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CLERK SUPREME COURT

228

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF DONALD KIRBY AND GAIL KIRBY

Upon the Petition of)

DONALD KIRBY,) Filed February 26, 1980

Petitioner-appellant,)
Appellee on cross-appeal,

And Concerning) 0-22
63789

GAIL KIRBY,)

Respondent-appellee,)
cross-appellant.

Appeal from Webster District Court - R. K. Richardson, Judge.

Petitioner appeals and respondent cross-appeals parties' dissolution decree, both asserting respondent's alimony award was inequitable. Affirmed in part, modified in part, and remanded with directions.

Roland D. Peddicord and Mark A. Humphrey of Peddicord, Simpson & Sutphin, Des Moines, for petitioner-appellant.

Arthur H. Johnson and James L. Kramer of Johnson, Erb, Latham & Gibb, Fort Dodge, for respondent-appellee.

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

DONIELSON, J.

Petitioner, Donald Kirby, appeals and respondent, Gail Kirby, cross-appeals parties' dissolution decree, both assert respondent's alimony award is inequitable. Donald further asserts trial court erred in considering parties' antenuptial agreement. Gail appeals award of attorney fees at trial and requests award of attorney fees for this appeal. We affirm as modified.

Our review is de novo. Iowa R. App. P. 4. We review the facts and law, determining anew from credible evidence all properly presented contentions. While we give weight to the trial court's fact-findings, especially when the credibility of witnesses is involved, we are not bound by them. In re Marriage of Novak, 220 N.W.2d 592, 597 (1974). Each determination must be made on the facts of the case, precedents are of little value. In re Marriage of Kehrli, 241 N.W.2d 923, 926 (Iowa 1976).

I.

The trial court entered the dissolution decree on April 30, 1979, awarding each party their own separate property. Gail received some additional household furnishings, a lump sum payment of $2500, alimony of $500 per month for five years, and attorney fees of $750. From this award, both parties appeal.

II.

Section 598.21, The Code 1979, provides "when a dissolution of marriage is decreed, the court may make such order in relation to the children, property, parties, and the maintenance of the parties as shall be justified." Id. Justified property divisions are those that are equitable under the circumstances. In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975); Bowman v. Bowman, 259 Iowa 820, 822, 146 N.W.2d 333, 334 (1966). Criteria to be used in determining an equitable award are set forth in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968) (modified to exclude fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972)). Using those criteria, we examine these facts to determine the equities of the award.

At the time of the entry of the dissolution decree, Gail was 38 years old and had a life expectancy of 30.41 years, Donald was 54 years old and had a life expectancy of 17.51 years. Gail suffers from a severe hearing disability, which is correctable with the assistance of a hearing device. Gail contends the late diagnosis of this disability

inhibited her emotional and intellectual development such that she has been unable to perform satisfactorily when employed in a business situation. Donald enjoys normal health. Gail has two normal children by her prior marriage. At the time the decree was filed, her daughter was 18 years old and her son was 17 years old. The parties had no children of their own.

During their 4-year marriage, Gail performed household duties, cooked, and weeded bean fields. Donald is a farmer. Gail's cash contribution to the joint accumulation of assets was minimal, but her contribution through performing household duties must be recognized. In re Marriage of Moorhead, 224 N.W.2d 242, 245 (Iowa 1974). Although Gail has a bachelor's degree in sociology and journalism, she claims she is not qualified for any particular employment and, despite numerous attempts, has been unable to function adequately in a business setting.

The principal asset of the marriage was a 275-acre farm, which was awarded, along with the machinery necessary to work the land, to Donald. Donald valued, in an exhibit, this land at $357,500 ($1,300 per acre), but testified at trial it may be worth $2,500 per acre. Gail contends Donald's net worth is $875,154. Donald argues his net worth is inflated by the rapid increase in farmland prices and his ability to pay alimony is limited by the non-liquid nature of these assets. Gail, however, contends Donald's average yearly income during the course of the marriage exceeded $40,000.

Under these facts, the trial court's alimony award is justified. Gail established a definite need for financial assistance, her contribution to the marriage, and Donald's ability to pay. We do not, however, believe the property division was equitable, and find Gail should receive from Donald an additional $17,500, for a total lump-sum payment of $20,000. See In re Marriage of McDowell, 244 N.W.2d 239, 240 (Iowa 1976). This increase will allow her to establish more adequately a new home than the trial court's award. While this amount still represents a small proportion of Donald's net worth, we do not believe any larger award is justified. The marriage was of relatively short duration and her contributions did not result in any substantial accumulation of assets. She has recently shown improvement in overcoming her emotional problems and should be able to obtain a job without undue difficulty. She also receives income from a trust account which had a present value of $14,000 at the time of trial, and social security

payments of $600 per month, which will be reduced to $123 at her youngest child's eighteenth birthday, although they may continue in part until each child's twenty-second birthday, respectively, if he or she is enrolled as a full-time student. The trial court's alimony award and the increased lump-sum payment achieve an equitable result. See In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976).

III.

Donald asserts the trial court erred in considering the parties' antenuptial agreement pertaining to disposition of their property in the event of either party's death. The trial court ruled this agreement did not affect the parties here. Donald, however, claims this consideration affected the court's decision. We are unpersuaded. Donald raised this issue in his petition and the trial court properly considered it. Moreover, he failed to establish how he was harmed by the trial court's finding. We find his contention of error to be without merit.

IV.

Gail requests an increase in the attorney fees awarded at trial and an award of attorney fees on appeal. We find the attorney fees awarded at trial were adequate. Without determining the amount her attorney may charge, we hold Donald shall pay all costs and $750 toward her attorney fees for this appeal. See In re Marriage of Peterson, 227 N.W.2d 139, 143 (Iowa 1975).

V.

We affirm the alimony award, direct reassessment of the lump-sum payment, award attorney fees and costs, and remand this case for entry of a decree in accordance with this opinion.

AFFIRMED IN PART, MODIFIED IN PART, AND REMANDED WITH DIRECTIONS.