

IN THE COURT OF APPEALS OF IOWA

No. 9-724 / 09-0496
Filed October 7, 2009

**IN RE THE MARRIAGE OF RAY PATTON CAMERON
AND VICTORIA LYNN CAMERON**

**Upon the Petition of
RAY P. CAMERON,**
Petitioner-Appellant,

**And Concerning
VICTORIA L. CAMERON,**
Respondent-Appellee.

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

Ray Cameron appeals the district court's ruling in his dissolution
proceeding. **AFFIRMED.**

Jami J. Hagemeyer of William, Blackburn & Maharry, P.L.C., Des Moines,
for appellant.

G. Stephen Walters of Jordan, Oliver & Walters, P.C., Winterset, for
appellee.

Considered by Vaitheswaran, P.J., Mansfield, J., and Zimmer, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

ZIMMER, S.J.

Ray Cameron appeals the district court's ruling in his dissolution proceeding, arguing the district court erred in awarding alimony to Victoria Cameron. Ray further contends the court erred in determining the value of the parties' marital property and failed to equitably distribute such property. Both parties request appellate attorney fees. We affirm.

I. Background Facts and Proceedings.

Ray and Victoria were married in 1987. No children were born of the marriage. Ray filed a petition to dissolve the parties' marriage in July 2008. Following a trial in January of 2009, the court dissolved the marriage by decree entered in February 2009. At the time of trial Ray was seventy-two years old and Victoria was sixty.

Sometime in May 2008, Ray informed Victoria he wished to dissolve their marriage. Ray opened a separate bank account and closed the parties' joint account. He moved out of the parties' house in Winterset, informed Victoria she would be responsible for the house payments, and moved in with Carol Block, who has since become his fiancé.

Victoria graduated from high school, and Ray attended high school through his junior year. When the parties got married, Ray worked at Prairie Farm Dairy. He continued working there for about a year, then quit and became employed at Moorman Feeds. He worked for Moorman Feeds until 1997, when he began working for Iowa Health Systems. Since 1998 or 1999, Ray has spent the winter months in Arizona, which Iowa Health Systems has accommodated. Ray's 2008 income from Iowa Health Systems was \$17,690. However, Ray stated at trial

that he would not be returning to work at Iowa Health Systems as doctors have advised him he should no longer work due to a heart condition. At the time of trial, Ray had not notified Iowa Health Systems that he intended to terminate his employment. Ray also worked part-time for a school system driving a school bus during the parties' marriage.

Ray has a 401K from his employment with Iowa Health Systems (valued at \$3099.03). He receives a Central States Pension from his work with Prairie Farms Dairy (\$437.50 per month). With the exception of one year, Ray earned the Central States Pension prior to the parties' marriage. He receives an IPERS benefit (\$28.50 per month), for his work with the school system during the marriage. Ray also receives Social Security benefits (\$1542.40 per month).

At the time of trial, Victoria worked as a house cleaner. She regularly cleans six houses, for which she earns approximately \$9120 per year. Throughout the parties' marriage, Victoria also worked as a waitress at several local restaurants.¹ Most recently, Victoria worked thirty to thirty-two hours per week at Cooking from the Heart, where she earned \$4.25 per hour base pay, and an average of \$20 per day in tips. However, Cooking from the Heart closed in December 2008, shortly before trial. Victoria testified it was unlikely she would be able to find a waitressing job elsewhere because people were being laid off at other restaurants in the area where she would normally go to apply for a job.

This was not the first marriage for either party, and the parties brought very few assets into the marriage. The record makes clear that Ray and Victoria

¹ Victoria also worked part-time at restaurants and a dinner theater in Arizona over the winters during the parties' marriage.

lived well beyond their means throughout their marriage. The parties' house was refinanced several times during the marriage in order to pay bills. At the time of trial, it was valued at \$110,000 with a mortgage indebtedness of \$147,000. Victoria was unable to make the mortgage payments after Ray moved out, and the parties allowed the house to go into foreclosure. The parties also owned several cars, with a total indebtedness of more than their value. The most valuable assets owned by the parties included a mobile home² and cemetery plots valued at \$800.

Following trial, the court awarded Ray the 1998 Ford Pickup (valued at \$5625) and the 2005 Ford Taurus (valued at \$7975 with an indebtedness of \$11,566). Ray also received the mobile home, his Central States Pension, and his IPERS benefit. Victoria was awarded the 2006 PT Cruiser (with a value not more than its approximate indebtedness of \$11,000), the cemetery plots, and Ray's Iowa Health Systems 401K. Each party was made responsible for his or her own credit card debt, totaling \$20,431.92 for Ray, and \$1880 for Victoria. The court ordered Ray to pay alimony to Victoria in the amount of \$600 per month beginning on February 1, 2009, and continuing until December 1, 2011, when Victoria turns sixty-two years old and will be eligible for Social Security benefits. Ray was also ordered to maintain a \$20,000 life insurance policy with Victoria named as beneficiary until the termination of his alimony obligation. Ray now appeals.

² The mobile home was purchased for approximately \$4900 in March 2008. In their affidavits of financial status, Ray contends the mobile home has since depreciated to a value of \$3187, whereas Victoria alleges the mobile home is worth \$4500. The court noted the mobile home's purchase price in its findings of fact; however, it did not place an enumerated value on it in the parties' property distribution.

II. Scope and Standard of Review.

We review dissolution decrees de novo. Iowa R. App. P. 6.4; *In re Marriage of Fennelly*, 737 N.W.2d 97, 100 (Iowa 2007). Though we are not bound by them, we give weight to the district court's factual findings and credibility determinations. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006).

III. Merits.

A. Alimony.

Ray argues that Victoria should not have been awarded alimony. He contends his financial situation does not give him the means to pay an alimony award. Ray further argues the court erred in calculating the parties' monthly incomes. He alleges the court should have calculated Victoria's earning capacity to include income from waitressing as well as her house cleaning income, and that the court should not have considered any income he could potentially make if he continued his employment with Iowa Health Systems.

Alimony is not an absolute right. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). Whether alimony is awarded depends on the circumstances of each particular case. *Id.* In determining whether to award alimony, the district court is to consider the factors in Iowa Code section 598.21A(1) (2007). That section allows the court to consider (1) the length of the marriage, (2) the age and physical and emotional health of the parties, (3) the property distribution, (4) the educational level of the parties at the time of the marriage and at the time the dissolution action is commenced, (5) the earning capacity of the party seeking alimony, and (6) the feasibility of the party seeking

alimony becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. Iowa Code § 598.21A(1)(a)-(f). We only disturb the district court's decision if there is a failure to do equity. *Anliker*, 694 N.W.2d at 540; see Iowa Code § 598.21A(1).

With regard to the determination of Victoria's income, the court concluded that any potential waitressing income should not be included in Victoria's earning capacity. The court obviously found Victoria's testimony that she was unlikely to find a waitressing job elsewhere in the area after Cooking from the Heart closed to be credible and persuasive in this case. We defer to the district court's finding on this issue.

It is evident the district court considered the property distribution in its decision to award alimony to Victoria. The parties have few assets and substantial consumer debt. The court concluded Victoria's standard of living and her ability to meet her monthly expenses would be greatly diminished following the dissolution of marriage. After property distribution, Ray and Victoria have comparable, but limited assets. The parties, however, have disparate incomes (through retirement income or otherwise). Victoria earns approximately \$760 per month, before taxes. Even if Ray does not return to work at Iowa Health Systems, he will still receive approximately \$2008 per month from various sources, including his Central States Pension, IPERS benefit, and Social Security benefit.

The parties were married for over twenty-one years. At age sixty, it is unlikely Victoria will be able to increase her earning capacity through education or training. She continues to do physically demanding work cleaning houses to

earn a modest income. Given the distribution of their property, the difference in their incomes, the length of their marriage, and the lack of any real potential for Victoria to increase her earning capacity and become fully self-supporting, we conclude the district court's alimony award to Victoria of \$600 per month until she reaches age sixty-two is equitable. We affirm as to this issue.

B. Division of Property.

Ray further argues the district court erred in valuing and distributing the parties' property. He contends the court erred in overvaluing the mobile home it awarded to Ray, in failing to assign the fair market value of the PT Cruiser it awarded to Victoria, and in ordering him to maintain a \$20,000 life insurance policy with Victoria named as beneficiary until his alimony obligation terminates. We disagree.

The partners in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Dean*, 642 N.W.2d 321, 325 (Iowa Ct. App. 2002). Iowa courts do not require an equal division or percentage distribution. *In re Marriage of Campbell*, 623 N.W.2d 585, 586 (Iowa Ct. App. 2001). The determining factor is what is fair and equitable in each particular circumstance. *In re Marriage of Miller*, 552 N.W.2d 460, 463 (Iowa Ct. App. 1996). The distribution should be made in consideration of the criteria set forth in Iowa Code section 598.21(5). We accord the trial court considerable latitude in resolving economic provisions of a dissolution decree and will disturb a ruling only when there has been a failure to do equity. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998).

Upon our de novo review, we find the court's distribution of the property in this case to be equitable and well within the range of the evidence. As mentioned above, the parties have comparable assets after property distribution. Any minor adjustments to the court's valuations of the mobile home and PT Cruiser would have no impact on the overall equity of the court's decision. Furthermore, the record shows Ray is only required to maintain life insurance with Victoria as the named beneficiary through 2011, and that he can do so by paying only a relatively modest monthly premium on insurance he already has in place. We find no reason to alter the property distribution, and we affirm on this issue.

C. Appellate Attorney Fees.

Both parties have requested an award of appellate attorney fees. This court has broad discretion in awarding appellate attorney fees. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). An award of appellate attorney fees is based upon the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal. *Id.*; *In re Marriage of Berning*, 745 N.W.2d 90, 94 (Iowa Ct. App. 2007). We award Victoria \$1000 in attorney fees for this appeal. Costs of this appeal are assessed to Ray.

AFFIRMED.