



IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF CONSTANCE L. PRICE AND FRANCIS E. PRICE

Upon the Petition of)

CONSTANCE L. PRICE,)

Petitioner-Appellant,)

Filed August 30, 1983

And Concerning)

FRANCIS E. PRICE,)

2-264
2-67387

Respondent-Cross-
Appellant.)

Appeal from Polk District Court - Rodney J. Ryan, Judge.

Petitioner wife appeals and respondent husband cross-appeals from economic provisions of the parties' dissolution decree. **AFFIRMED.**

Robert B. Scism and Thomas J. Levis of Scalise, Scism, Gentry, Brick & Brick, Des Moines, for petitioner-appellant.

Verne Lawyer and Richard H. Doyle IV of Verne Lawyer Law Offices, Des Moines, for respondent-cross-appellant.

Considered by Donielson, Acting C.J., and Snell, and Schlegel, JJ.
Oxberger, C.J., and Hayden, J., take no part.

DONIELSON, J.

Petitioner wife appeals and respondent husband cross-appeals from economic provisions of the parties' dissolution decree. On appeal petitioner asserts: (1) that the trial court erroneously valued the husband's closely held corporation; (2) that the property division was inequitable; (3) that she should have been awarded alimony; (4) that the child support award was inadequate; and (5) that she should have been awarded attorney fees. Respondent asserts: (1) that the valuation issue is moot since the decree provided that the issue of the business' value would be determined by its actual sale price; (2) that the child support award was excessive; and (3) that the case should have been reopened to allow the presentation of additional evidence concerning alleged decline in the husband's business and health and the wife's alleged resumption of employment. The wife's request for attorney fees on appeal was ordered submitted with the appeal. We affirm.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. While we are not bound by the findings of the trial court, we do give them weight especially where the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7); In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974); In re Marriage of Bowen, 219 N.W.2d 683, 687 (Iowa 1974).

I.

The parties, Constance Price and Francis Price, were married a total of about ten and one-half years. They were divorced once in 1970 but remarried each other later that same year. Constance and Francis brought assets of \$3,000 and \$50,708 into the marriage, respectively. Constance worked as a secretary as well as performing as a housewife and a mother to their only child, Kristin, who was born in December, 1973. In 1974, Constance began working for Francis, performing secretarial and bookkeeping duties in the finance company he created. Constance was 33 and Francis was 58 years old at the time of trial. At the time of trial,

Constance was unemployed, though her earning capacity was estimated at from \$10,800 to \$15,000 per year. Francis was president and sole stockholder of the finance company at a salary of \$1,752.75 per month supplemented by bonuses and fringe benefits. There was conflicting testimony regarding the value of the finance company at the time of trial. An accountant hired by Constance valued the business at \$175,788. Francis testified that, taking into account the debts of the company, it had a value of only \$29,000.

In its final decree of dissolution the trial court ordered the sale of the business in order to more accurately determine its value. The net proceeds were to be divided 70%/30% in favor of the husband. The court also ordered the sale of the parties' home which had an equity value of approximately \$79,386. The market value of the home was estimated to be \$100,000. The proceeds of the sale were to be divided with Francis receiving 90% of the first \$50,000 and 60% of any amount received over \$50,000. Constance was to receive 10% of the first \$50,000 and 40% of any amount over \$50,000. Both parties were also awarded various specified items of personalty. Francis was made responsible for all debts and maintenance of insurance and medical expenses for the benefit of the parties' child. The wife was awarded child custody and support of \$100 per week. No alimony was awarded.

More than six months after trial, Francis unsuccessfully moved to reopen the case for the purpose of introducing evidence relating to a continuing decline in his business and health and the wife's resumption of employment.

No evidence relating to attorney fees was introduced at trial and no fees were awarded. On appeal Constance filed a request for attorney fees on appeal supported by an affidavit including itemization of fees for trial work. The request was ordered submitted with the appeal together with Francis' motion to strike the affidavit on the following grounds: (1) that it should have been presented to trial

court; (2) that it contains matters outside the record; (3) that it was untimely; and (4) that it was in improper form.

After this appeal was submitted with this court, we entered an order on July 1, 1982, sustaining Francis' motion for a limited remand to the trial court for the taking of further evidence relating to the value of his finance company. Hearing was held on May 23, 1983. Francis testified that his company had filed under Chapter XI of the federal bankruptcy laws and was in the process of liquidation. He also indicated that the assets of the company had been purchased by another corporation for a final adjusted price of \$705,170. The liabilities of the company exceeded its assets by \$557,359; Francis testified that his company stock was now worthless and that the company was no longer in business but was operating for the sole purpose of liquidation under Chapter XI.

II.

Constance asserts that the trial court erred in valuing the finance company owned by Francis at \$29,000. The testimony at trial regarding the company's value was conflicting. The testimony of Constance's witness valued the company at \$175,788 but Francis placed the value of the stock at \$29,000 at that time. We believe the valuation issue is moot at this point. First, the trial court's valuation was irrelevant in any event since the court ordered the company sold and the net proceeds divided between the parties. Even more to the point and as indicated above from the evidence presented at the hearing on limited remand, the company has filed under the bankruptcy laws, is no longer in business and has liabilities which far exceed the value of its assets. In the unlikely event that there is anything left over after all liabilities have been taken care of, the distribution of the net proceeds shall take place in the manner prescribed by the trial court; i.e. divided 70%/30% in favor of Francis.

III.

Constance's next contention is that the property division, as a whole, is inequitable. Our analysis is governed by § 598.21 which codified many aspects of our prior case law. See Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968) (modified to exclude fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972)). Section 598.21 provides that, upon every dissolution of marriage:

1. . . . The court shall divide all property, except inherited property or gifts received by one party, equitably between the parties after considering the following:

- a. The length of the marriage.
- b. The property brought into the marriage by each party.
- c. The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services.
- d. The age and physical and emotional health of the parties.
- e. The contribution by one party to the education, training or increased earning power of the other.
- f. The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.
- g. The desirability of awarding the family home or the right to live in the family home for a reasonable period to the party having custody of any children.
- h. The amount and duration of an order granting support payments to either party pursuant to subsection 2 and whether the property division should be in lieu of such payments.

* * *

Thus, the ultimate question is, as it has always been, whether the distribution of property was equitable. We reject any rule based on a percentage division of the total assets and must determine what is equitable under the specific facts of this case. In re Marriage of Callenius, 309 N.W.2d 511, 514 (Iowa 1981). When asked to review an individual economic provision of a dissolution decree, we consider all the provisions together as an integrated whole. In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976).

Constance was awarded her automobile valued at \$4,875. Francis was awarded his retirement account and the cash value of his life insurance policy worth \$3,000 and \$1,736.87, respectively. The \$1,000 the parties had in cash savings was divided equally. The household items were divided by item rather than by their monetary value. The only other items of property considered by the court were the stock in First Security Acceptance Corporation, held by Francis, and the marital home. Both of these assets were ordered sold with the proceeds to be distributed on a percentage basis. Francis was assigned to pay the debts of the parties, a substantial amount of which are associated with the finance company. Constance argues that the court should have awarded Francis sole ownership in the finance company and should have awarded her sole ownership of the home.

The record indicates that Constance quit her job at the Treasurer's Office for the State of Iowa in 1974 in order to work for her husband in his newly-established financial company. She also performed household duties and the primary child care responsibilities. We have recognized that the property division should reflect such uncompensated contributions. See In re Marriage of Williams, 303 N.W.2d 160, 165 (Iowa 1981); In re Marriage of Lattig, 318 N.W.2d 811, 815 (Iowa Ct. App. 1982).

We believe the trial court's property division represents an equitable

distribution of the parties' assets. The percentage of the proceeds Constance will receive from the sale of the home appears to be equitable in light of her contributions. Francis entered the marriage with \$50,708, while Constance brought in only \$3,000. The marriage was relatively short, lasting a total of only ten years. Constance is much younger than Francis and has excellent opportunities for gainful employment in the future. In addition, Francis was made responsible for all of the parties' debts and for those associated with the business. Under these circumstances, we believe the greater award to Francis is justified under the principles set forth in section 598.21.

IV.

Constance also claims that the court erred in refusing to award her alimony. The factors to be considered in determining whether spousal support should be granted are set forth in § 598.21(3). The trial court ruled that these factors had been taken into account in making the property division and concluded that no alimony should be awarded:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the property settlement herein adequately recognizes the property brought into the marriage, the property accumulated by the parties during the marriage, the length of the marriage, the age and health of the parties, petitioner's child rearing involvement and the relative ability of the parties to sustain themselves in the future along with supporting the child of the parties; and, therefore, no alimony is awarded to Petitioner.

Although allocations for alimony, support, and property have different purposes, the court can properly consider how the property has been divided in assessing the needs and resources of the parties in fixing alimony. In re Marriage of Petersen, 227 N.W.2d 139, 142 (Iowa 1975). The record here indicates that Constance is young, in good health, and has what have been described as "excellent" secretarial skills. She did not sacrifice any career opportunities during

the marriage and attended some classes at Drake, thus furthering her education. Her earning capacity was estimated to be \$15,000 per year. Francis on the other hand is 58 years old and experiencing some health problems. Constance has received a substantial share of the parties' marital assets. Under these circumstances, we agree that Constance is not entitled to alimony.

V.

Having reviewed the criteria governing child support awards set forth in section 598.21(4), we find the child support award to be equitable and justified. The obligation to provide support depends upon the particular circumstances and is awarded in accordance with the parent's ability to pay. In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974). As a general rule, however, parents are equally obligated to support their children. Id. It appears to us from the record that both parties are able to discharge their obligation of support toward Kristin without hardship. We believe that the support award will allow Kristin to continue her private education at a cost of \$800 per year. Moreover, Francis is to pay up to \$50 per month in uninsured medical and dental bills for Kristin. We do not believe this places a disproportionate share of the obligation on Francis. We find the \$100 per week support to be reasonable.

VI.

Constance claims that the court erred in refusing to award her attorney's fees. She also requests attorney's fees on this appeal.

Attorney's fees are not recoverable as a matter of right, but depend upon one party's financial needs and the other party's ability to pay. In re Marriage of Burham, 283 N.W.2d 269, 278 (Iowa 1979). The trial court has considerable discretion in awarding such fees at trial. In re Marriage of Winegard, 257 N.W.2d 609, 618 (Iowa 1977). We believe the trial court considered the parties' financial needs and abilities in determining that each should pay his or her own attorney's

fees. We agree with the trial court's refusal to award Constance her attorney's fees.

Likewise on appeal, our primary consideration in making an award of attorney's fees is the parties' resources. Francis is obligated under the decree to provide child support, to pay the financial debts of the parties, and to pay the mortgage payments on the home until it is sold. In light of these facts and in light of Constance's earning capacity, we order each party to pay his or her own attorney fees incurred in this appeal.

VI.

The final issue raised by Francis is whether the court erred in refusing to grant his motion to reopen the evidence for the taking of additional testimony regarding the value of the business, his health, and Constance's employment status. This issue is also rendered moot by our order for limited remand. In that hearing, Francis was able to present the evidence referred to in his motion.

Finding no reason to disturb any of the provisions of the decree, we affirm. Each party shall pay one-half the costs.

AFFIRMED.