FILED
FEB 26 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF GARY L. SULSBERGER AND SHERYL D. SULSBERGER

Upon the Petition of)
GARY L. SULSBERGER,) Filed February 26, 1980
Petitioner-appellant,)
And Concerning) 0-3 / 2-62538
SHERYL D. SULSBERGER,)
Respondent-cross-appellant.)

Appeal from Woodbury District Court - George F. Davis, Judge.

Petitioner appeals and respondent cross-appeals economic provisions of dissolution decree. On cross-appeal, respondent also requests additional visitation and a visitation restriction be stricken. Affirmed in part, modified in part, and remanded with directions.

Robert J. Crary of Crary, Huff, Yates & Clem, P.C., Sioux City, for petitioner-appellant.

Bradford Kollars of McQueen, Dandos & Kollars, Sioux City, for respondent-cross-appellant.

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

DONIELSON, J.

Petitioner, Gary L. Sulsberger, appeals and respondent, Sheryl D. Sulsberger, cross-appeals economic provisions of dissolution decree, both assert trial court erred in valuing Gary's farm partnership interest and made an inequitable property award to Sheryl. On cross-appeal, Sheryl also challenges the frequency of her visitation privileges and a restriction on those privileges. She also requests an award of attorney fees for both trial and appeal. We affirm as modified and remand this case for an order in accordance with this decree.

Our review is de novo. Iowa R. App. P. 4. We review the facts and law, determining anew from credible evidence all properly presented contentions. While we give weight to the trial court's fact-findings, especially when the credibility of witnesses is involved, we are not bound by them. In re Marriage of Novak, 220 N.W.2d 592, 597 (1976). Each determination must be made on the facts of the case, precedents are of little value. In re Marriage of Kehrli, 241 N.W.2d 923, 926 (Iowa 1976).

I.

The dissolution decree awarded Sheryl a $14,000 property settlement, payable in nine annual installments with no interest. Gary received custody of the couple's two children with Sheryl granted visitation of one weekend per month, one week during August, and approximately one week during Christmas vacation. The decree also provided no one else could be present at Sheryl's residence during the visitation period except her parents and other members of her immediate family. The supreme court stayed the effect of this provision because Sheryl has remarried and it would prevent her from exercising her visitation rights in the presence of her new husband. Both parties were ordered to pay their own attorney fees.

II.

Both parties challenge the decree's property division. Section 598.21, The Code 1979, provides "when a dissolution of marriage is decreed, the court may make such order in relation to the children, property, parties, and the maintenance of the parties as shall be justified." Id. Justified property divisions are those that are equitable under the circumstances. In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975); Bowman

v. Bowman, 259 Iowa 820, 822, 146 N.W.2d 333, 334 (1966). Criteria to be used in determining an equitable award are set forth in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968) (modified to exclude fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1976)).

The primary marital asset was Gary's one-third interest in the Sulsberger Farms partnership. Both parties contest the trial court's valuation of this asset, which it used in arriving at its conclusion the net worth of their joint accumulation of assets was $35,000. Gary contends the most current and reliable financial data shows him to have a negative net worth. Sheryl argues the record as a whole establishes the value of the partnership to be much greater than that reflected in the trial court's findings. She asserts Gary's financial statement of the partnership's net worth is erroneous and contrary to the evidence presented at trial. Moreover, she claims the submitted financial statements undervalue the partnership. After reviewing the record, we conclude the trial court's valuation of the parties' joint accumulation of assets was reasonable and correct. Parties' contentions that timing and manner of accounting greatly affect the final figures is true. But, we believe the trial court properly assessed this impact and arrived at a correct value. See In re Marriage of Conley, 284 N.W.2d 220, 222-23 (Iowa 1979).

We also find the trial court's property division, which awarded Sheryl forty per cent of the parties' net accumulated worth, is equitable. Schantz, 163 N.W.2d at 405. During the twelve-year marriage, Sheryl made substantial and vital contributions to the accumulation of their net worth. Her outside employment brought in approximately $16,000 from 1972 to November 1976. Her efforts and sacrifices during the marriage contributed to their investment in the farm partnership interest. We believe the trial court's division was fair to both parties. In re Marriage of Briggs, 225 N.W.2d 911, 913 (Iowa 1975). However, due to the length of the installment payment period and the ravaging effects of inflation, we find the unpaid installments of the award should bear interest at nine per cent per annum. Conley, 284 N.W.2d at 223-24. We order the decree be modified to provide interest on the award's unpaid balance, accruing at the rate of nine per cent per annum from and after January 2, 1979, until all payments are made, with each year's interest payable along with the subsequent year's payment.

III.

In reviewing child custody and visitation provisions, our primary concern is the best interests of the children. In re Marriage of Moorhead, 224 N.W.2d 242, 244 (Iowa 1974); Iowa R. App. P. 14(f)(15). The evidence shows both parents to be concerned and qualified parents. We believe the children here would benefit from more frequent contacts with their mother. Accordingly, we order the decree be modified to allow her visitation rights on alternating weekends, within the time periods currently set forth in the decree. In re Marriage of McBee, 244 N.W.2d 327, 329 (Iowa 1976). We find the restriction on visitation to be unnecessary and unreasonable and order it be stricken.

IV.

Attorney fees are not recoverable as a matter of right, but depend on one party's financial needs and the other party's ability to pay. Locke v. Locke, 263 N.W.2d 694, 695-96 (Iowa 1978). The trial court has considerable discretion in awarding attorney fees. In re Marriage of Winegard, 257 N.W.2d 609, 618 (Iowa 1977). We find the trial court's decision not to award attorney fees was within its discretion. Without determining the amount her attorney may charge, we hold Sheryl is entitled to an award for attorney fees on this appeal of $500. See McBee, 244 N.W.2d at 329.

AFFIRMED IN PART, MODIFIED IN PART, AND REMANDED WITH DIRECTIONS.