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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-298 / 88-1735

IN RE MARRIAGE OF DON RALPH GARRISON AND BARBARA ANN GARRISON

Upon the Petition of

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DON RALPH GARRISON,

Appellee,

And Concerning

BARBARA ANN GARRISON,

Appellant.

Appeal from the Iowa District Court for Black Hawk County, John Bauercamper, Judge.

Appellant appeals from a dissolution decree, challenging economic provisions. **AFFIRMED.**

Richard A. Knock of Mershon, Snow & Knock, Cedar Falls, for appellant.

David J. Mason of Mason & Mason, Waterloo, for appellee.

Considered by Donielson, P.J., and Schlegel and Sackett, JJ.

SCHLEGEL, J.

The wife appeals a dissolution decree, challenging economic provisions. We affirm the trial court.

Barbara requests larger awards of property and alimony. She also contends the district court should have awarded her attorney's fees. Both parties request attorney's fees on appeal.

The parties, Don and Barbara Garrison, were married in 1978. They have no children of their own, although Barbara's son from an earlier marriage lived with the parties. This child was fifteen years old at trial time. Barbara receives $200 per month in child support from the father of this child.

Don has extensive experience as a ceramic tile installer. About two years before this marriage he formed a business called Garrison Tile. He has operated this business continuously since that time, and the business provided the parties' primary income during the marriage. Barbara served as bookkeeper for this business and also assisted with other aspects of the business. The record indicates that in 1987 the business paid Barbara a salary of $12,000 and had net income of $38,000. For the first half of 1988, the business showed net income of $8,800, presumably after Barbara's salary was paid. No value for the business appears in the record.

The district court awarded the tile business to Don. The court also awarded Don the parties' house, which is valued at $37,000 and is subject to a debt of $15,000. (Don owned this house prior to the marriage, and the tile business is operated from the house.) In addition, Don was awarded savings of $9,500, some life insurance policies, a lot in Arkansas, a used mobile home valued at $1,000, and various personal effects. Barbara was awarded a car, savings estimated at $10,000 to $13,000, life insurance policies, and personal effects. Don was ordered to assume debts of over $6,500, in addition to the house mortgage.

Don was directed to pay Barbara rehabilitative alimony of $350 per month for twelve months. Neither party was awarded attorney's fees.

This is an equitable action and as such our review is de novo. Iowa R. App. P. 4. This court gives weight to the findings of the trial court but is not bound by them. In re Marriage of Wallace, 315 N.W.2d 827, 830 (Iowa App. 1981).

Barbara's main contention regarding the property distribution is that the court failed to consider certain debts brought into the marriage by Don. The criteria for division of property and the award of support payments are set forth in Iowa Code section 598.21. An examination of those factors show that the property division in this instance is equitable.

Don did bring debts into the marriage, but he also brought in the home and the business. There was substantial equity built up in the house and the business has provided the parties with a good income for many years. There was some discrepancy as to the value of the assets brought into the marriage by Barbara. However, we find the value placed on the assets by the trial court to be well within the permissible range of evidence and will not disturb them on appeal. See In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973); In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984).

We consider the property division and alimony together in evaluating their individual sufficiency. In re Marriage of Dahl, 418 N.W.2d 358, 359 (Iowa App. 1987); In re Marriage of Griffin, 356 N.W.2d at 608. Barbara was awarded $350 per month for twelve months as rehabilitative alimony. Considering this award, together with the property and cash that she received, shows there has been an equitable distribution of the property.

Barbara also contends the award of rehabilitative alimony was insufficient. Alimony is not an absolute right; an award depends upon the circumstances of each particular case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3). See In re Marriage of Hayne, 334 N.W.2d 347 (Iowa App. 1983).

Barbara argues that her health is deteriorating and should be given greater weight as a factor under section 598.21(3). She also argues that the trial court overestimated her ability to earn a living based on her education. There is no evidence to suggest that the health factors would impair Barbara's ability to earn a living or would cause her to incur any substantial expense to correct them. Barbara is not a college graduate but her education and training allow her more opportunities for employment. Don only has the tile business and it would make little sense to award Barbara the only business Don has the ability to run when she has the ability to find work elsewhere.

When considering the factors listed in Iowa Code section 598.21(3), the trial court was within its sound discretion in awarding the specified amount of rehabilitative alimony.

Barbara finally contends that the trial court should have awarded her attorney fees. Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). To overturn an award the complaining party must show that the trial court abused its discretion. Id. Awards of attorney fees must be for fair and reasonable amounts, In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977), and based on the parties' respective abilities to pay. In

re Marriage of Lattig, 318 N.W.2d 811, 817 (Iowa 1982). The trial court did not abuse its discretion by not awarding attorney fees to Barbara.

Both parties have requested attorney fees on appeal. The trial court's property distribution and determination of alimony were equitable and neither party is in desperate need. However, the nature of the award to Don provides him with more ability to pay current expenses. Barbara is awarded $500 in attorney fees on appeal and the costs are to be assessed against the appellee, Don.

AFFIRMED.