IN THE COURT OF APPEALS OF IOWA

No. 4-543 94-0451

IN RE THE MARRIAGE OF THOMAS HAROLD STANZEL AND PATRICIA ROSE STANZEL

Upon the Petition of
THOMAS HAROLD STANZEL,

Appellant,

And Concerning
PATRICIA ROSE STANZEL,

Appellee.

FILED
JUN 27 1995
CLERK SUPREME COURT

Appeal from the Iowa District Court for Mahaska County, James P. Reilly, Judge.

The husband appeals certain economic provisions of the dissolution decree entered in this matter. **AFFIRMED AS MODIFIED.**

Lance A. Grotewold, Oskaloosa, for appellant.

Allan C. Orsborn of Keith, Orsborn, Bauerle, Milani & Neary, Ottumwa, for appellee.

Considered by Hayden, P.J., Cady, J., and McCartney, S.J.*

*Senior judge from the 2nd Judicial District serving on this court by order of the Iowa Supreme Court.

McCARTNEY, S.J.

The petitioner, Thomas Harold Stanzel, appeals the decree of dissolution of marriage entered by the trial court on January 14, 1994 and which decree incorporated findings of fact and conclusions of law filed by the court prior to the date of entry of the decree .

In particular, he appeals the provisions of the decree which provide for the payment of alimony and child support to the respondent, Patricia Rose Stanzel. He further asserts on appeal that the trial court failed to properly value the professional practice of the petitioner in disposing of the assets of the parties.

The parties were married in May 1979 and ten years later, in September of 1989, adopted their three minor children, Robert, who was born on August 10, 1980, Kati, born on July 16, 1982, and Adam, born on May 31, 1984. The children, however, have been with the parties since November 1988.

The parties agreed at trial that they would be awarded joint legal custody of the three children and that the petitioner would be the primary caretaker for Robert and the respondent would be the primary caretaker for Kati and Adam. This agreement has been adhered to by the parties and there have been no problems with these placements.

At the time of marriage appellant (Thomas) was attending college in Davenport, Iowa, and the respondent (Patricia) had completed one year of college. After marriage Tom continued his college work, eventually graduating from Palmer

College of Chiropractic Medicine at Davenport, Iowa, and became licensed to practice in June of 1983. Patricia worked outside the home while Tom attended college and the college of chiropractic medicine. Tom established his chiropractic clinic in Oskaloosa in May 1984. From that time until placement of the children in the home, Patricia worked full time as office manager in the clinic. Patricia had been employed in a chiropractic clinic while Tom attended college and was, therefore, acquainted with the office management of such a practice. Although Patricia reduced her hours of employment after the adoption of the children, she continued to be responsible as office manager. She spent considerable amount of time and effort in caring for the three children. Because of emotional problems suffered by several of the children, she eventually became almost fully engaged in their care.

A fourth child, who was substantially older than the three adopted children, resided with the parties for a while and subsequent to the adoptions posed some serious stressful situations for Patricia, as a consequence of which she was required to seek therapy. In March of 1981 she was hospitalized for a period of time. She has received psychiatric treatment, but the stresses that were imposed upon her by virtue of caring for the children have abated and her mental health has substantially improved.

Pursuant to local district court rule, the parties stipulated prior to trial to the values of various assets, including the petitioner's chiropractic practice. The parties

agreed that the value of that practice was $125,000, and the trial court accordingly used that value in its calculations of property division.

The purpose of such stipulation is to expedite the trial of the cause and to remove from disputation those issues upon which the parties are agreed. Consequently, the respondent did not introduce any evidence at trial to support or enlarge that value of $125,000, and it is apparent from the record that the petitioner did not attack that value. Such being the case, he is not now free to attack the valuation, having previously stipulated to it.

Although our review is de novo, such review is however based upon the record. The record contains the stipulation of the parties as to the value of the chiropractic practice. Absent any evidence to the contrary, we are constrained to adopt the valuation stipulated. Consequently we hold that the use of that valuation by the trial court was appropriate and, in fact, the only value of the practice adduced by either party.

It is apparent that neither party brought any substantial assets into the marriage and the assets they do have were acquired during the marriage. The respondent provided support to the petitioner while he was attending college and chiropractic school and thereafter worked full time as an office manager until the adoption of the children. Her contribution was and is as substantial and as essential as the contribution made by the petitioner. Consequently, an appropriate division of the

property would be as granted by the trial court, i.e., an approximate one-half of the net assets to each.

The values used by the court in determining its division of property were based in large part upon the stipulated values and where there was disagreement as to value, the trial court generally used a more conservative approach in valuation. It found the assets had a value of $295,155 and that liabilities against the same totaled $159,217, yielding a net worth of $135,938.

These valuations and debts are within the permissible range of evidence, and we give a great deal of credence to the trial court's findings in these valuations. Its discretion has not been abused. *In re Marriage of Bare*, 203 N.W.2d 551 (Iowa 1973).

Consequently, the trial court allocated to respondent $67,969 net assets and the same amount to the petitioner. In order to make this allocation, petitioner is required to pay to the respondent $16,137. In addition, respondent received the homestead, valued at $90,000 subject to a $60,000 mortgage, her vehicle, household goods and appliances, her IRA, and proceeds from a real estate sale. She also is required to pay several charge accounts totaling almost $6,000. The petitioner received his practice, other properties, household goods and appliances, his own IRA, and certain life insurance.

The method devised by the trial court for the payment of the $16,137 from petitioner to respondent was appropriate. Consequently, we affirm the valuations and distributions of property made by the trial court as being supported by the record.

The trial court ordered the petitioner to pay support alimony for a period of five years at the rate of $2,000 per month, or $24,000 a year; he further directed the petitioner to pay $2,500 per month for child support, or $30,000 a year. The petitioner was also directed to pay for all health insurance for the three children, or approximately $4,000 per year. Consequently, the petitioner is obligated to expend $59,000 per year.

In 1992, the petitioner had an income from his practice of $115,000 and rental income of approximately $3,500 for a total of $118,500. In 1992, he was able to deduct $5,200 for self-employment tax and self-employed health insurance from his gross income.

Using the standard deductions and four exemptions, petitioner would have tax consequences of approximately $16,700 for federal income tax, $10,400 for social security self-employment tax and Medicare tax, and approximately $7,000 state income tax, for a total of $34,134. Subtracting these taxes from the cash flow of $118,500 leaves $84,366. After paying $59,000 the petitioner is left with approximately $25,000 to support himself and minor child residing with him . These calculations have taken into account the deduction of $24,000 per year alimony in calculating the taxable income of the petitioner.

Child support for the two children of $2,500 per month is approximately two and one-half times the minimum child support for two children mandated by the supreme court in the Child Support Guidelines adopted in 1990. A noncustodial parent with monthly net income calculated of $3,000 or more shall in no event pay less than $1,116 per month for two children. Under the circumstances, we believe and find that child support in the sum of $2,000 for both children is more appropriate for the resources available to the parties.

We concur with the trial court when support becomes payable for only one child that the child support at that juncture should be reduced to $1,250 per month.

We further agree with the trial court that support alimony should be provided the respondent in the total sum of $120,000. However, the payment of this sum at the rate of $2,000 per month for five years again impinges upon the ability of the petitioner to maintain himself and the child for whom he is primarily responsible. The respondent has assisted substantially in creating what assets are available for distribution and in assisting the petitioner in obtaining a professional education which in turn has led to a profitable chiropractic practice.

However, we believe that amount should be paid at the rate of $1,500 per month, or $18,000 a year, rather than $24,000 a year as directed by the trial court. This will prolong the payment of support alimony, thus extending the period of time during which the respondent will receive support alimony, but will also assist the petitioner in retaining a cash flow sufficient for his own support and that of the

dependent child for whom he is responsible. It also results in less tax advantage to the petitioner since his federal and state income taxes will increase approximately $2,500 per year as a result of the reduced alimony deduction per year. The respondent will receive a benefit, however, since the alimony taxable to her will be reduced resulting in less federal tax obligation. We are aware of the debt service obligations of the petitioner, but child support guidelines do not permit such to be deducted before calculating support needs of children which come before the need to repay debt.

In accordance with the foregoing, we affirm the district court in all respects except as modified in the following particulars: (1) child support for the two dependent children for whom the respondent has primary care is reduced from $2,500 per month to $2,000 per month, and when support under the decree of dissolution is reduced to support for one such child, child support will then be reduced to $1,250 per month; (2) support alimony for the respondent shall remain at the sum of $120,000, but shall, from the time of the entry of this opinion, be payable at the rate of $1,500 per month rather than at the rate of $2,000 per month as ordered by the district court, the petitioner to receive credit against the $120,000 for sums heretofore paid for support alimony.

Costs of this appeal are taxed to the petitioner.

AFFIRMED AS MODIFIED.