IN THE IOWA COURT OF APPEALS

IN RE MARRIAGE OF LARRY W. BEETH & MAYLENE BEETH

Upon the Petition of,) Filed May 26, 1981

LARRY W. BEETH,) 1-59
2-65030

Petitioner-Appellant,)

And Concerning

MAYLENE BEETH,

Respondent-Appellee.)

FILED
MAY 26 1981
CLERK SUPREME COURT

Appeal from Scott District Court. Margaret S. Briles, Judge.

Petitioner-husband appeals alimony and property division provisions of dissolution of marriage decree. MODIFIED AND AFFIRMED.

Alan R. Havercamp, of Havercamp, Havercamp & Murray, Davenport, Ia., for petitioner-appellant.

A. Fred Berger, of Berger & Lane, Davenport, Ia., for respondent-appellee.

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

PER CURIAM

Petitioner-husband, Larry Beeth, appeals the alimony and property division provisions of a dissolution of marriage decree. Respondent-wife, Maylene Beeth, seeks attorney fees incurred on appeal. We modify and affirm.

Larry and Maylene Beeth were married on February 21, 1970. Larry, who is 39 years old, is now a spot welder at International Harvester, where he has been employed for 22 years. Maylene, who is 42 years old, has been employed for 5 1/2 years of the parties' ten year marriage and now works as a sales clerk at a K-Mart. During the other years of the marriage, Maylene worked as a homemaker. Larry's gross annual salary for 1977 was $21,201 and for 1978 was $19,677. Maylene's net income is approximately $8,100 per year, including $20 per week child support payments for a daughter from a former marriage. The trial court awarded Larry net assets amounting approximately to $33,717 and awarded Maylene net assets amounting approximately to $58,176. The trial court ordered Larry to pay Maylene alimony of $25 per week until she dies, remarries, or reaches age 62. The marriage produced no children and was dissolved on February 29, 1980.

Our review is de novo. Iowa R. App. P. 4. We are not bound by the trial court's findings of fact, but we give weight to them, especially regarding the credibility of witnesses. Iowa R. App. P. 14(f)(7). In reviewing the property division and alimony provisions of a dissolution decree, we consider the factors articulated in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except fault. In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972).

I. Larry contends that the property division provisions of the dissolution decree were unfair to him. Although frequently an equal division of assets is made, there is no requirement that this be done. In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980); In re Marriage of Conley, 284 N.W.2d 220, 223 (Iowa 1979). The test for an acceptable division of assets is to ask what would constitute an equitable and just award under the circumstances. Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976).

The substantial difference between the value of assets awarded to Maylene and Larry is unfair. The reason that Maylene's assets are so much greater in value than Larry's is that Maylene was awarded the parties' residence at 1038 North Lincoln in Davenport, Iowa, whose net value is $48,150. Maylene and her former spouse purchased

the home in February, 1964, and Maylene has lived in it ever since. The value of the house has increased $30,550 during Larry and Maylene's marriage. Even though Maylene brought the house into the Beeth marriage, Larry contributed substantially to its value in terms of making improvements on it and making mortgage payments. Therefore, it would be unfair to distribute the property so as to deny Larry any interest in the house. In order to distribute to Larry his fair share of the house, we hereby order Maylene to pay Larry $10,000 in ten annual installments of $1,000 per year plus 10% interest on the unpaid balance, and the obligation is to commence August, 1981. In order to secure Maylene's obligation, we hereby create a lien on the house in favor of Larry.

II. Larry contends that the trial court's order that he pay Maylene $25 weekly alimony is unfair. This is a modest sum, Larry is well able to pay it, and, as the trial court points out, Maylene needs it in order to make ends meet. Applying the criteria enumerated in Schantz to the circumstances of the instance case, we find the trial court's alimony award reasonable and therefore affirm it.

III. Maylene requests an award of attorney fees incurred by this appeal. In evaluating a request for attorney fees incurred on appeal we consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Erickson, 228 N.W.2d 57, 59 (Iowa 1975); In re Marriage of Stom, 226 N.W.2d 797, 800 (Iowa 1975). Applying these factors to the case at bar, we determine that Maylene shall pay her own attorney fees.

Costs are assessed against Larry.

MODIFIED AND AFFIRMED.