

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF
BARBARA JEAN BOWERSOX AND JAMES J. BOWERSOX

FILED

DEC 22 1988

CLERK SUPREME COURT

Upon the Petition of)

BARBARA JEAN BOWERSOX,)

Petitioner-Appellant,)

And Concerning)

JAMES J. BOWERSOX,)

Respondent-Appellee.)

8-574
88-324

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Appeal from the Iowa District Court for Johnson County
(Eq. 7191), L. Vern Robinson, Judge.

Petitioner appeals certain economic provisions in the
decree of dissolution entered for the parties in district
court. **AFFIRMED.**

Margaret T. Lainson of Meardon, Sueppel, Downer &
Hayes, Iowa City, for petitioner-appellant.

Philip A. Leff of Leff, Leff, Leff, Hauptert & Traw,
Iowa City, for defendant-appellee.

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

HAYDEN, P.J.

This is an appeal by the petitioner-wife from the economic provisions of a dissolution decree entered for the parties by the district court.

I.

Barbara Bowersox and James Bowersox were married in 1963. They have four children. The oldest two children, Lori and Christopher, are adults. The other two children are Douglas, born in 1969, and Susan, born in 1970. James, 47, is self-employed as a farmer. Barbara, 45, has worked primarily on the farm and as a housewife. Barbara recently had back surgery and is currently under psychiatric treatment for a depression caused by problems in the marriage.

The parties own a 293-acre farm which has a negative net value. The district court found the farm had an average net monthly income of \$2,500. The district court awarded the farm and its debt to James. Barbara received an automobile with a net value of \$2,300 and personal property. Barbara received custody of the children. James was ordered to pay \$600 per month in child support until Douglas becomes 18, when the payments will be reduced to \$300 per month. Barbara was granted the right to reside at the farmstead until June 1, 1989, shortly after Susan finishes high school. James must pay \$600 per month in alimony until either party dies. The trial court explained

it was considering the fact Barbara was not receiving a property settlement in determining the amount and duration of the alimony award. James was also ordered to pay \$2,000 of Barbara's attorney fees. Barbara now appeals from the decree entered by the district court.

II.

Barbara argues the division of property was inequitable because James received the only real asset of the marriage, the farm, and she did not receive a property settlement. She feels even though the farm has a negative value now, it will likely increase in value, thus she asks for a property settlement of \$50,000. Second, Barbara claims the amount of child support should be increased, asking that James provide for post-high school education for the minor children. Third, Barbara contends the amount of alimony is not adequate, she asks for \$1,000 per month until July 1, 1989, when she must move out of the farmhouse, and \$1,400 per month thereafter. Finally, Barbara asks for attorney fees for this appeal.

Our scope of review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7). Prior cases have little precedential value, we must base our decision primarily on the particular circumstances of the parties in each case. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

III.

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A. Division of Property. Barbara first asserts the district court's division of property was inequitable because it did not properly reflect the reality of the improving farm economy. Barbara agrees that James should retain the land, but that she should receive some cash settlement as her share of the joint marital contribution made in acquiring the land during the marriage.

When determining what constitutes an equitable distribution of property between the parties, it is mandatory that we consider the listed factors of Iowa Code section 598.21(1) (1987). In re Marriage of Johnson, 350 N.W.2d 199, 201-02 (Iowa 1984). Although it is within our discretion to consider other factors. Id. In this regard, we note the supreme court has stated:

Although alimony on one hand and allocation of property rights on the other are distinguishable and have different purposes in marriage dissolution proceedings, they are still closely related to the matter of determining the amount to be allowed.

Thus, the question boils down to whether the property division and alimony taken together are equitable to both

In re Marriage of Callenius, 309 N.W.2d 510, 513-514 (Iowa App. 1981) (quoting In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975)).

Both parties submitted appraisals which valued the farm between \$273,000 and \$338,000. In either event, the outstanding debt exceeds both appraisals. As the trial

court determined, requiring a forced sale of the property would result in both parties leaving the marriage with tremendous debt. It is clear from the record the farm can provide a positive income source if James is allowed to farm it.

Barbara agrees the total debt is greater than the value of the farm, but argues the farm has an intrinsic value--apparently asserting, because land values and farm incomes appear to be improving after the dark days of the early 1980's, that James will soon be making huge profits while pulling the farm out of debt.

We acknowledge in the year before the dissolution was entered James's farming profits showed improvement, however, it is mere speculation for us to now say this farm is going to be worth much more five or ten years down the road and thus, James should pay Barbara half of what the farm may someday be worth. The trial court awarded James the farm as well as all the debt on the farm. James will continue to walk a narrow plank to keep the farming operation alive. Granted, the potential is there for James to turn the farm into a successful venture, but the converse is also true, James may not be able to maintain the farm in the future, which could result in even larger losses than those which he has already assumed. We therefore find these factors, coupled with the trial court's decision to discontinue alimony only upon the death

of either party, results in a fair and equitable property division between James and Barbara.

B. Child Support. Barbara next argues the district court order for child support was too low and was set for too short a duration. The trial court ordered James to pay \$600 per month to Barbara for support of Douglas and Susan and reduced the child support obligation by \$300 when Douglas graduated from high school.

Iowa code section 598.21(4) (1987) lays out criteria which the court must look to in determining child support obligations. The statute provides upon every judgment and dissolution the court may order either parent to pay an amount reasonable and necessary for support of the child. Among the permissible considerations listed is the financial resources of both parents.

In determining the financial resources of the parents, we take into consideration the parties' age, health, present earning capacity, future prospects, amount of resources, and indebtedness. In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974). These factors are weighed against the needs of the child to reach a suitable support level. Iowa Code § 598.21(4) (1987).

The trial court's decision allows Barbara and the minor children to remain in the family farmhouse until the younger of the two children graduates from high school. James is also to pay all bills relative to the upkeep of

the family farmhouse during that time. Through our de novo review, we determine the trial court correctly solved this difficult decision to fix child support payments which provide Barbara with a reasonable amount and also allow James to meet the farm operating expenses, including debt service, so that he may continue farming.

Likewise, we find no merit in Barbara's assertion the trial court should have extended James's child support obligation until the children's twenty-second birthday, pursuant to Iowa Code section 598.1(2) (1987). This section specifically permits additional support beyond age eighteen when the child is regularly attending a post-high school education institution as a full-time student, or when the child has been accepted to admission to a college, university, or area school and the next regular term has not begun. The record here does not indicate Douglas has been accepted at the mechanical school which he desires to attend, although he has expressed an interest in attending a particular institution. We determine his situation does not fit the statutory guidelines and thus, the trial court was correct in not extending the child support obligation. In regard to Susan, she has not yet graduated from high school and any determination of extended child support obligations would be premature. In re Marriage of Briggs, 225 N.W.2d 911, 914 (Iowa 1975).

C. Alimony Award. Barbara next asserts the amount of alimony is inadequate and should be increased, if not now at least when she moves off the farm.

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 relative needs of the other. In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983) In our de novo review, considering the relative income of James and the current needs of Barbara, as well as other factors we must consider under Iowa Code section 598 21 (1987), we determine the alimony award was proper both as to amount and duration, and we therefore affirm the trial court's determination on this issue.

D. Attorney Fees. Finally, Barbara asks for attorney fees for this appeal. In considering the financial difficulties both parties currently suffer, we hold the parties should pay their own attorney fees.

AFFIRMED.