

IN THE COURT OF APPEALS OF IOWA

No. 9-603 / 89-328

FILED

DEC 21 1989

CLERK SUPREME COURT

IN RE THE MARRIAGE OF DOUGLAS E. HAYNES and VICKIE J.
HAYNES

Upon the Petition of
DOUGLAS E. HAYNES,

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Appellee,

And Concerning
VICKIE J. HAYNES,

Appellant.

Appeal from the Iowa District Court for Polk County,
Rodney C. Ryan, Judge.

Appeal from the economic provisions of a dissolution
decree. **AFFIRMED.**

Richard O. McConville of Scalise, Scism, Sandre & Uhl,
Des Moines, for appellant.

J. Blaine Phipps, Des Moines, for appellee.

Considered by Schlegel, P.J., and Hayden and Habhab,
JJ.

PER CURIAM

Appellant Vickie J. Haynes appeals from provisions of the dissolution decree entered in the district court. She argues: 1) the district court erred in not awarding her alimony; and 2) the district court's division of property was inequitable. We affirm.

Douglas and Vickie Haynes were married on July 16, 1983. No children were born of the marriage.

At the time of the marriage, Douglas was a quadriplegic, having been injured in an automobile accident while in the armed forces. His sole income is derived from military pension and social security benefits based upon his permanent disability. At the time of the hearing, he was receiving approximately \$3,900 a month in benefits.

Just prior to their marriage, Douglas received a grant and loan from the Veterans Administration for the construction of a specially-designed home in Urbandale. The home was built and purchased in 1983 for approximately \$148,000. At trial, the balance of principal owed on the mortgage was about \$107,000.

Vickie, age 29, is in good health. She has a GED and had taken one and one-half years night classes in production art at the Des Moines Area Community College prior to her marriage. Vickie did not work during the marriage.

On September 3, 1987, Douglas filed a petition for the dissolution of the parties' marriage. On September 4, a temporary order was entered requiring Douglas to pay temporary alimony of \$200 per week to Vickie.

Following trial, a district court decree of dissolution was entered on July 18, 1988. The district court awarded the parties' home to Douglas in addition to the obligation on the mortgage. Both parties were awarded all vehicles and personal property in their possession except for a few items Vickie was ordered to return to Douglas. No alimony was awarded and the parties were made responsible for their own attorney fees. Following the denial of Vickie's posttrial motions, Vickie filed a notice of appeal. We affirm.

I. Scope of Review. Our scope of review is de novo. Iowa R. App. P. 4. Although not bound by the trial court's determination of factual findings, we will give considerable weight to them, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). Prior cases, though helpful, have little precedential value since we must base our decision here primarily on the particular circumstance of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

II. Alimony. Alimony is an allowance to the ex-spouse in lieu of a legal obligation to support that person. See In re Marriage of Hitchcock, 309 N.W.2d 432 (Iowa 1981).

Alimony is not an absolute right; its award depends upon the unique circumstances of each particular case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). In making an award of alimony the courts are to consider those factors listed in Schantz v. Schantz, 163 N.W.2d 398 (Iowa 1968), as modified by In re Marriage of Williams, 199 N.W.2d 339 (Iowa 1972), and now codified in Iowa Code section 598.21(3). See In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983); In re Marriage of Hayne, 334 N.W.2d 347 (Iowa App. 1983).

We consider 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 606, 608 (Iowa App. 1984). The partners in a marriage are "entitled to a just and equitable share of the property accumulated through their joint efforts." In re Marriage of Havran, 406 N.W.2d 450, 452 (Iowa App. 1987).

When the value placed on the assets by the trial court is within the permissible range of evidence we will not disturb those values 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).

Upon our review of the evidence, we do not deem the trial court's decision to decline to award appellant alimony to be inequitable. First, the parties' marriage

was of a short duration, only fifty months between marriage and separation. Additionally, the trial court found, and we agree, appellant is fully capable of obtaining gainful employment. We find it significant since the parties' separation appellant made no applications for permanent employment.

III. The Property Award. The criteria governing property division are now contained in Iowa Code section 589.21. The determination as to what constitutes an equitable property division cannot be reduced to precise mathematical formulas. The courts strive to make a just and equitable award under the unique circumstances of each case. Among the factors to be considered are the parties' respective incomes, educations, and earning capacities; the length of the marriage; the contributions and sacrifices made by each toward the acquisition of the property during the marriage; the sources of the property; the respective parties' needs; their social position and living standards both before and during the marriage; their physical and mental health and life expectancies; the tax consequences to each party; and such other factors as may reasonably enter into any division. See In re Marriage of Wallace, 315 N.W.2d 827, 830 (Iowa App. 1981).

We find the trial court's division of property to be equitable and will not disturb it on appeal. All of the funds for the house in Urbandale were secured by appellee

through the Veteran's Administration. Similarly, the house payments were made solely from appellee's disability benefits. We find no error in awarding this property to appellee along with any equity which exists in the property.

IV. Attorneys 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. 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 App. 1982).

We find no abuse of discretion on the part of the trial court in declining to award attorney fees to appellant.

V. Appellate Attorneys Fees. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Hayne, 334 N.W.2d 347, 353 (Iowa App. 1983); In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981).

We decline to award appellant attorney fees for this appeal.

Costs of this appeal are assessed to appellant.

AFFIRMED.