IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JERRINE J. McINNIS and LYLE F. McINNIS

Upon the Petition of	)	
JERRINE J. McINNIS,	)	Filed March 14, 1977
Appellant,	)	
And Concerning	)	56 / 2-57888
LYLE F. McINNIS,	)	
Appellee.	)	

Appeal from Plymouth District Court - C. F. Stilwill, Judge.

Appeal from the economic provisions of a dissolution decree. Affirmed.

James L. Waite, of LeMars, Iowa, for appellant.

L. M. Goldblatt, of Sioux City, Iowa, for appellee.

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

CARTER, J.

This is an appeal from the economic provisions of a dissolution decree. Petitioner, Jerrine McInnis, complains of the failure of the trial court to award her alimony. We affirm the trial court's decree.

This dissolution action was commenced in February 1972 but not tried until November 1974 at which time the parties had been separated for 34 months. The record reflects the following facts at or about the time of the decree in November 1974. Jerrine was 41 and the respondent, Lyle McInnis, was 43 -- they had been married approximately 25 years. Two of their six children, Hayden, age ten, and Dustine, age seven, were still minors. Lyle was employed as a general mechanic by Iowa Beef Processors, Inc. of Dakota City, Nebraska, netting $160 per week. Jerrine was employed at that time by the Martin Evergreen Restaurant in Sioux City, as a waitress, netting between $90 and $120 per week, depending upon the amount of tips she received. Neither party had any other source of income.

For 23 years prior to their separation in January of 1972, the parties had engaged in farming. At one time Lyle farmed as much as 760 acres, 600 of which were rented and the balance were being purchased by the parties on contract. During this time Jerrine aided in the farm work along with her domestic chores. Unfortunately, at or about the time the parties separated, all of their interests in farm land, livestock and farm machinery and equipment was either sold or repossessed in order to pay debts incurred in the farming operation.

The record is sketchy with respect to the assets of the parties at the time of the decree. Lyle had in his possession at that time an automobile valued at $1500, subject to an incumbrance of $500; tools valued at $300; and cash of $150. In addition, he had a mobile home and contents in which he and the two minor children resided. The value of this mobile home does not appear in the record. There is nothing in the record to show the assets, if any, in Jerrine's possession at the time of the decree. Lyle indicated that he had indebtedness of about $2650 at the time of the decree, $750 of which represented medical bills of Jerrine and $400 of which involved medical bills of other family members. There is no specific evidence in the record as to Jerrine's indebtedness, if any, at the time of the decree. The report of the attorney for the minor children which was placed in the record by agreement of the parties indicates that she claimed to have no significant indebtedness. At the time of the decree Lyle was substantially in default on temporary alimony payments which he had been ordered to pay Jerrine pendente lite.

The trial court's decree dissolved the marriage; awarded custody of Hayden and Dustine to Lyle; granted liberal visitation rights to Jerrine; required Lyle to pay Jerrine $35 per week as child support during her three week summer visitation with the children; and required Lyle to pay Jerrine's attorney fees up to $550.

The decree made no reference to division of the assets of the parties. On appeal the parties have treated the decree as granting Lyle the right to retain those assets listed above which he possessed at the time of the decree. We will treat it in this manner in reaching our decision. The trial court required Lyle to pay all indebtedness of the parties prior to March 21, 1971, with any subsequent indebtedness to be paid by the party who incurred it. We construe this provision as obligating Lyle to pay the $2650 indebtedness previously referred to and leaving Jerrine with negligible indebtedness. No alimony was awarded either party.

In her brief on this appeal Jerrine asks only that this court modify the trial court's decree so as to award her permanent alimony. While Jerrine alludes in her argument to the property which Lyle was permitted to retain as supporting her claim for alimony she does not ask for any specific property adjustment. Nor are we inclined to grant Jerrine any such relief with respect to the property Lyle was permitted to retain in view of his apparent negative net worth and assumption of substantial debts. The result might be different if the record reflected a substantial equity in the mobile home. But since the record is silent on this issue this omission operates to Jerrine's disadvantage.

Payment of alimony is not an absolute right. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). Jerrine's claim to alimony in the present case may be reduced to a question of her needs balanced against Lyle's ability to pay. See, e.g., In re Marriage of Dally, 222 N.W.2d 478, 482 (Iowa 1974). Precedent is of little value in making such determinations and each case must be decided on its own peculiar circumstances. With respect to the economic determinations which we must make on this appeal, we apply the criteria stated in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968) as modified by In re Marriage of Williams, 199 N.W.2d 339, 344 (Iowa 1972).

Jerrine is possessed of only a tenth grade education and admittedly those skills which she has developed in 23 years as a farm wife and mother will bring less in the job market than the mechanical abilities which Lyle developed on the farm. But Lyle's income is also modest. The record reflects his net monthly earnings are $693 and his monthly expenses are $697. These expenses of course include his obligation to support the two minor children placed in his custody and toward whose support Jerrine is not required to contribute under the decree. Our de novo review of the record leads us to the same conclusion as the trial court on the issue of alimony. Lyle is financially unable to pay it. We further conclude that he should not be required to contribute toward Jerrine's attorney fees on this appeal.

Nothing contained in this opinion shall be construed as discharging any unsatisfied portion of the temporary alimony judgment entered against Lyle pendente lite, which was a final judgment from which no appeal was taken. See, In re Marriage of Prybil, 230 N.W.2d 487, 488 (Iowa 1975); Walsmith v. Jackson, 195 Iowa 630, 632, 192 N.W. 513, 514 (1923). This was a subsisting obligation for the period from March 6, 1972 until November 18, 1974.

We have considered all issues presented and find no basis for reversal.

AFFIRMED.