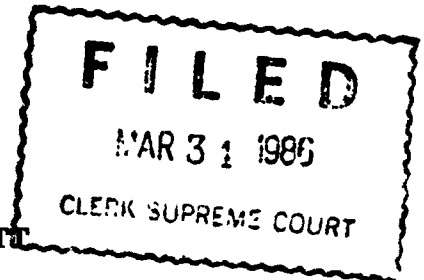


IN THE COURT OF APPEALS OF IOWA



IN RE MARRIAGE OF JANE J. SCHMITT AND ART J. SCHMITT

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Upon the Petition of)

JANE J. SCHMITT,)

Filed March 31, 1986

Petitioner-Appellee,)

And Concerning)

ART J. SCHMITT,)

5-715
85-684

Respondent-Appellant.)

Appeal from the Iowa District Court for Butler County (576) - M. L. Mason,
Senior Judge.

Respondent husband appeals the provisions of the decree dissolving the
parties' marriage. **AFFIRMED AS MODIFIED.**

Marion L. Beatty of Miller, Pearson, Gloe, Burns, Beatty & Cowie, Decorah,
Iowa, for respondent-appellant.

Gary J. Boveia of the Boveia Law Offices, Waverly, Iowa, for
petitioner-appellee.

Habbo G. Fokkena, Clarksville, Iowa, as guardian ad litem.

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

Respondent husband appeals the provisions of the decree dissolving the parties' marriage. He asserts: (1) the property division is inequitable; (2) the child support award is inequitable; and (3) the court should have directed who could claim the children for a tax exemption and determined a cost-sharing arrangement for visitation. We affirm as modified.

Jane and Art were married on September 7, 1973. Three children were born to the marriage—two girls in 1975 and 1979 and a boy in 1977. A child of Jane's previous marriage, born in 1970, was adopted by Art three months after they were married.

Both parties are high school graduates. Art worked as a farmer and a factory laborer during the marriage. Jane took care of the children and their home.

At the time of the marriage, Jane had a trailer house which she sold for \$4,000 or \$5,000. A portion of this money was used for furniture for the new family home; \$1,000 was put in her child's bank account.

Art brought a home into the marriage which he had purchased for \$17,500. During the marriage he sold the home for \$30,000. The proceeds were used as a downpayment on a 160-acre farm. The parties to this action have a one-half interest in the farm as tenants in common; Art's brother owns the remaining half interest in the farm. Expert testimony varied as to the value of the parties' interest. Valuations ranged from \$1,000 to \$1,150 per acre. Art and his brothers formed a partnership which purchased other real estate. Valuation of these parcels also varied.

Other marital assets included farm equipment, livestock, and certain promissory notes. There were no inheritances or gifts.

The trial court awarded physical care of the four children to Jane and ordered Art to pay \$750 per month child support. Art was ordered to pay all medical,

dental, and hospital expenses of the children. Jane was awarded \$80,000 "as a property settlement and not as alimony," with interest to accrue at 10% per annum until paid in full, and awarded \$3,000 towards her attorneys fees. In an amendment, Art was ordered to pay costs and the fees of guardian ad litem. Art has appealed.

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

I.

Art's first allegation of error is that the property division is inequitable.

Our analysis of the property division is governed by section 598.21(1) of the Iowa Code which codifies many aspects of our prior case law. A percentage division of property 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).

Viewing the facts before this court in light of section 598.21(1), we conclude that an award of \$80,000 to Jane is excessive.

Even using the most generous appraisal values, the parties' net worth only totals \$81,690. An award of \$80,000 does not reflect an equitable share of this amount. Nor does it take into consideration the \$17,500 Art brought into the marriage. Accordingly, we modify the property settlement provision and award Jane \$30,000 as her share. This amount shall be payable in annual installments of \$5,000. The first payment shall be due ninety days from the entry of the decree; the remaining five installments are payable on or before December 31 each year. Interest shall accumulate at a rate of ten percent per annum.

Jane argues that if the property division is altered, she should receive alimony. We agree. Jane has a high school education, however, she did not work

during the marriage. In light of the length of the marriage and Jane's lack of work experience, we award \$200 per month alimony for five years. The alimony will cease upon Jane's remarriage or if either party dies. We believe this award will allow Jane sufficient time to acquire job skills and obtain suitable employment.

II.

Art also argues that child support of \$750 per month is excessive.

In considering Art's claim, we examine the facts of this case in light of the factors listed in Iowa Code section 598.21(4). Both parties to a marriage have a legal 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 parent to contribute. In re Marriage of Heinemann, 309 N.W.2d 151, 153 (Iowa Ct. App. 1983).

Our examination of the record convinces us that the child support obligation should be reduced. Art's net monthly income is approximately \$1,450. Pursuant to the decree, Art would have to pay over half of this amount for the support of his children. We find this to be inequitable.

Accordingly, we modify the child support portion of the decree. Art shall pay child support in the amount of \$100 per month per child until each child respectively attains majority, marries, or becomes self-supporting; in any event, the obligation to provide support shall only continue until each child respectively completes his or her high school education.

III.

Art claims he is entitled to claim the children as exemptions for income tax purposes. Jane does not dispute this. We therefore modify the decree to provide as follows. So long as Art is current in child support payments, at the end of his tax year he shall be entitled to claim the parties' children as dependents on his federal and state income tax returns. Jane shall execute a multiple support

agreement and/or any other requisite I.R.S. and Iowa Department of Revenue forms necessary to accomplish Art claiming his children as dependents for income tax purposes. Jane shall deliver the executed forms to Art on or before January 20th of each calendar year.

Art also requests that this court determine a cost-sharing arrangement for visitation expenses. We decline to do so. We are confident that the parties can resolve this matter without unnecessary interference with the decree.

IV.

Jane's request for appellate attorney fees is denied. Each party shall be responsible for his or her own attorney fees on appeal. Appellate court costs are assessed to petitioner-appellee.

AFFIRMED AS MODIFIED.

Oxberger, C.J., concurs; Sackett, J., dissents.

I agree with the majority in their decision to modify the decree and decrease the property award. I also agree with their decision to award Jane alimony. I cannot, however, concur with their decision to terminate the alimony if Jane should remarry and I would provide the alimony not terminate on her remarriage. Jane devoted some twelve years to this marriage and assumed the majority of the custodial responsibility for the three children born to the parties in a four-year span. Because of these facts she obviously has been denied the opportunity for remunerative employment and career advancement. The award being made to her, although minimal, hopefully will assist her with re-entry into the job market and the opportunity to become an economically productive person. There is no justification for her losing alimony awarded for marital sacrifice on remarriage, nor is there any less reason for her to seek to become an economically productive creature if she should remarry.

Furthermore, I agree with the majority the child support should be modified. Jane is receiving a portion of the family's net worth and because Art's income in part is from his capital investment it is reasonable to assume his income will decrease. Jane has a duty, too, to support the children and her property award will assist her with this responsibility. I would, however, modify the child support to \$600 a month and decrease the amount by \$75 each time a child no longer met the requisites for support.

In all other respects, I concur with the majority.