FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-469 / 94-530

IN RE THE MARRIAGE OF JANIS L. MYERS AND CARL J. MYERS

Upon the Petition of
JANIS L. MYERS,

Appellant,

And Concerning
CARL J. MYERS,

Appellee.

Appeal from the Iowa District Court for Dallas County, Dale B. Hagen, Judge.

Janis Myers appeals the district court's order in a dissolution of marriage of action. **AFFIRMED.**

Gregory A. Hulse and Randy V. Hefner of Van Werden, Hulse & Hefner, Adel, for appellant.

John C. Powell of Shirley, Smith, Shirley & Powell, Perry, for appellee.

Considered en banc.

DONIELSON, C.J.

Janis Myers appeals the provisions of a dissolution decree. She contends she should have been awarded permanent rather than rehabilitative alimony. She also argues the district court should have calculated her share of her husband's retirement plan as of the date of trial or entry of the decree and not from the date of their separation. Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. In equity cases, especially when considering the credibility of witnesses, we give weight to the fact findings of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7). We affirm the district court's decision in its entirety..

I. ALIMONY

Janis and Carl Myers were married seven and one-half years prior to their separation. At the time of the dissolution trial Janis was fifty years old and Carl was fifty-seven. Janis has a high school education and was not employed at the time of trial. Carl has a college education and is employed as an operations manager for Wiese Corporation. At the time of trial, Carl's gross pay was $4,725 per month. He also receives an additional $324 per month as a pension benefit from his prior place of employment. The district court found Janis brought approximately $71,000 worth of assets into the marriage and

Carl brought approximately $30,800 of assets to the marriage.

During her life Janis has held various clerical, secretarial and waitress positions. She was employed as a meter reader for Iowa Electric until 1986 and was earning $18,000 a year in that position. She quit that job because of health reasons. Janis testified she has fibromyalgia, a muscle condition which causes her chronic pain and fatigue. Janis has held two part-time jobs since 1986, but she testified she could not handle those jobs because of fatigue. Carl testified he could not remember Janis ever telling him she was afflicted with fibromyalgia, although he was aware of prior back problems she had.

In its January 19, 1994, Findings of Fact and Conclusions of Law, the district court concluded this was not a marriage of long-standing and no evidence other than Janis's testimony was offered concerning her physical health. The court ordered Carl to pay Janis rehabilitative alimony so she could become self supporting. Carl was ordered to pay Janis $1,500 per month until June 30, 1994, $1,000 per month until December 31, 1994, and $500 per month until December 31, 1995.

Janis contends she should have been awarded permanent alimony in light of her age, health, earning capacity and assets. Alimony is an allowance to the former spouse in lieu of a legal obligation to support that person. In re Marriage of Elbert, 492 N.W.2d 733, 735 (Iowa App. 1992).

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. Id. The discretionary award of alimony is made after considering the statutory factors listed in Iowa Code section 598.21(3). Id. at 736. We will consider the property division and alimony award together in evaluating their individual sufficiency. In re Marriage of Coulter, 502 N.W.2d 168, 172 (Iowa App. 1993).

Self-sufficiency is the goal of rehabilitative alimony. See In re Marriage of Francis, 442 N.W.2d 59, 64 (Iowa 1989). Rehabilitative alimony was conceived as a way of supporting an economically dependent spouse through a limited period of reeducation and retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting. Id. at 63.

We concur with the district court's decision to award rehabilitative rather than permanent alimony. Janis's own testimony indicated she had over twenty-eight years of work experience. She had been employed as a waitress, at Penney's, at a foundry, and for Iowa Electric prior to her marriage. She had held and voluntarily quit two part-time jobs after leaving Iowa Electric in 1986. Janis testified she considers herself to be disabled most of the time and unable to work. However, at the time of trial she had not applied, or investigated the possibility of applying, for social security disability benefits.

The district court judge had the best opportunity to assess the strength and credibility of Janis's claim of being physically unable to work. No medical records or evidence other than her testimony were offered regarding this matter. The district court concluded Janis had the ability to become self-supporting. While Janis's past work history indicates she has less earning capacity than Carl, she has been employed for long periods in the past and has a demonstrated ability to work.

This was not a marriage of long-standing, and neither Janis's age nor health necessarily preclude her from obtaining employment. Under these circumstances, and in light of the property awarded to Janis, we find the award of rehabilitative alimony was equitable.

II. RETIREMENT PLAN

Janis claims her equitable share of Carl's retirement plan should have been calculated as of the date of the trial or entry of the decree and not as of the date of the parties' separation. Carl commenced his employment with the Wiese Corporation in December 1983. Carl and Janis were married December 7, 1984, and separated in June 1992. Janis filed a petition for dissolution on February 26, 1993.

During his employment with the Wiese Corporation, Carl has been a participant in his employer's profit sharing/401K plan. Exhibit 15 established the value of

Carl's vested interest in the plan was $95,423.17 as of October 31, 1992. During the October 21, 1993, trial, Carl testified the value of his vested interest had risen to approximately $100,000.

"[T]he date of trial is the only reasonable time at which an assessment of the parties' net worth should be undertaken." Locke v. Locke, 246 N.W.2d 246, 252 (Iowa 1976); see also In re Marriage of Muelhaupt, 439 N.W.2d 656, 661 (Iowa 1989); In re Marriage of Moffatt, 279 N.W.2d 15, 20 (Iowa 1979). It is the responsibility of the parties to supply the trial court with valuations current as of the date of trial. However, where a spouse does not contribute to the increased value of an asset after the parties' separation, a trial court does not err in using the value of the property as of the date of separation in making a property disposition. See In re Marriage of Richards, 439 N.W.2d 876, 882 (Iowa App. 1989); see also In re Marriage of Oakes, 462 N.W.2d 730, 733 (Iowa App. 1990) (assets should not be divided where spouse did not contribute to their growth after parties' separation); Muelhaupt, 439 N.W.2d at 661 (spouse entitled to only small portion of asset when she had contributed little to it after parties' separation).

The district court orally, and in written findings, determined Janis was entitled to one-half of Carl's pension plan accumulated during the marriage prior to their separation. Relying on the October 31, 1992, valuation, (a

valuation made four months after the parties' separation) the district court determined Janis was entitled to a Qualified Domestic Relations Order in the amount of $40,577.07.

We conclude it was equitable for the district court to use the value of the plan as of the parties' separation rather than the value at trial or at the time of entry of the decree. This was not a situation in which Janis contributed to any increased value of the retirement plan after the parties' separation. The district court took deliberate steps to ensure Janis was awarded a home free from debt and sufficient property to offset the fact she brought more assets into the marriage than had Carl. Under these circumstances we find no inequity in the valuation or division of Carl's retirement plan.

AFFIRMED.