FILED
DEC 27 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MARY E. WARE AND FLOYD J. WARE

Upon the Petition of)
MARY E. WARE,) Filed December 27, 1979
Petitioner-Appellant,)
And concerning) 309
FLOYD J. WARE,) 2-63189
Respondent-Appellee.)

Appeal from Polk District Court - Don L. Tidrick, Judge.

Wife appeals economic provisions of dissolution decree alleging trial court's division of property and award of alimony were inadequate and inequitable. AFFIRMED.

Theodore Duffield of Patterson, Lorentzen, Duffield, Timmons, Irish & Becker, Des Moines, for petitioner-appellant.

Paul E. Huscher of Huscher & Rittgers, Des Moines, for respondent-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Petitioner-wife, Mary B. Ware, appeals economic provisions of dissolution decree terminating her marriage to respondent-husband, Floyd J. Ware. She alleges trial court's division of property and award of alimony were inadequate and inequitable. We affirm.

Petitioner and respondent were married August 11, 1940. One daughter was born of the marriage and was self-supporting on the date of dissolution. Respondent, age 60 and a high school graduate, earned approximately $8,000 in 1978 as a life, accident and health insurance salesperson. Petitioner, age 56, with an eleventh-grade education, has worked during most of the marriage doing general office work.[1] She, however, quit her job at Forward Graphics five days prior to filing this action and was unemployed at the time of trial. Petitioner had been under a doctor's care for a nervous condition and was taking medication as needed. Respondent was suffering from deep vein thrombophlebitis and chronic bronchitis, the latter of which entitled him to receive a civil service disability pension of $655 per month.[2]

Trial court decreed all cash, savings, and securities of the parties be divided equally.[3] Respondent was awarded the Mark V automobile, while petitioner received the mobile home, the furniture therein, and a 1974 Ford automobile. Trial court further ordered respondent pay petitioner alimony for a period of one year in the amount of $300 per month, commencing on the first day of February, 1979, and, thereafter, $200 per month until respondent reaches age 65. At that date the alimony would decrease to $100 per month.

I. Scope of Review. Appellate review of the economic provisions of the dissolution proceeding are **de novo.** Iowa R. App. P. 4; Zinger v. Zinger, 243 N.W.2d 639, 640 (Iowa 1976).

II. Alimony and Property Provisions. Petitioner alleges trial court's division of property and award of alimony were unfair and inequitable. More specifically,

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[1] Although petitioner types approximately 40 words per minute, she does not take shorthand.

[2] Upon the dissolution of marriage, respondent's pension payment would increase to $689 per month. The pension also will increase automatically with each increment in the cost of living.

[3] The approximate total value of the parties' accumulated property was $76,000.

petitioner argues respondent's civil service pension and insurance renewal commissions are marital property which trial court should have divided equally between the parties. To support her contentions, petitioner cites In re Marriage of Ralston, 242 N.W.2d 269, 271 (Iowa 1976), wherein the wife was awarded one-half of the accumulated marital assets, exclusive of the husband's railroad annuity policy, plus $42,000 as lump sum alimony.[4]

Applying the criteria set forth in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972), we find petitioner's contentions without merit. Petitioner is capable of obtaining gainful employment if only she would seek it. Even if she should choose not to return to work, the total combined award of property and alimony is adequate. Balancing petitioner's needs and available resources, including her earning capacity, against respondent's ability to pay, we find the provisions of trial court's decree are just and equitable.

III. Attorney Fees and Costs. In light of the available resources, each party shall pay his or her own attorney fees. Costs of this appeal are assessed equally.

Trial court's judgment is affirmed.

AFFIRMED.

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[4] The wife in Ralston lacked any marketable skill and had serious health problems. The husband was in good health and held an excellent job. Due to the dissolution, the wife lost a $225 per month pension benefit she would have received under the Railroad Retirement Act.