FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF SHARON Y. HILLER AND RICHARD R. HILLER

Upon the Petition of	)	66
SHARON Y. HILLER,	)	
Petitioner-Appellant,	)	Filed February 25, 1987
And Concerning	)	
RICHARD R. HILLER,	)	6-438 86-174
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Black Hawk County (No. 32493) James L. Beeghly, Judge.

Petitioner wife appeals from the judgment and decree dissolving the parties' marriage and from the trial court's ruling on petitioner's motion to enlarge or amend findings and conclusions, asserting the trial court erred in determining the amount of alimony awarded and in making the property division. Petitioner wife requests that the respondent be ordered to pay an additional $1,967.50 for her attorney fees on appeal. Respondent husband requests that petitioner be ordered to pay the costs of the appeal. **AFFIRMED.**

Gary J. Boveia of Boveia Law Offices, Waverly, for petitioner-appellant.

David J. Price of Price, Correll & Sheerer, Cedar Falls, for respondent-appellee.

Considered by Oxberger, C.J., and Snell and Hayden, JJ.

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PER CURIAM

The parties to this appeal, Sharon and Richard Hiller, were granted a dissolution of their marriage by the District Court for Black Hawk County on October 14, 1985. The district court, as part of the dissolution decree, divided a portion of the marital property and imposed alimony obligations on Richard. In addition, the court ordered that the residential property, as well as all personal property, household furnishings, and appliances not expressly distributed by the decree, be sold. The proceeds were to be applied against indebtedness with the balance divided equally between the parties. Following Sharon's motion to enlarge findings and to amend or substitute judgment, the district court increased Richard's alimony obligation to $610 per month. This obligation is to continue until either party dies, until Sharon remarries, or until Richard retires or becomes disabled, whichever event first occurs. If Richard retires before Sharon dies or remarries, his alimony obligation is equal to forty percent of his pension and social security benefits; if he becomes disabled prior to Sharon's death or remarriage, his obligation is equal to forty percent of his disability, retirement, and social security benefits. If Sharon becomes eligible for social security benefits, Richard's social security benefits become excluded from his alimony obligations. Sharon, in this appeal, challenges the alimony award as insufficient and argues that the district court's order requiring the residence and much of the marital property to be sold is unjustified and inequitable. Our review is de novo. Iowa R. App. P. 4. Although we are not bound by the district court's findings of fact, we give them weight. Iowa R. App. P. 14(f)(7).

The statutory factors which guide the alimony determinations made by Iowa courts are detailed in Iowa Code section 598.21(3) (1985) and need not be set forth at length here. In addition to the Code, we are assisted by the sizeable body of case law on this issue. We are informed by both these sources

that the payment of alimony is not an absolute right; it is awarded out of fairness, according to the particular facts of the case. Iowa Code section 598.21(3) (1985); In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). Where a spouse has sacrificed her earning capacity in order to make a home for the family and the other spouse has profited thereby, alimony is justified. In re Marriage of Sanders, 255 N.W.2d 109, 111 (Iowa 1977). When determining the appropriateness of alimony, a 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 Estlund, 344 N.W.2d 276, 281 (Iowa Ct. App. 1983). The spouse with the lesser earning capacity is entitled to be supported for a reasonable time in a manner as closely resembling the standards existing during the marriage as possible to the extent that is possible without destroying the right of the party providing the income to enjoy at least a comparable standard of living as well. In re Marriage of Hayne, 334 N.W.2d 347, 351 (Iowa Ct. App. 1983). Alimony must be considered together with the property division in evaluating their individual sufficiency, as they are neither made nor subject to evaluation in isolation from one another. In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa Ct. App. 1984).

Sharon is a forty-eight-year-old college graduate with a degree in journalism. Although she worked prior to the beginning of the marriage, the parties agreed that she should not work outside the home during the marriage. During the parties' nineteen-year marriage, she was responsible for the care and maintenance of the parties' household and child. In addition, she regularly assisted Richard with a number of chores and duties incident to farm life. Her ability to perform these duties has been curtailed by heart problems, diabetes, and a number of physical infirmities resulting from these conditions. These medical

problems have contributed significantly to her monthly expenses, which she lists at approximately $990.

Richard is a fifty-two-year-old maintenance man employed by a manufacturing concern in Waterloo, Iowa. He has been employed there since 1958, although in his present capacity only since approximately 1979. While he earned approximately $37,700 in 1984, his earnings have been declining since then due to managerial decisions made by his employer that have resulted in a decrease in hours available for work. His income was approximately $32,000 in 1985 and estimated at $26,600 for 1986. This resulted in a projected net monthly pay during 1986 of approximately $1,470. He claims monthly fixed expenses of $768. Richard has a heart condition which requires multiple daily medications and which may result in future surgery.

As the equity of the alimony award cannot be determined absent a consideration of the property division, Marriage of Griffin, 356 N.W.2d at 608, we look now to that division. The district court awarded Sharon a pickup truck, a typewriter, certain stock, checking and savings accounts containing $4,220, her life insurance policies, and a horse. Richard received an automobile, a motorcycle, a credit union account, an Investors Diversified Savings certificate, half-interest in a coin collection, several guns, his life insurance policies, and a transit. The district court ordered that the marital residence and the remainder of the marital property be sold, the proceeds applied toward indebtedness, and the remainder divided equally between the parties. Such a sale would result in proceeds of approximately $25,929 to each party. The assets awarded directly to the parties totaled $7,056 to Sharon and $5,197 to Richard.

In reviewing a district court's division of marital property, we are guided by the criteria set out in Iowa Code section 598.21(1) (1985). We reaffirm our rejection of any rule based upon a percentage division of the assets. In re Mar-

riage of Lattig, 318 N.W.2d 811, 814 (Iowa Ct. App. 1982). We are not bound to achieve a precisely equal division in awards of marital property. In re Marriage of Anderson, 243 N.W.2d 562, 564 (Iowa 1976). In general, the division of property is based upon each marital partner's right to a just and equitable share of the property accumulated as a result of their joint efforts. In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1976). The controlling mandate is that courts achieve an equitable and just award under the circumstances. In re Marriage of Wallace, 315 N.W.2d 827, 831 (Iowa Ct. App. 1981).

Sharon maintains that the property division is inequitable because it fails to take account of her physical condition, a factor she contends "should be of overriding significance" in this case. She argues that in order to properly account for her physical condition, she should be awarded the family residence, its furnishings, household goods, and all the marital property which the district court ordered sold. We certainly agree that the physical health of the individual parties is a proper consideration in both the alimony and property division determinations. Iowa Code sections 598.2(3)(b) and 598.21(1)(d) (1985). We do not think, however, that in this case it possesses "overriding significance." While we fully appreciate the nature of Sharon's physical condition, and in no sense mean to belittle its severity, we do not agree that equity demands we acknowledge her condition by awarding her the family residence along with all the household goods, furnishings, and marital property that the district court ordered sold. We note that this is not a case where extensive remodeling of a home has taken place, or is necessary, in order to accommodate an individual's handicap, thus making the home uniquely suitable to Sharon's physical condition.

The district court, in this case, was faced with a situation in which Richard's financial situation was not sufficient to fully meet his needs as well as Sharon's. Given that financial reality, the district court determined that the marital

residence and a good deal of the parties' personal property should be sold. We think that determination, as well as the remainder of the property disposition, is an equitable one and should not be disturbed.

In addition, we believe the alimony obligations imposed by the district court, considered in conjunction with the property division, are equitable and appropriate Although short of meeting all of Sharon's expenses, they strike an equitable balance between her needs and Richard's necessary monthly outlays.

Finally, Sharon requests attorney's fees for this appeal. In evaluating such a request, we 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 district court's decision on appeal. In re Marriage of Castle, 312 N W 2d 147, 150 (Iowa Ct App 1981) We think that, in the present case, such an award is not warranted Costs are assessed one-half to each party.

AFFIRMED.