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CLERK SUPREME COURT

IN RE THE MARRIAGE OF CHARLES D. YORK AND MARILYN J. YORK

Respondent.

Filed October 21, 1980

0-303
64533

Appeal from Marshall District Court - David R. Hansen, Judge.

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

Pat W. Brooks of Mowry, Irvine, Brooks & Ward, Marshalltown, Iowa, for
petitioner.

Charles F. Fairall of Fairall, Fairall, Reeves & Kaplan, Marshalltown, Iowa, for respondent.

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

PER CURIAM

Petitioner-husband appeals from economic provisions of the parties' dissolution decree. He argues the alimony and child support awards are excessive and inequitable and that the period of child support should not have been extended through college pursuant to section 598.1(2), The Code, since the children are not yet eighteen years old. Our review is *de novo*. Iowa R. App. P. 4. We affirm the decree.

Charles and Marilyn York were married on May 25, 1969. Their two children, Michael and Diane, are eight and five years old respectively. Charles filed his petition for dissolution on February 8, 1978. He was ordered to pay \$200 per month temporary support to Marilyn and \$200 for her attorney fees. On December 31, 1979, the trial court issued its decree. Charles was ordered to pay \$400 per month in child support until the children are eighteen years old or self-supporting or, if the school attendance requirements of section 598.1(2), The Code, are satisfied, support continues until the children are twenty-two years old. When only one child is eligible for support, the support obligation is to be reduced by 40%. If Charles receives any cost-of-living salary increases, the support obligation will be increased by the same percentage as represented by the salary increase. Marilyn is to receive \$100 per month in alimony for eighteen months beginning in January, 1980. Charles was ordered to pay an additional \$1,000 for Marilyn's attorney fees. Other provisions of the decree are not at issue on this appeal.

To determine the propriety of awards of child support and alimony, we apply the criteria set forth in In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974), and Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968) (except fault), respectively. We must therefore review the parties' financial circumstances. Charles is employed as a machinist and has a net monthly income of \$1,100-\$1,200. He estimates his monthly expenses at \$703. He also receives overtime and incentive pay, but only on an irregular and infrequent basis. Marilyn is working part-time at a nursing home, earning \$3.02 per hour for sixteen hours a week. This employment will cease for a period of time, however, as she expressed a desire to stay at home with her two children and help them adjust emotionally to the idea of the parties' divorce. Marilyn will therefore have no income during that time until both children are in school and she can then obtain full-time employment. She estimates her monthly expenses at \$1,080.

I. Charles first argues that the support obligations should not be increased in the future in conjunction with salary increases based on the cost of living. He cites a

number of cases which have disapproved the idea of setting one's child support obligation as a fixed percentage of earnings. These include Norenberg v. Norenberg, 168 N.W.2d 794, 798 (Iowa 1969), which states: "[w]e have not and cannot recognize any such formula in support awards, but must consider all facts pertinent to a just and reasonable support award." But we believe that what the trial court did here is consistent with this admonition. After considering the relevant factors (including the needs of the children and Charles' ability to pay), the trial court determined that \$400 per month was an appropriate factor. That court further realized the impact of inflation on Marilyn and the children's future expenses and allowed for that by increasing support when Charles receives a cost-of-living salary increase. In Norenberg, the trial court arbitrarily established support as a certain percentage of salary without any indication that such percentage was actually related in any way to the appropriate criteria. Here, the support award is based on all the relevant facts, including the prospect of future inflation. We see no reason to alter that portion of the decree.

Charles next argues the support award is erroneous in providing for support until age twenty-two (pursuant to section 598.1(2), The Code) if the children are pursuing post-secondary education. He claims such an award is not permitted until the children reach the age of eighteen. This contention is answered by In re Marriage of Urban, 293 N.W.2d 198, 202-03 (Iowa 1980), where the court held that section 598.1(2) is not limited in application to situations where the children are already in or are about to begin college studies. We affirm that portion of the support decree.

Charles also claims the \$400 per month support figure is excessive. We disagree. The record shows some support for Marilyn's claimed monthly expenses of \$1,080. Even subtracting the babysitting expense of \$160 per month which will not be incurred while Marilyn is not employed, her expenses will still be \$920 per month. Charles is capable of paying \$400 per month from his net monthly income after payment of his current monthly expenses as shown by the record. We affirm the child support award in all respects.

II. Charles also claims the alimony award of \$100 per month was erroneous. We do not agree. First, the alimony is to last for only eighteen months. Second, and more important, Marilyn has expressed the commendable desire to stay at home with the children to help them with their emotional problems relating to their parents' separation and divorce. In addition, this eighteen-month interim will give Marilyn time to put her own life back in order (she suffered and has recovered from a nervous breakdown as a

result of the divorce proceedings) and perhaps receive further training to improve her employment prospects and make herself more self-sufficient. We affirm the alimony award.

III. Marilyn has requested attorney fees incurred on this appeal. Such fees are not awarded as of right but instead depend on the financial circumstances and earnings of each party. In re Marriage of Burham, 283 N.W.2d 269, 278 (Iowa 1979). Without determining what her attorneys may charge for their services on this appeal, we order Charles to pay \$800 towards that obligation.

We affirm the trial court's decision in all respects.

AFFIRMED.