FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ALICE ANN JENSEN AND DEL D. JENSEN

Upon the Petition of)
ALICE ANN JENSEN,)
Petitioner-Appellee/)
Cross-Appellant,)
And Concerning)
DEL D. JENSEN,)
Respondent-Appellant/)
Cross-Appellee.)

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Appeal from the Iowa District Court for Polk County (No. CD 45-16633) - Luther T Glanton, Jr., Judge.

Respondent-husband appeals and petitioner-wife cross-appeals the district court's decree dissolving the parties' marriage. **AFFIRMED AS MODIFIED.**

Bert A. Bandstra, Knoxville, for respondent-appellant.

Joseph G. Bertogli, Des Moines, for petitioner-appellee.

Considered by Oxberger, C.J., Schlegel and Hayden, JJ.

HAYDEN, J.

Respondent-husband appeals and petitioner-wife cross-appeals the district court's decree dissolving the parties' marriage. Both parties allege that the property division and the child support provision are inequitable. Petitioner also requests trial and appellate attorney fees. We affirm as modified.

Alice and Del Jensen were married in 1970 and have four minor children. At the time of trial the parties were 36 and 38 years old, respectively.

During the marriage Del had various sales jobs and owned a business in partnership with another individual. He is now employed as a sales representative earning a net monthly income of $1,200 plus traveling expenses. Del also receives $435 per month from his business, which is used to pay off a personal obligation to the bank.

During the marriage Alice was employed as a bookkeeper and a bank loan teller, earning salaries ranging from $300-370 per month. Currently she is employed as a bank vice-president earning a net income of $1,580 per month. Alice participates in a profit-sharing plan with her employer. At the time of dissolution, her share in this plan was valued at $38,000.

The parties' assets include a residence purchased for $92,000 and valued at $85,000 by a real estate agent. The mortgage balance at the time of trial was $79,795.28.

Alice and Del bought the home using savings and some of the proceeds from the sale of their prior residence. They withheld $19,000 of the proceeds and placed these funds in a certificate of deposit. When the parties separated, the certificate was worth approximately $15,000. Del took half of this amount and deposited the money in another bank. At the date of trial, Del's certificate of deposit was worth $7,627.40 and Alice's certificate was worth $5,296.15.

The parties' debts include a bank loan in the amount of $17,500 and a

$2,982 loan from an insurance company. These loans were used primarily to finance Del's business ventures.

Following the trial, the court entered a decree awarding Alice custody of the four children and providing Del with reasonable visitation rights. Del was ordered to pay child support of $35 per child per week until the child reached the age of 18, died, married, or became self-supporting. The amount was increased to $45 per week per child when the support was payable for three children; $55 per week per child when the support was payable for two children; and $65 per week per child when the support was payable for one child. The court also required Del to maintain existing life insurance policies with the children named as beneficiaries as long as he was required to pay support.

As her share of the property division, Alice received $42,000 worth of assets including the homestead. The parties were required to use the certificates of deposit to reduce the mortgage on the home; Alice was to assume responsibility for the remaining indebtedness. Del was awarded property valued at approximately $24,000. This included a $9,502.36 lien against the homestead and $6,000 from Alice's profit-sharing plan payable when the fund became available to her. Del was also ordered to pay the parties' outstanding loans. No attorney fees were awarded. Del has appealed this result; Alice has cross-appealed.

Our review of this equitable action is de novo. Iowa R. App. P. 4. While we give deference to the findings of the trial court, we are not bound by them. Iowa R. App. P. 14(f)(7).

I.

The first issue before this court concerns child support. Del claims it is excessive, while Alice argues it should be increased.

The factors to be considered in awarding child support are set forth in Iowa Code section 598.21(4). Both parties to the marriage have an obligation

to support their children. In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976). The obligation to support should be apportioned according to the ability of each person to contribute. In re Marriage of Heinemann, 309 N.W.2d 151, 153 (Iowa Ct. App. 1981).

Our examination of the record convinces us that the child support obligation is excessive. As we have indicated, Del's net monthly income includes a salary of $1,200 and $435 he receives from his business, which is applied directly to the bank loan. His claimed monthly living expenses total $745. Contrary to the trial court's conclusion, we consider this amount to be reasonable. It is apparent that Del will be unable to pay approximately $600 per month in child support as ordered by the trial court and cover living expenses. Further, it is apparent from the record that Alice will be able to contribute towards the child support.

Under these circumstances, we find that the child support should be reduced to $25 per week per child or $433 per month. Payments for each child will cease when the child attains majority or becomes emancipated. In any event, support for payments for a particular child shall not cease until the child has completed his or her high school education.

II.

Alice and Del also claim that the property division is inequitable. Del claims the large disparity between his share of the property and Alice's share is not supported by the record. Alice argues that Del's $9,502.36 lien on the home is excessive and he should not have received any portion of her profit-sharing plan.

Our analysis of the property division is governed by section 598.21(1) of the Iowa Code. A percentage division is not statutorily sanctioned. Rather,

the ultimate question is whether the distribution is equitable under the specified facts of the particular case. In re Marriage of Callenius, 309 N.W.2d 511, 514 (Iowa 1981).

Pursuant to the decree, Alice received $42,000 worth of property; Del received $24,000 worth of assets and was required to assume responsibility for approximately $20,500 in debts. We find this division to be inequitable and make the following modifications.

The parties' total equity in the homestead is approximately $18,000. Del shall have a lien against the homestead in the amount of $9,000, representing his equitable share. This amount will be payable when Alice remarries, sells the home, or is no longer supporting and providing a home for any minor child. Interest will accumulate on the $9,000 lien at the statutory rate of 10 percent per annum.

We further find that the $38,000 in Alice's profit-sharing plan is a marital asset and Del is entitled to $19,000 as his equitable share. This amount is payable when the funds become available to Alice.

Our final modification relates to the two loans which Del was directed to pay. Del took out a personal loan for $20,000 and subsequently loaned it to his corporation. $17,500 remains owing on the personal loan. The corporation, however, has paid back all but $5,000. Only $2,500 of this amount has been applied toward the bank loan. Apparently, the remaining $12,500 which the corporation paid to Del was used for family expenses rather than paying off the loan. Some testimony indicates that the loan from the insurance company was also used for a business venture, although this is disputed in the record.

We find that these debts are marital debts and Alice should assume some responsibility for them. Her testimony indicates that she was consulted and

approved Del's business ventures. At the very least, she benefited from the $12,500 the corporation paid to Del which was not applied toward the loan.

Accordingly, we modify the decree to provide that Alice shall contribute $6,000 toward the two loans. This amount shall be payable to Del in six annual installments of $1,000 each. The first payment shall be due ninety days from the entry of the modified decree; the remaining five installments are payable on or before December 31 of each year. Interest shall accumulate at a rate of 10 percent per annum on the unpaid balance.

All other aspects of the property division are affirmed as set forth in the original decree.

III.

The remaining issue concerns attorney fees. Alice requests both trial and appellate attorney fees. In light of the financial situation of the parties, we conclude that such an award would be inappropriate.

AFFIRMED AS MODIFIED.