FILED
JUN 30 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF BARBARA SUE BURKE AND JOHN MICHAEL BURKE

Upon the Petition of	)	
BARBARA SUE BURKE,	)	Filed June 30, 1978
Appellee,	)	
And Concerning	)	
JOHN MICHAEL BURKE,	)	558 / 2-61081
Appellant.	)	

Appeal from Woodbury District Court - Lawrence W. McCormick, Judge.

Respondent-husband seeks to reduce his child support and debt obligations under the provisions of the dissolution decree. - Affirmed with modification.

Phillip D. Furlong, Sioux City, for Appellant.

John T. O'Brien, of O'Brien & O'Brien, Sioux City, for Appellee.

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

PER CURIAM

Respondent John Michael Burke seeks to reduce his child support and debt obligations under the provisions of the dissolution decree terminating his marriage with petitioner Barbara Sue Burke. We affirm.

We find that the trial court rightly concluded that John had available to him approximately $1250 net pay per month and rightly decreed he should pay support in the amount of $559 per month ($130 per week). The children are ages seven and five. Barbara sought both alimony and child support in her original petition. Her financial statement listed needs of $551 to maintain the home for herself and the two children. The trial court ordered child support in the amount of $130 per week without reference to alimony. Barbara has not cross-appealed the failure of the trial court to award alimony. She has simply urged the $130 weekly child support is justified in relation to the family's needs and John's capacity to pay. She also urges that we recognize that she has been a full-time mother and has no developed job skills or experience.

Our problem in fashioning appropriate relief after reviewing this record de novo is that in fulfilling our duty to examine the whole record and adjudicate rights anew we are, nevertheless, held to considering those propositions which are properly presented for such review. In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974). We are persuaded this is a case in which alimony for an interim time of adjustment would be justified. That relief, as we have said, has not been sought on appeal by either party and we are without authority to grant it sua sponte. What we do hold is that the child support provisions of $130 per week shall remain in effect for three years from the date of the trial court decree. Thereafter, the child support amount shall decrease to $80 per week for the two children under the conditions enumerated in the decree.

The debts which John was ordered to pay require a substantial monthly outlay; however, we see no other alternative than the order of the trial court that John should pay them. Novak, 220 N.W.2d at 598. We note John continues to have taxes withheld at a single status rate and that he has designated a sizeable withholding for vacation pay. We think with refinancing of some of the loan

obligations and a more realistic paring of his withholdings, John will be able to retire the debts as the trial court ordered.

We find no merit in John's claim that he was entitled to a new trial because the trial court erred in its consideration of his net pay or the full magnitude of his debt obligation. His motions for new trial were properly denied.

We affirm with the modification of the support obligation as outlined above and remand for entry of that provision in the decree.

All judges concur, except DONIELSON, J., who dissents.

DONIELSON, J. (dissenting)

Since I am unable to agree with the child support provisions approved by the majority, I must dissent. In his financial statement, John stated that he earned $9.15 per hour before deductions and that his monthly expenses were about $746. The parties had debts totalling $501 per month, with an additional $206 past due and $6368 due in the near future. At the hearing on this matter, John testified that he now earned $11.21 per hour before deductions.

On the basis of the financial condition of the parties and the rest of the record, I am persuaded that the child support obligations which John is forced to assume are extremely burdensome and highly inequitable, especially in light of the relatively short duration of the marriage (approximately six years) and the heavy debt burden which the majority places upon him. Although only lasting three years, the $559 per month child support obligation out of a $1250 per month net income earned as an apprentice electrician accounts for 44.7 percent of John's net income. Unfortunately, the substantial child support obligation which John must bear will very likely deprive him of the right to a decent standard of living, especially since his occupation offers little prospect of financial advancement beyond an hourly wage.