allow Carol the chance to obtain her Iowa cosmotology license or other training. Child support was set at $275 per month for two years.

In a de novo review of an equitable proceeding, we look at the facts anew, but give deference to the trial court findings, particularly when the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7).

Our courts do not favor rules regarding property division based on a percentage division of the assets, but instead strive for equity in property and alimony provisions. In re Marriage of Callenius, 309 N.W.2d 510, 514 (Iowa 1981). Alimony and property divisions are distinguishable, but they are closely related in determining the amount of each. In re Cooper's Marriage, 225 N.W.2d 915, 919 (Iowa 1975). We look at the decree provisions as a whole. In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976).

We disagree with Carol's contention that the Kansas City property was not brought into the marriage by Larry. The first marriage was ended in 1971, and this marriage is not a continuation of the prior marriage. She claims the fact that she never presented him with a quit claim deed and that he did not pay the $1000 to his parents shows it continued to be marital property. Larry says he paid the $1000 in services. In either case, the court divided the property of the parties in the first dissolution, giving the house to Larry. When separate property is brought into a marriage, the length of the marriage is a factor, and in this case the parties were married the second time for ten years. In re Marriage of Wallace, 315 N.W.2d 827, 831 (Iowa Ct. App. 1981). The Iowa court was within its power in setting aside the Kansas City property to Larry in the second dissolution. In re Marriage of Callenius, 309 N.W.2d 510, 515 (Iowa 1981).

The trial court never set a net worth or value on either the Kansas City or Marshalltown properties. However, we disagree with Carol's assertion she should have received more in property settlement because her figures on the equity of the two parties should have been used. We believe the trial court would have had adequate reason to accept the figures given by Larry regarding the equity in the home.

In addition, in reviewing the property settlement and alimony award as a whole, using these figures, it appears the trial court achieved equity in its decree. Larry claims the Marshalltown property has an equity of $10,900. The

Marshalltown property equity, along with the other marital property given to him adds up to $18,100 received by Larry. The value of the marital property received by Carol, using these figures, would total $19,700. The split of the marital property was nearly equal, with Carol receiving slightly more.

The court also said it would consider the value of the Kansas City property set off to Larry when awarding alimony to Carol. Larry's figures show the Kansas City home is worth approximately $10,000 or less. Carol will receive $6000 in alimony, an amount which will not be reduced if she remarries.

Considering all the factors set out at section 598.21(1)(3) of the Code, we believe the property and alimony provisions achieve equity and affirm the trial court.

AFFIRMED.