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IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MATTHEW SADDLER AND MILDRED L. SADDLER

UPON THE PETITION OF	)	
MATTHEW SADDLER,	)	Filed November 19, 1979
Petitioner-Appellant,	)	
AND CONCERNING	)	249
MILDRED L. SADDLER,	)	2-62705
Respondent-Appellee.	)	

Appeal from Black Hawk District Court - William G. Klotzbach, Judge.

Petitioner-husband appeals from the economic provisions of a decree dissolving his marriage to respondent-wife. AFFIRMED.

Peter J. Gartelos of Evans, Gartelos & Wagner, Waterloo, for petitioner-appellant.

Charles J. Pickett of Pickett & Kober, Waterloo, Iowa, for respondent-appellee.

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

CARTER, J.

Petitioner-husband, Matthew Saddler, appeals from the economic provisions of a decree dissolving his marriage to respondent-wife, Mildred Saddler. We affirm the decision of the trial court.

Matthew and Mildred were married in 1965, while both were in their teens. The couple had one child, a son, now age fourteen. Neither party brought anything in the way of assets into the marriage and neither party earned much money until 1976. At the time of trial, Matthew was earning over $2,000 per month as a salaried supervisor at John Deere; Mildred, who had been earning approximately $1,150 per month as a forklift operator at John Deere, was unable to work as a result of an automobile accident and was receiving $179 per week in sick pay. The trial court entered a decree of dissolution and awarded custody of the couple's son to Mildred. Matthew was ordered to pay $60 per week child support. Mildred was awarded all of the real estate owned by the parties, subject to any indebtedness thereon, a 1976 LeMans automobile subject to any indebtedness thereon, and all the furniture and household furnishings then in her possession. Matthew was awarded a 1976 Cutlass automobile, subject to any indebtedness thereon, and a color television set. Matthew was also ordered to pay Mildred $50 per month alimony and to pay $250 toward her attorney fees.

On appeal Matthew contends: (1) property division was inequitable; (2) the alimony award was not justified; and (3) the child support award was excessive. Mildred seeks an award of additional attorney's fees for this appeal. Our review in this equity proceeding is **de novo.** Iowa R. App. P. 4. In order to achieve a fair and equitable determination of the property rights and financial obligations of the parties, we apply the guidelines of Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968) as modified in In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972). While we give weight to the findings of the trial court, we will not abdicate our function as trier **de novo** on appeal. In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974).

I. Matthew asserts the trial court's decree awarding Mildred $50 per month alimony and giving her the bulk of the marital assets is inequitable. Although alimony and the allocation of property rights have a different purpose, they are closely related in the matter of determining the amount to be allowed. Schantz, 163 N.W.2d at 405.

The question becomes, whether the property award and alimony, when taken together, constitute an equitable award. In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975).

Despite the longevity of the marriage, neither party accumulated much in the way of assets, with the exception of a house in Detroit, until 1976. The property in Detroit was purchased by Mildred in 1973, without her husband's knowledge, using funds she had received from an insurance settlement for an automobile accident.[1] The record shows that all of the monthly payments were made by either Mildred or her insurance company.[2] The record also shows that Mildred invested approximately $1,800 on drapes and other improvements in the property. For at least part of the time the couple lived in Detroit, Matthew lived in the house with Mildred,[3] but the record does not indicate that he made any contributions toward their living expenses or the monthly house payments during this time.[4] At the time of trial, Mildred was attempting to sell this property, which was valued at around $20,000, but she testified that the house needed some work to bring it into compliance with the city code and that she would only recover around $5,000 of her investment as a result of the sale.

The trial court also awarded a house in Waterloo to Mildred. At the time of trial, she was living in this house with the couple's son. This property was purchased on contract from Mildred's sister using funds that Mildred received from an insurance payment.[5] Although the first six $115 monthly house payments were made from the couple's joint bank account, it is undisputed that Mildred has made all of the subsequent house payments. She is also obligated, by the terms of the trial court's decree, to pay for the improvements on the house, improvements for which Matthew has made no contribution.

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[1] She paid slightly over $7,200 to the previous owner and assumed the existing mortgage on the property.

[2] Mildred had the benefit of insurance during her disability that made mortgage payments for the mortgagor while the mortgagor-policyholder was disabled.

[3] The record shows Matthew was in Detroit from late 1973 until the summer of 1975. Mildred testified the couple lived together about half of the time; Matthew testified that they lived together for all but a couple of months.

[4] Matthew did not file an income tax return for the year 1974. He testified that his losses from his unsuccessful business venture selling vacuum cleaners outweighed his gains. He was engaged in this line of business until he started working at John Deere in Waterloo in the latter part of 1975.

[5] The evidence shows that $1,650 of the $2,150 downpayment came from Mildred's medical and hospitalization insurance. Initially the other $500 came from a loan from Dial Finance. This loan was later repaid with another of Mildred's insurance checks.

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The trial court awarded Matthew a 1976 Cutlass automobile for which evidence indicates Mildred furnished the $1,000 down payment. The record also shows a $3,000 personal loan to Matthew from his father was repaid with funds from Mildred's insurance check.[6]

Other guidelines to be considered in making an equitable award of alimony and division of the marital assets are the present mental and physical health of each party, and the earning capacity of each party. Schantz, 163 N.W.2d at 405. Although the record does not mention the parties' mental health, the other guidelines strongly support the award approved by the trial court. At the time of trial Mildred was unable to work as a result of undisclosed injuries suffered in a February 1978 automobile accident. Although there is no indication from the record she will not be able to return to work, her past employment record does not indicate that she has enjoyed good health.[7] At the time of trial Matthew was in good health and able to work. He had a salaried supervisory position at John Deere in Waterloo and was making over $2,000 per month. Mildred had been earning wages totalling around $1,150 per month before the accident. It would appear, therefore, that Matthew's employment future, as well as his physical health, is significantly better than Mildred's.

Although the property settlement approved by the trial court distributed the marital property unequally, we cannot say the distribution was inequitable. After considering all relevant factors, we decline to disturb the trial court's division of the marital assets. We also find the alimony award of $50 per month is, in light of circumstances, justified.

II. Matthew also appeals the trial court's award of child support as being excessive. The trial court ordered Matthew to pay $60 per week support for the couple's only child. Matthew, as discussed earlier, earns in excess of $2,000 per month. Mildred's salary, while she was working, was slightly in excess of $1,000 per month.

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[6] Matthew's father loaned Matthew $3,000 so he could start his vacuum cleaner business in Detroit. Although the financial transaction that resulted in the repayment of this loan is somewhat complicated, it is undisputed that Mildred's insurance payment went to pay off this debt.

[7] Mildred suffered from undisclosed illnesses from 1970-72. She had an automobile accident and a hysterectomy in 1971. In 1978 she had another automobile accident. Apparently she was also unable to work for undisclosed reasons for large parts of 1973 and 1974.

Mildred, in providing the child with a suitable custodial environment, is faced with many expenses which Matthew will not have. In light of the circumstances as discussed above, we do not feel that an award of $60 per week is excessive. We therefore affirm the trial court's award of $60 per week child support.

III. Mildred also seeks attorney's fees on appeal. Without determining the amount her attorney may charge, we hold Matthew shall pay $750 toward those fees. See In re Marriage of Peterson, 227 N.W.2d 139, 143 (Iowa 1975).

AFFIRMED.

All judges concur except Oxberger, C.J., and Johnson, J., who dissent.

OXBERGER, C.J. (dissenting)

I dissent.

The majority states the property division is unequal but not inequitable. I cannot agree with the latter.

The majority appears to place inordinate weight on the fact many of the assets acquired by the parties were initially financed by insurance proceeds paid to Mildred. Contribution to accumulation of assets is but one factor to be considered when a court divides property between spouses in a dissolution decree. See Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968). Additionally, contribution is not limited to pecuniary input; it may be through labor or other means. Id.

Here, Matthew contributed financially throughout the marriage and since Mildred's 1978 accident he has accounted for the vast majority of the couple's income. He has contributed through other means as well. Yet, the majority seems to ignore those contributions and the other factors enunciated in the Schantz guidelines as well. The majority's approach is akin to a "source of funds" method of distributing assets. Division of assets by awarding them to the party who directly financed or purchased them, however, makes the term "marital assets" a misnomer. It is especially troubling to use such an approach where, as here, the contributions attributed to one party were acquired through insurance proceeds. Presumably those proceeds indemnified Matthew as well as Mildred since the marital estate was injured when she was. Yet, Mildred alone receives credit for reinvestment of those indemnification funds under the majority's division of assets. I would award Matthew a substantial share of the marital assets. See In re Marriage of Freese, 226 N.W.2d 800, 803 (Iowa 1975).

The majority affirms the granting of $50 per month alimony to Mildred who earns $1170 per month. This is tokenism. It bespeaks of medievalism when women were considered chattels. The fifty dollars cannot be justified as equalizing the disparity of income between the spouses. It cannot be justified on the basis of need. The only possible justification is that women are entitled to a token for their services as a wife. I cannot accept that justification.

Alimony is justified when a spouse's career is damaged by the marriage. For instance, if a spouse cannot accept a promotion because it requires a move to another city and the move would hinder the other spouse's career, alimony may be in order. Alimony also may be appropriate to compensate the woman if she has been underpaid merely because she is a woman. However, alimony should not be awarded to equalize the career capacities of the spouses. Some people simply perform more capably than others.

Here, Mildred presently is unemployed and the duty of support between spouses is well recognized. I would award Mildred the difference between her sick pay of $179 per week and her regular pay of $270 per week, i.e., $81 per week, until she is able to return to work.

JOHNSON, J. (concurring in part, dissenting in part)

I concur in the majority's affirmance of trial court's division of property in this case. However, I agree with the dissent's assertion that petitioner's alimony obligation should continue only so long as respondent remains unable to work due to injuries sustained in the February, 1978 accident.