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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF LEE V. SWANSON and ELEANOR A. SWANSON

Upon the Petition of

LEE V. SWANSON,

Appellant,

And Concerning

ELEANOR A. SWANSON,

Appellee.

Filed September 21, 1978

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2-61422

Appeal from Scott District Court - Margaret S. Briles, Judge.

Husband appeals economic provisions of marriage dissolution decree. Affirmed as modified.

Elliot McDonald, Jr., of McDonald, McDonald & Stonebraker, Davenport, for appellant.

Seymore M. Raben, Davenport, for appellee.

Heard by Donielson, Acting C.J., Snell, Oxberger and Carter, JJ.

PER CURIAM

Petitioner, Lee Swanson, appeals from the economic provisions of the decree dissolving his 22-year marriage to respondent, Eleanor Swanson. He contends that the division of assets made in such decree is inequitable and that excessive child support and alimony obligations are imposed upon him. We review the trial court's decree in light of the criteria listed in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), excluding considerations of fault. See In re Marriage of Zoellner, 219 N.W.2d 517, 523 (Iowa 1974); In re Marriage of Ward, 226 N.W.2d 812, 814 (Iowa 1975). We conclude that the record supports Lee's contention to a certain extent and modify the decree accordingly.

I. Property division. In dividing the assets of the parties, the trial court divided equally between the parties the equity in a vendor's interest of a Christmas tree farm sold on installment contract. Each party received automobiles and household goods of approximately the same value. Lee received the cash surrender value of his life insurance policy valued at $5760 and Eleanor received the equity in the parties' residence having a net value of $44,400. The trial court determined that Lee's interest in his retirement program with the federal government, which was awarded to him under the decree, was sufficient to equalize the property settlement.

The inclusion of the value of a retirement or pension plan among assets to be divided in marriage dissolution cases has not received extensive judicial treatment in this jurisdiction. Cases from other jurisdictions recognize that such plans have a certain value which should be considered in arriving at an equitable division of the assets. See Pinkowski v. Pinkowski, 67 Wis. 2d 176, 226 N.W.2d 518 (1975); cases discussed in Foster & Freed, Spousal Rights in Retirement and Pension Benefits, 16 Journal of Family Law 187 (1978). We give consideration to the value of Lee's expectancy under his retirement program in deciding the issues before us. But we conclude that the record fails to establish that the present value of such expectancy is equal to the $38,440 differential between the value of the parties' respective shares of the other assets.

We therefore modify the decree by awarding Lee a $10,000 lien on the residential property awarded to Eleanor plus interest on said sum at the rate of 8% per annum. Said lien may be foreclosed by execution at such time as Eleanor remarries, sells the residence, ceases to reside in the residence, or when the youngest child of the parties attains the age of 18 years, whichever of said conditions first occurs.

II. Alimony and child support. We conclude that the total of the alimony and child support payments imposed upon Lee under the decree work an unreasonable financial hardship upon him at the present time. We accordingly modify said provisions of the decree (retroactive to the date thereof) so as to provide for (a) child support payments of $585 per month and alimony payments of $250 per month during such time as three children are entitled to monthly support payments under the decree; (b) child support payments of $500 per month and alimony payments of $250 per month during such time as two children are entitled to monthly support payments under the decree; and (c) child support payments of $325 per month and alimony payments of $250 per month during such time as one child is entitled to monthly support payments under the decree. Said alimony payments shall continue thereafter at the same rate unless terminated upon those conditions hereafter specified.

Those provisions of the decree relating to post-high school educational expenses of the children are affirmed as are all other provisions of the decree not herein modified. All obligations to make alimony payments under the decree shall cease upon Eleanor's remarriage, the death of either party, or Lee's 65th birthday, whichever first occurs. Costs of appeal are equally divided.

AFFIRMED AS MODIFIED.