FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF WILLIAM R. SCHOBER AND BETTY L. SCHOBER

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Upon the Petition of)
WILLIAM R. SCHOBER,)
Petitioner-Appellant,) Filed May 25, 1982
And Concerning)
BETTY L. SCHOBER,) 2-109 / 2-66951
Respondent/Cross-Appellant.)

Appeal from Floyd District Court - Ray E. Clough, Judge.

Petitioner husband appeals and respondent wife cross-appeals from the economic provisions of the parties' dissolution decree. AFFIRMED.

Alfred A. Beardmore, Charles City, for petitioner-appellant.

John G. Sorensen of Boyle, Schuler, Stanton, Grabinski & Sorensen, Clear Lake, for respondent-cross-appellant.

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

DONIELSON, J.

Petitioner husband appeals and respondent wife cross-appeals from the economic provisions of the parties' dissolution decree. We affirm.

Our review of this equitable proceeding is de novo. Iowa R.App. P. 4. Our responsibility is to review the facts as well as the law and to determine rights anew from the credible evidence on properly presented and preserved issues. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977). While we give weight to the findings of the trial court, especially where credibility of witnesses is involved, we are not bound by them. In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974); Iowa R. App. P. 14(f)(7). As in all cases of this type, precedent is of little value and our decision must ultimately depend upon the particular facts of this case. In re Marriage of Kehrli, 241 N.W.2d 923, 926 (Iowa 1976).

I.

Petitioner is a practicing physical therapist with an annual income of approximately $53,000 at the time of trial. Respondent was primarily a housewife and mother during the twenty-six years of marriage and was unemployed at the time of trial.

Both parties were personally liable for the corporate debts of a motorcycle business ran by their son-in-law. When this business became insolvent, petitioner attempted to file for bankruptcy under chapter 13, 11 U.S.C. §1301-1330 (Supp. IV 1980), but, due to respondent's refusal to join in the action, petitioner was forced to file separately under chapter 7, 11 U.S.C. §701-766 (Supp. IV 1980). Thus, petitioner's obligations for the motorcycle business have been discharged, while respondent's have not been discharged. The trial court ordered that respondent would not be indemnified for either her individual or joint debts dischargeable in bankruptcy, with the exception of those debts which petitioner chooses to reaffirm.

The trial court recognized that due to the bankruptcy there would be very little property left to divide. The court, therefore, awarded each party his or her own clothing and personal effects. The remaining property was to be sold at public auction and the proceeds equally divided.

The trial court further ordered that petitioner pay respondent $1,100 per month alimony, terminable only upon her death or remarriage. At the time of trial, respondent was living with a man who contributed somewhat to her support.

II.

Both parties claim the economic provisions of the trial court's decree are inequitable. Petitioner has appealed, asserting the trial court's award of alimony to the respondent was excessive and should not have been made a charge against his estate. Respondent has cross-appealed, asserting: (1) that the alimony award was inadequate; (2) that she should have been awarded additional marital assets, particularly a motor vehicle and a lump sum property award based on the petitioner's corporate and partnership interests; (3) that she should be indemnified with regard to certain debts; and (4) that petitioner should be required to maintain medical and dental insurance covering her.

Our analysis begins with § 598.21, The Code, and is guided by the familiar factors found in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), (modified to exclude fault in In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972)). The property division and alimony provisions must be equitable to both parties. In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975).

We have examined the trial court's decree in terms of the criteria set out above and conclude that the decree reaches an equitable result as to both the division of property and the award of alimony. We deny respondent's request for a motor vehicle. Neither party exited the marriage owning a motor vehicle, but both now have the use of a motor vehicle. Unfortunately, due to the failure of the

parties' business venture with their son-in-law, which resulted in petitioner's chapter 7 bankruptcy proceeding, they have very little property to show for twenty-six years of marriage. The public auction ordered by the trial court was the only feasible and equitable method to divide the property which remained after the bankruptcy. Furthermore, we find the trial court's decision with regard to indemnification for debts is equitable in light of respondent's unexplained refusal to join in the petitioner's bankruptcy action and the fact that she still has the option to file her own bankruptcy action.

Although allocations for alimony, support, and property have different purposes, the court can properly consider how the property has been divided in assessing the needs and resources of the parties in fixing alimony. In re Marriage of Peterson, 227 N.W.2d 139, 142 (Iowa 1975). The trial court's decision to allow petitioner to retain his share of the business partnership was necessary to insure that he will be able to continue to earn a substantial income. In light of the property division and the parties' respective earning capacities, we feel the trial court's award of $1,100 per month in alimony to respondent is equitable. These same circumstances justify the trial court's decision to make the alimony award a charge against petitioner's estate.

As applied to this case, we reject petitioner's argument that the trial court erred by failing to consider that respondent was being supported to some extent by a man with whom she was living at the time of trial. While we believe it would not be improper to consider the amount of such support in making an alimony award, in this case the amount of support received was not well documented or substantial and would not warrant a reduction in the amount of alimony awarded.

III.

Finally, respondent has requested that petitioner pay attorney fees incurred in this appeal. Such an award depends upon the relative financial circumstances

of the parties. In re Marriage of Burham, 283 N.W.2d 269, 278 (Iowa 1979). Our examination of both parties' financial circumstances dictates that we deny respondent's request for attorney fees.

AFFIRMED.