FILED
MAR 29 1978
CLERK SUPREME COURT



IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF EDWARD WILLIAM LINEBACH and JEANNE E. LINEBACH

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| Upon the Petition of | ) | |
| JEANNE E. LINEBACH, | ) | Filed March 29, 1978 |
| Appellee, | ) | |
| And Concerning | ) | 436 |
| EDWARD WILLIAM LINEBACH, | ) | 2-60342 |
| Appellant. | ) | |

Appeal from Polk District Court - Luther T. Glanton, Judge.

Respondent appeals from the economic provisions of a marriage dissolution decree. Affirmed as modified.

Marilyn S. Lantz, Des Moines, for appellant.

Mike Wilson, Des Moines, for appellee.

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

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PER CURIAM

Respondent, Edward William Linebach, appeals from the economic provisions in a decree of dissolution of marriage. He complains that those provisions left him with approximately $2.15 per month for his own support and payment of debts, and awarded him a flower pot, a door jamb, and a car which the parties do not own, and are therefore inequitable. In resolving the issues presented by this appeal as trier de novo, we examine the entire record, giving weight to trial court's findings, but not being bound by them. In re Marriage of Winegard, 257 N.W.2d 609, 613 (Iowa 1977).

Since the taking of this appeal, the parties have stipulated to the sale of the marital home. Of the proceeds of that sale, $5000 were given to Jeanne E. Linebach to establish a new home for herself and the remaining minor children of the parties. The remainder, $6356.17, is being held in trust pending disposition of this appeal. This stipulation was approved by Chief Justice Moore, and filed on October 28, 1977, before the case was transferred to this court.

We first consider respondent's child support obligation in light of In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974); Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968) and In re Marriage of Williams, 199 N.W.2d 339 (Iowa 1972); see also In re Marriage of Dally, 224 N.W.2d 478, 482 (Iowa 1974); Norenberg v. Norenberg, 168 N.W.2d 794, 798 (Iowa 1969). It is noteworthy that the two oldest children celebrated their 18th birthdays during the period between the trial and entry of the decree, thus leaving respondent with the duty to support only two children. On this record, it appears that the social security dependency benefits which petitioner collects on respondent's account should be credited toward the decreed support of $20 per week per child. Cf. Boyes v. Boyes, 247 N.W.2d 265, 267 (Iowa 1976); Potts v. Potts, 240 N.W.2d 680 (Iowa 1976). Because respondent's obligation as decreed is minimal, at such time, if any, that the social security dependency benefits exceed respondent's obligation as decreed, that obligation should automatically increase to the amount of the social security benefits received. The child support obligation shall begin as of January 3, 1977, the date of filing of trial court's decree.

The property division also requires modification. Respondent should be awarded the 1973 Pontiac LeMans owned by the parties, in place of the 1972 Chevrolet. The proceeds from the sale of the home which are now being held in trust should be awarded to respondent, with the proviso that they must first be applied to what remains of the

debts listed in trial court's decree. Respondent should be solely liable for the debt to Meyer Nursing Home. The Morris Plan mortgage has been paid from the home sale proceeds and is, therefore, no longer in issue. The balance remaining of the debts listed in the decree, after application of the home sale proceeds, shall be the joint liability of both parties.[1]

Having weighed the facts peculiar to this case and applied Schantz criteria, we find trial court's decree should be modified in the following respects:

1. Petitioner shall be awarded the $5000 of the proceeds from the sale of the marital home which the parties have agreed upon by stipulation.

2. Respondent shall be awarded the balance of the proceeds from the sale of the marital home, and shall be held solely liable for the debts of the parties as listed, and in the amount specified in trial court's original decree, to the extent of his share of the proceeds of the marital home.

3. In the event that the joint debts of the parties, as listed in trial court's original decree, exceed the respondent's share of the proceeds of the marital home, each party shall be liable for one half of such excess.

4. Respondent's child support obligation shall begin as of the date of entry of the original decree, January 3, 1977.

5. Respondent shall provide for mailing of social security dependency benefits directly to petitioner. Such benefits shall be applied toward respondent's child support obligation as decreed above; if at any time the social security benefits exceed the support obligation as decreed above, petitioner shall be entitled to the excess, for support of the minor children.

[1] We take note that the debt to Chet Elson is $50 rather than $200 (X. 50.), and Elaine Linebach is owed $20, not $27 (X. 43.). Because the amounts owed are less than those listed the decree, they require no special provisions.

6. Respondent shall maintain hospital and medical insurance for the parties' minor children; respondent shall maintain life insurance on his life in the amount of $5000 with the minor children named as beneficiaries. Each of the two insurance coverages shall be maintained for the children during each child's minority.

7. Petitioner shall be awarded the 1966 Oldsmobile belonging to the parties, and respondent awarded the parties' 1973 Pontiac LeMans; respondent shall have title to the antique door jamb and flower vase. Both parties shall immediately execute all documents necessary to effectuate title transfers; the transfers of title to the automobiles shall be accomplished without necessity of state inspection.

8. Trial court shall enter an order directing release of the $6356.17 remaining proceeds from the sale of the marital home which are presently held in trust pursuant to the parties' stipulation.

Except as modified by this opinion, trial court's decree is affirmed. The cause is hereby remanded with instructions to enter a decree in conformance with this opinion. Costs on appeal shall be taxed to petitioner.

Remanded with instructions.