

IN THE COURT OF APPEALS OF IOWA

No. 7-029 / 06-0554
Filed March 28, 2007

**IN RE THE MARRIAGE OF JEROME M. LOUTSCH
AND ELENA LOUTSCH**

**Upon the Petition of
JEROME M. LOUTSCH,**
Petitioner-Appellee,

**And Concerning
ELENA LOUTSCH,**
Respondent-Appellant.

Appeal from the Iowa District Court for Warren County, Darrell J.
Goodhue, Judge.

Elena Loutsch appeals from the economic provisions of the decree
dissolving her marriage. **AFFIRMED.**

Ta-Yu Yang, Des Moines, for appellant.

Louis Fusco of Wilson, Fowler & Fusco, Indianola, for appellee.

Heard by Zimmer, P.J. and Miller and Baker, JJ.

BAKER, J.

Elena Loutsch appeals from the economic provisions of the decree dissolving her marriage to Jerome Loutsch. Elena asserts the trial court erred in failing to equitably divide the marital property and failing to award her rehabilitative alimony. We affirm.

I. Background and Facts

Elena Loutsch and Jerome Loutsch were married in the Ukraine in 2002, where Elena resided at the time. They remarried on April 14, 2003, after Elena immigrated to the United States. They separated in May 2005. Jerome filed a petition for dissolution of marriage on July 22, 2005. At the time of trial, Elena was fifty and Jerome seventy-one years of age.

Jerome has a master's degree. Following a bout with cancer of the larynx in the early 1990's, he began working as a machine operator. He earns approximately \$30,000 annually and receives \$650 per month in social security benefits. In the Ukraine, Elena worked in the education field, and has nearly enough course work to receive her PhD. She testified that she has experienced considerable difficulty in obtaining a similar position in the United States. At the time of trial, she was working at Walgreens approximately forty hours per week, earning \$8.00 per hour.

Prior to the marriage, Jerome owned a rental house in Carlisle and a residence in rural Indianola. The Carlisle property is rented at \$700 per month, but the tenant testified that she is \$9750 behind on rent. The Carlisle property is assessed at \$97,000, and Jerome owes \$61,000 on it. It has significant damage, and it is estimated that it would cost between \$10,000 and \$15,000 to put it in

marketable condition. The appraised value of the Indianola residence is \$123,000. Jerome owes \$117,522 on that property.

Jerome and Elena own a 2003 Kia automobile, valued at \$7500, and a 1993 Ranger pickup truck, valued at \$1500. Both vehicles are debt free. Jerome owns a mutual fund valued at \$6500. There is approximately \$22,000 in debt, which is mostly credit card debt.

On April 7, 2006, the trial court entered a decree of dissolution of marriage ordering the marriage dissolved and no alimony due either party. The trial court also ordered that each party would retain their personal property, that Jerome would be responsible for the credit card and any other debts, and that Jerome would retain ownership of the Indianola and Carlisle properties, subject to the mortgages, which would be his sole responsibility. Jerome was awarded the 1993 pickup, and Elena was awarded the 2003 automobile. Jerome was required to pay Elena \$2500 cash and \$1000 of her attorney fees and was responsible for his own attorney fees and court costs. Elena appeals.

II. Standard of Review

Our review of allowances for alimony and property division is *de novo*. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). We examine the entire record and adjudicate rights anew on the issues properly presented. *Id.* We give weight to the fact-findings of the trial court, especially when considering the credibility of witnesses, because the trial court has a firsthand opportunity to hear the evidence and view the witnesses. Iowa R. App. P. 6.14(6)(g); *In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992); *In re Marriage of Walton*, 577 N.W.2d 869, 871 (Iowa Ct. App. 1998).

III. Merits

Elena asserts the trial court erred in failing to equitably divide the marital property. She asserts that she is entitled to an additional \$11,000, half of the appreciation of the Indianola and Carlisle properties that accrued during the marriage.

Decisions regarding the economic provisions in a dissolution action turn on the uniquely relevant facts of the case. *Smith*, 573 N.W.2d at 926. “[W]e accord the trial court considerable latitude in resolving disputed claims and will disturb a ruling ‘only when there has been a failure to do equity.’” *Id.* (quoting *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996)). The ultimate question is “whether the distribution of property was equitable.” *In re Marriage of Lattig*, 318 N.W.2d 811, 814 (Iowa Ct. App. 1982).

Where “one party brings property into the marriage, there need not necessarily be a division. This is especially true where the marriage was of short duration.” *Id.* at 815. An equitable division of the appreciated value of property should not be a function of the mere existence of a marital relationship. *Id.*

The trial court found that, if the real estate were to be sold, there would likely be insufficient funds to pay the credit card and other consumer debts. Given that Jerome owned the property prior to the marriage, the relatively short duration of the marriage, and Jerome’s small remaining net worth, we hold the property division was equitable.

Elena further asserts the trial court erred in failing to award her rehabilitative alimony. Rehabilitative alimony supports “an economically dependent spouse through a limited period of re-education or retraining following divorce, thereby

creating incentive and opportunity for that spouse to become self-supporting.” *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). Iowa Code section 598.21(3) (2005) provides factors for the court to consider when awarding alimony. The factors include the length of the marriage, the parties’ ages and health, the earning capacity of the spouse seeking support, and that spouse’s ability to become self-sufficient. Iowa Code § 598.21(3).

At age fifty, Elena has a greater earning capacity than Jerome, who has experienced cancer and whose continued ability to work is tenuous. Jerome, at age seventy-one, is left with little net worth and no retirement funds or income, except for social security. Based upon our review of the unique facts of this case, we agree with the trial court that alimony is not appropriate in this situation.

Elena also requests an award of appellate attorney fees. “An award of attorney fees is not a matter of right, but rests within the court’s discretion and the parties’ financial positions.” *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa Ct. App. 1998) (citing *In re Marriage of Kern*, 408 N.W.2d 387, 390 (Iowa Ct. App. 1987)). Jerome is in no better position to pay attorney fees than Elena. Each party shall pay his or her own attorney fees.

IV. Conclusion

Upon our de novo review of these issues, we fully agree that the property division was equitable and that alimony is not appropriate in this situation. We therefore affirm. We deny Elena’s request for an award of appellate attorney fees.

AFFIRMED.