



IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF CARROL WOOLRIDGE AND HAROLD WOOLRIDGE

Upon the Petition of	)	
CARROL WOOLRIDGE,	)	278
Petitioner-Appellant/ Cross-Appellee,	)	Filed January 28, 1987
And Concerning	)	
HAROLD WOOLRIDGE,	)	<u>6-318</u>
Respondent-Appellee/ Cross-Appellant.	)	85-1336

Appeal from the Iowa District Court for Ida County (No. 346) - Phillip S. Dandos, Judge.

Petitioner wife appeals and respondent husband cross-appeals from the decree dissolving the parties' marriage. **AFFIRMED AS MODIFIED.**

Steven D. Hamilton of Hamilton Law Firm, Storm Lake, for appellant.

D. R. Franck and R. J. Tilton of Franck, Mundt, Nepper & Franck, Denison, for appellee.

Considered by Oxberger, C.J., and Donielson, Schlegel, Hayden, and Sackett, JJ. Snell, J., takes no part.

DONIELSON, P.J.**279**

Petitioner wife appeals and respondent husband cross-appeals from the decree dissolving the parties' marriage. On appeal, petitioner wife asserts (1) that her alimony award is inadequate in both amount and duration, (2) that the property division is inequitable, and (3) that she should be awarded attorney fees on appeal. On cross-appeal, respondent husband asserts (1) that the trial court should not have awarded petitioner wife any alimony and (2) that the property division is inequitable. We affirm as modified.

The petitioner Carrol Woolridge and respondent Harold Woolridge were married on March 14, 1975, in Hawaii. This was the second marriage for both. Each had children from a prior marriage that are adult and not dependent on either during the parties' marriage. At the time the parties met, Carrol was employed at the Xerox Corporation in California as a senior computer auditor. At the time Carrol quit her job with Xerox to marry Harold, Carrol was earning approximately \$13,500.00 per year. At the time of the dissolution decree, Carrol was 67 years of age.

Harold, age 68, has been a lifelong resident of Ida Grove, Iowa. Prior to the parties' marriage, Harold had inherited and purchased a 160-acre farm. At the time of the marriage there existed a \$16,000.00 mortgage on the farm, \$4,000.00 of which Harold owed to himself as an heir.

Both Carrol and Harold owned substantial inherited and premarital assets at the time the parties were married. Carrol owned a home in Torrence, California, worth approximately \$90,000.00. The home is presently being rented for \$600.00 per month. Carrol also had a considerable sum of money in a Xerox fund which had grown to approximately \$40,000.00 at the time of the dissolution. Besides the farm, Harold also owned two vehicles and \$8,000.00 in certificates of deposit inherited from his deceased wife. The parties executed an antenuptial

agreement on March 14, 1975. The agreement provided that the real property owned by each of the parties would remain their own separate property and that each agreed to sign all documents necessary to transfer title when requested.

The divorce decree provided that Harold was to pay Carrol \$250.00 per month alimony for two years. Each party was to receive his or her property that was brought into the marriage pursuant to an antenuptial agreement. In addition, Carrol also received a Winnebago recreational vehicle valued at \$4,500.00, a home valued at \$16,000.00, and a \$12,000.00 property division award, for a total of \$167,625.00. Harold received additionally a truck valued at \$2,000.00, a Keogh account of \$17,146.00, an IRA valued at \$433.00, a certificate of deposit for a road easement valued at \$4,000.00, certificates of deposit from farm income valued at \$10,000.00, and crops valued at \$12,835.00, for a total sum of \$179,914.00. On appeal from the decree, Carrol asserts that the alimony provision was insufficient both as to amount and duration and that Harold had received an inequitable division of the marital assets.

The standard of review in equitable proceedings is de novo. Iowa R. App. P. 4. Thus, it is our responsibility to review the facts and the law and to determine anew the rights of the parties where the issues have been properly presented. In re Marriage of Phipps, 379 N.W.2d 26, 27 (Iowa Ct. App. 1985). Although we give weight to the trial court's findings, particularly where the credibility of witnesses is concerned, we are not bound by them. Iowa R. App. P. 14(f)(7).

There are no hard and fast rules governing economic issues in a dissolution action, and because precedent is of little value, our decision must ultimately rest on the particular facts of each issue. In re Marriage of Vrban, 359 N.W.2d 420, 423 (Iowa 1984). When determining the appropriateness of alimony, the trial court must consider the earning capacity of each party, present standards of living, and ability to pay balanced against the relative needs of the other.

In re Marriage of Hitchcock, 309 N.W.2d 432, 436-37 (Iowa 1981). In considering the fairness of the alimony provision in a dissolution decree, we look to the factors listed in Iowa Code section 598.21(3) (1985), which provides a list of factors that must be considered in ordering support payments. In re Marriage of Passick, 375 N.W.2d 284, 285 (Iowa Ct. App. 1985). In balancing the needs of both parties, we note that the property division and alimony may be considered together in evaluating their sufficiency; neither should be evaluated in isolation from one another. In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa Ct. App. 1984).

Upon a careful review of all the factors enumerated in section 598.21(3), we believe that the trial court's award of alimony was proper. The record reveals that Carrol, upon her marriage to Harold, left her job with Xerox to help maintain the marital home. Harold contends that had Carrol not married him, her financial condition would have been no better today. Considering Carrol's senior position as a computer auditor at Xerox, and noting that computer technology has exploded within the past decade, we believe Carrol may well have substantially increased her standard of living during that period of time. Because Carrol is approximately 67 years old and because her knowledge of computers would by now be obsolete, it would be extremely difficult for her to return to that employment or other gainful employment.

The record reveals that while Carrol did not work outside the home, she performed various homemaking duties such as laundry, ironing, cooking, baking, painting farm buildings, and mowing nearly five acres of grass every week. We have recognized that such contributions are equally as important as monetary contributions when considering the appropriateness of granting alimony. See In re Marriage of Moffatt, 279 N.W.2d 15, 21 (Iowa 1979). The record reveals that Harold's income, with interest income, farm income, and social security,

is approximately \$21,740.00 per year. Carrol's income is only \$14,880.00 per year, which could drop considerably should Carrol decide to return to live in her home in California, at which time she would lose approximately \$600.00 in rent per month. Though Carrol could receive rent from the home in Ida Grove she inherited by contract, such rent would not be enough to afford Carrol a standard of living comparable to that during the parties' marriage. Harold has a greater ability to pay, and we believe that he should contribute to Carrol's support. We therefore affirm the trial court's award of \$250.00 per month alimony. Upon consideration of the facts in the present case, we believe, however, that the alimony provision should be modified by requiring that such alimony payments shall continue until Carrol's death or remarriage or Harold's death.

Carrol next asserts that the division of the parties' assets by the trial court was not equitable and that the property division payment should be increased from \$12,000.00 to \$25,000.00. Harold contends that the \$12,000.00 award is unwarranted under the circumstances of the present case and requests the return of the parties' recreational vehicle which was awarded to Carrol.

In a marriage dissolution action, there need be neither an equal division nor a percentage division of property. In re Marriage of Hoak, 364 N.W.2d 185, 194 (Iowa 1985). That which is most determinative is that which would constitute an equitable and just award. Id. We must consider all the enumerated factors of Iowa Code section 598.21(1) (1985) and all other factors we may properly consider relevant in each individual case. In re Marriage of Yates, 365 N.W.2d 49, 51 (Iowa Ct. App. 1985). All economic aspects of the decree must be viewed as an integrated whole. In re Marriage of Bornstein, 359 N.W.2d 500, 503 (Iowa Ct. App. 1984). The property division and alimony award must be considered together in evaluating their individual sufficiency; neither is to be viewed in

isolation from one another. In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa Ct. App. 1984).

In the present case, Carrol received approximately \$167,625.00 in property division while Harold received approximately \$179,914.00. Harold received, besides the property he brought into the marriage, a Chevy truck valued at \$2,000.00, a Keogh fund in the amount of \$17,146.00, an IRA of \$433.00, a \$4,000.00 CD purchased from money received for a road easement, \$12,500.00 in CD's purchased from farm income funds, and \$12,835.00 in crops. In addition to the property Carrol brought into the marriage, Carrol also received a Winnebago van worth approximately \$4,500.00, a home valued at \$16,000.00, and the \$12,000.00 property division award.

Upon careful review of all the factors enumerated in section 598.21(1), we believe that the property division award of \$12,000.00 is equitable under the circumstances. Both parties are in their late 60's and an increase in income for either party appears unlikely. Both parties' children were adults and therefore did not live in the marital home. The marriage was of a relatively short duration, lasting approximately ten years. The record reveals that both parties contributed to the marriage though in different ways. Carrol performed many household duties and participated in the maintenance of the farm, but did not substantially contribute monetarily to the parties' assets. Taking into consideration our decision granting Carrol alimony in the amount of \$250.00 per month until her death or remarriage, or Harold's death, we believe that the trial court's order granting a \$12,000.00 property division payment and recreational vehicle to Carrol is equitable under the circumstances of the present case.

Carrol also requests attorney fees on appeal. An award of attorney fees in a dissolution action is not a matter of right but depends upon the relative needs and abilities of the parties. In re Marriage of Fish, 350 N.W.2d 226, 231

(Iowa Ct. App. 1984). On the basis of the present record, we believe that each party should pay his or her own respective attorney fees.

AFFIRMED AS MODIFIED.

Sackett and Schlegel, JJ., dissent and specially concur.

I agree with the majority's decision to affirm the property and alimony award. I fail, however, to find justification for their decision to modify the award to automatically provide the alimony terminate on remarriage. There is no statutory authority for alimony to automatically terminate on remarriage. The Iowa Supreme Court has determined there is a rebuttable presumption alimony terminate on remarriage. See In re Marriage of Shima, 360 N.W.2d 827, 828 (Iowa 1985).

The majority has determined Carroll's alimony award is justified because she absented herself from secure employment to devote time to homemaking activities. She enters retirement without the benefits she would have accrued from employment until retirement. The majority has arbitrarily predetermined her alimony should terminate on remarriage. She is not even given the benefit of rebutting the presumption. See Shima, 360 N.W.2d at 828. Schlegel, J., joins this dissent and concurrence.