

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ANTONETTE G. HARVEY
AND JOHN R. HARVEY

FILED

MAR 16 1989

CLERK SUPREME COURT

Upon the Petition of)

ANTONETTE G. HARVEY,)

Petitioner-Appellee,)

And Concerning)

JOHN R. HARVEY,)

Respondent-Appellant.)

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8-595
87-224

Appeal from the Iowa District Court for Polk County
(No. CD 52-30631), Arthur E. Gamble, Judge.

The husband, acting pro se, appeals from the parties'
dissolution decree. **AFFIRMED.**

John R. Harvey, respondent-appellant, pro se.

Douglas R. Smalley of Riemenschneider, Rydell &
Smalley, Des Moines, for petitioner-appellee.

Considered by Oxberger, C.J., and Donielson and Hayden,
JJ.

PER CURIAM

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The husband, acting pro se, has appealed from the parties' dissolution decree. He challenges the award of child support to the wife, the division of property, and certain pre-trial temporary orders directing him to vacate the marital house. He also contends the dissolution itself was erroneous because the record did not adequately establish a breakdown of the marital relationship. Finally, he contends the district court erred by denying his motion to reconsider the decree. The wife requests attorney fees on appeal.

John and Antonette Harvey were married in 1978. John later adopted Antonette's two children from a previous marriage and those children resided with the couple throughout the marriage. One of the children was an adult at all times relevant to this proceeding. The other child, Jodi, was born in December 1968. The parties have no other children.

The marriage was dissolved in January 1987. The decree directed John to pay Antonette \$25 per month in child support for Jodi until Jodi turned eighteen or graduated from high school, whichever occurred later. At the time of the decree, Jodi had already turned eighteen, but was not scheduled to graduate from high school until May of 1987.

Our review of this matter is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of

fact, but we are not bound by them. Iowa R. App. P. 14(f)(7).

John first contends that substantial and satisfactory evidence of the marital breakdown was lacking. Our review reveals that petitioner complied with the statutory requirements of Iowa Code section 598.5. She also testified at trial that the legitimate objects of matrimony had been destroyed and that no reasonable likelihood remained that the marriage could be preserved. This testimony was not challenged on cross-examination or through evidence to the contrary. The trial court heard the parties testify about the circumstances of their marriage and was convinced that Iowa Code section 598.17 was satisfied. We find no reason to disrupt this result.

John disagrees with the trial court order requiring him to pay child support for his adoptive daughter who was of adult age at the time of the decree. However, the court may order either of the parents to pay an amount in support of a child who is between the ages of eighteen and twenty-two years who is regularly attending an accredited school. Iowa Code § 598.1(2). High school satisfies the accredited school requirement. Id.

Furthermore, the district court acted properly in retaining jurisdiction for future educational expenses. Iowa Code section 598.1(2) allows order of support for children pursuing further education provided the

requirements of this Code section are met. Retention of jurisdiction is proper where additional evidence of these requirements and the passage of time are needed before this decision can be made.

Each parent has a legal obligation to support his or her children, and this obligation should be apportioned according to the ability of each parent to contribute. In re Marriage of Bornstein, 359 N.W.2d 500, 504 (Iowa App. 1984). John has been ordered to pay only \$25 a month to support Jodi through high school graduation. Considering the financial resources of both parents we find the amount ordered to be equitable.

The third challenge concerns the propriety of the temporary orders. John claims the district court erred when it signed orders of eviction and a restraining order against him. John alleges that the basis for these orders was never heard and that cause was not shown because neither the party or the children were in imminent danger of physical harm.

Although we do not encourage ex parte eviction and restraint orders, we find no merit in this claim by John. We find John's request to reverse these temporary orders moot.

The fourth issue concerns the distribution of the property. John correctly cites the rule in Iowa for property distribution. The court shall seek an equitable

distribution under the specified facts of a particular case, viewing all economic aspects of the decree as an integrated whole. Marriage of Jensen, 396 N.W.2d 367 (Iowa App. 1986). After reviewing the claims and considering the relevant factors, we find an equitable property distribution has been made. See Iowa Code § 598.21(1).

John's fifth issue is whether the trial court erred when it overruled a motion to reconsider the matters contained in the divorce decree. Having considered these matters as part of our de novo review, we find no merit in John's claim. Therefore, we affirm the decision of the district court.

We deny Antonette's request for attorney fees on appeal. The primary consideration in making this determination is the parties' resources. In re Marriage of Winegard, 257 N.W.2d 609, 618 (Iowa 1977). The court costs of this appeal are to be divided equally with Antonette paying her own attorney fees.

AFFIRMED.

Danielson and Hayden, JJ., concur; Oxberger, C.J., concurs in result only.