IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF EARL W. COOK and MARY EVELYN COOK

Upon the Petition of	)	
EARL W. COOK,	)	Filed January 28, 1977
Appellant,	)	
And Concerning	)	2 / 2-57446
MARY EVELYN COOK,	)	
Appellee.	)	
	)	

Appeal from Jasper District Court - Van Wifvat, Judge

Appeal from the economic provisions of a dissolution decree. Modified in part, affirmed in part, and remanded.

Korf, Diehl, Clayton, and Cleverley, of Newton, for appellant.

Brierly, McCall, and Girdner, of Newton, for appellee.

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

FILED
JAN 28 1977
CLERK SUPREME COURT

CARTER, J.

This is an appeal from the economic provisions of a dissolution decree. Petitioner, Earl W. Cook, contends the trial court imposed excessive financial obligations upon him in its decree and amended decree dissolving his marriage to respondent, Mary Evelyn Cook. We agree in part with his contention. The decree of the trial court is modified in part and affirmed in part.

At the time of trial Earl was 56; Mary was 51. They married in 1944. Earl was in the armed forces at that time. Earl, who has a high school education, has done both farm work and factory work during the marriage. He has worked for the Maytag Company in Newton since 1949 and has moved upward in positions of responsibility. At the time of the decree he held the position of superintendent of machinery. From 1949 until 1955, Earl and Mary both worked an 80 acre farm on which they resided. Mary assisted significantly in the production of livestock and crops during this period in addition to keeping house.

Mary, who has a high school education, was also employed by the Maytag Company from 1945-48; 1950-53; and from 1973 until the decree of June 18, 1974. She also worked from time to time during the marriage as a dental assistant, sales clerk and as manager of a women's apparel store.

At the time of the decree Earl's regular monthly gross pay was $1733 and his net pay $1224. In addition, he had for several years received an annual bonus of between 14 to 18 per cent of his annual gross pay. At age 65 Earl will be entitled to a monthly retirement benefit of $782 per month from the Maytag Company pension trust fund.

Mary's income at the time of the decree was a gross annual wage of approximately $8800. She had no vested retirement benefits at the time of the decree and would have to work until

1983 to qualify for a minimum benefit of $77.50 per month. Her job seniority is sufficiently low that she has been subjected to occasional layoffs.

The net worth of the parties at the time of the decree was $29,275. This included the home valued at $18,000 and some cash and personal property. The debts of the parties totaled $2000.

Two children were born of the marriage. Only one of these children had not attained majority at the time of the decree. This child, Denise, was a student at the University of Iowa at that time.

The trial court's decree and amended decree provided the following:

(1) dissolution of the marriage;

(2) granting of custody of Denise to Mary;

(3) division of the personal property in a manner agreed upon;

(4) granting possession of the home to Mary until Denise completed or terminated her college education at which time said home is to be sold and the net proceeds divided equally between the parties;

(5) payment by Earl of $300 per month child support until Denise completes or terminates her college education;

(6) payment by Earl of $350 per month alimony until he retires from his job at which time said monthly alimony payments shall be reduced to $175. In any event alimony payments are to terminate upon Mary's remarriage or the death of either party;

(7) assumption by Earl of $2000 in debts plus $800 in dental expenses for Denise. In addition Earl is to pay all property taxes during the period of Mary's occupancy of the home; and

(8) payment by Earl of $800 towards Mary's attorney fees in the trial court.

We have reviewed the economic provisions of the decree and amended decree in light of the criteria contained in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), excluding considerations of fault. We conclude the alimony provisions of the decree imposed an unreasonable financial hardship on Earl. The property and debt division is confirmed as is the award of attorney fees in the trial court.

We direct that the alimony provisions of the decree be modified retroactively to the date of the decree so as to provide monthly alimony payments of $225 per month during the time that child support is payable under the decree. When the child support obligation terminates the alimony payment shall be increased to $300 per month until Earl's retirement when such payments shall be reduced to $175 per month.

Upon remand the trial court shall determine the precise date upon which the child support obligation terminated as a result of Denise's completion of her college education in order to fix the time at which the monthly alimony payment increases and the time at which the home is to be disposed of. The trial court shall also determine a fair rental to be charged to Mary for use of Earl's one-half interest in the home between the time the child support obligation is ended and the sale of the property.

Earl shall be given credit against future payments for any overpayment under the trial court's decree. Mary may recoup any delinquent payments from Earl's share of the house proceeds. Costs on appeal are assessed to Earl and shall include an allowance of $870 towards Mary's attorney fees on appeal.

The case is remanded to the district court for entry of a modified decree as herein provided. Except as modified the original decree is affirmed.

Modified in part, affirmed in part, and remanded.