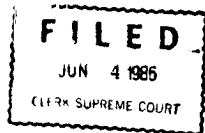


IN THE COURT OF APPEALS OF IOWA



IN RE THE MARRIAGE OF JANET ANN CONN AND TIMOTHY WILCOX CONN

Upon the Petition of	)	55
JANET ANN CONN,	)	
Petitioner-Appellee,	)	Filed June 4, 1986
And Concerning	)	
TIMOTHY WILCOX CONN,	)	<u>6-109</u>
Respondent-Appellant.	)	<u>85-612</u>

Appeal from the Iowa District Court for Jasper County (No. DDO-2661)

- Gene L. Needles, Judge.

Respondent husband *appeals the decree dissolving the parties' marriage, asserting that the property division is inequitable and the trial court should not have awarded petitioner wife alimony. **AFFIRMED AS MODIFIED.***

Eugene Knopf of Diehl, Clayton, Cleverley, Knopf & Williams, Newton, for appellant.

Barry S. Kaplan and Joseph P. Nieman of Fairall, Fairall & Kaplan, Marshalltown, for appellee.

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

PER CURIAM

Petitioner Janet Ann Conn and respondent Timothy Wilcox Conn were married on December 24, 1970. No children were born of the marriage. At the time of trial Janet was thirty-eight years old and Timothy was forty-one. The parties entered the marriage with equal financial contribution. Janet brought in a new Mustang automobile and Timothy brought in an old Ford pickup and a piece of real estate known as the "schoolhouse property" with equity of \$1,500. The parties sold this real estate on contract in 1981. The parties also own lake property, the value of which was disputed at trial. A mortgage of almost \$19,000 exists on this real estate and the trial court determined that the Conns had \$3,000 of equity.

Both parties had health problems at the time of their marriage which persisted during the marriage. Janet suffers from a manic-depressive disease, or bipolar illness, manic phase. She is still undergoing psychiatric care. Timothy is a recovering alcoholic. Timothy has a high school degree and approximately two years of college. Janet also graduated from high school and has attended approximately one and a half years of college. Janet is presently a full-time student at a community college, seeking a two-year degree which will enable her to operate a child care center. She lives with her mother and relies on her for financial support. Janet worked in retail sales off and on during the marriage and was the primary caretaker of the home. The parties' tax returns for the years 1980 to 1983 do not reflect any income from her.

Timothy had trouble retaining steady employment during the marriage because of his drinking problems. While Timothy is trained as a welder, at the time of trial he was employed as an orderly in a nursing home earning \$4.50 an hour. He grosses \$360 biweekly. Timothy testified that he has not had a drink since 1983 and the nursing home has a program which assists him in his

alcoholic reform. Timothy also lives with his parents and receives financial assistance from them.

The trial court directed Timothy to pay Janet alimony of \$150 per month for five years. The trial court awarded Janet a car, a table, the personal property in her possession, and half of the installment contract for the sale of the school-house property. The balance of the contract is \$6,000 and the monthly payment is \$124.22. At present this payment is received by an escrow account and credited to the Conns' monthly mortgage payment. The trial court awarded Timothy a truck, some tools, the personal property in his possession, the other half of the real estate installment contract, and the parties' lake property. The trial court directed Janet to pay a \$90 debt and Timothy to pay all of the parties' other debts. Timothy has appealed from the trial court's dissolution decree asserting the property division is inequitable and the trial court should not have awarded alimony to Janet.

Our scope of review is *de novo*. Iowa R. App. P. 4. While the trial court's findings of fact are entitled to weight, especially in matters of credibility, we are not bound by such findings. Iowa R. App. P. 14(f)(7).

Property Division. Timothy contends that the trial court erred in awarding Janet one-half of the schoolhouse property installment contract. He argues that because he brought the property into the marriage and contributed to the property, Janet should receive no share of the proceeds from its sale.

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 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).

Generally, where valuation of real estate by trial court is within the permissible range of the evidence, we are not inclined to disturb it. In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973); Schantz v. Schantz, 163 N.W.2d 398, 404 (Iowa 1968).

While Timothy brought the schoolhouse property into the marriage, it appreciated in value during the marriage due to the joint efforts of both parties. Both Timothy and Janet were employed during the marriage, albeit not steadily, and each contributed what little they earned to the marital relationship. We, therefore, find that the trial court's allocation of one-half of the installment contract to Janet is fair and reasonable. Each party will receive \$62.11 monthly.

Alimony. Timothy argues that the trial court erred in awarding alimony to Janet because he cannot afford to pay \$150 a month for five years.

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). Although alimony on one hand and allocation of property rights on the other, have a different purpose, they are still closely related in the matter of determining the amount to be allowed. In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa Ct. App. 1984).

The parties here were married for fourteen years. Both parties have attained the same educational level. Both have been unable to retain steady employment due to health problems and therefore they were accustomed to a low standard of living. For the last several years, Timothy has been the sole wage earner. He has demonstrated success in his alcoholic reform. There is no doubt that Janet is capable of working; however, with her history of mental illness, her employment prospects are limited. She is presently making an effort to become more marketable by attending college and she expects to graduate this year. We realize that the Conns' financial situation is grim. At this point, Janet is left with no debt, but with no employment or place to live either.

In light of the length of the marriage, Timothy's greater earning capacity, and Janet's need, we find that Janet is entitled to rehabilitative alimony to assist her in pursuing employment training. However, we are persuaded that the trial court's award should be reduced in amount. We conclude that a more equitable alimony award is \$100 per month for five years. This should allow Janet sufficient time to finish her schooling and find suitable employment. This award shall terminate upon the death of either party or upon Janet's remarriage, whichever first occurs.

Attorney Fees In evaluating a request for attorney fees on appeal, the court *must* consider the needs of the party making the request and the ability of the other to pay In re Marriage of Castle, 312 N W 2d 147, 150 (Iowa Ct. App 1981) We order each party to pay his or her own attorney fees incurred on appeal Costs are assessed to Timothy

AFFIRMED AS MODIFIED.

All judges concur, except Sackett, J , who dissents

SACKETT, J. (dissenting)

I would affirm the trial court in all respects except I determine the alimony to be rehabilitative and would order it not be terminated should Janet remarry.