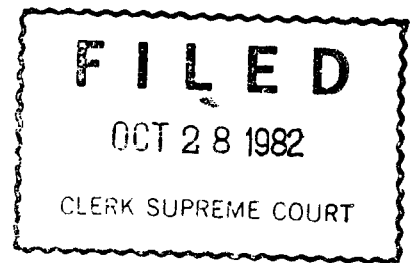


IN THE COURT OF APPEALS OF IOWA



**IN RE THE MARRIAGE OF ROSEMARY THORNLEY AND
WILLIAM HENRY THORNLEY**

379

**UPON THE PETITION OF
ROSEMARY THORNLEY,**

)

Filed October 28, 1982

)

Petitioner-Appellant,

2-266

2-67432

**AND CONCERNING
WILLIAM HENRY THORNLEY,**

)

Respondent-Appellee.

)

Appeal from Polk District Court, Gene L. Needles, Judge.

Petitioner-wife appeals from economic provisions of the parties' dissolution decree, asserting that the child support award was inadequate, that respondent-husband should have been required to contribute toward maintaining insurance for the children, and that interest of ten percent should not have been awarded on a property lien in favor of the husband. AFFIRMED AS MODIFIED.

Donald G. Beattie of Ed Skinner, P.C., Altoona, for petitioner-appellant.

Ronald R. Rieper, Des Moines, for respondent-appellee.

Considered en banc.

PER CURIAM

The parties, Rosemary Thornley and William Thornley, were married in August of 1971. Rosemary had two children by a previous marriage; William adopted these children subsequent to his marriage to Rosemary. In addition, one child was born to the marriage in April of 1976.

The only property brought into the marriage was William's Ford Falcon. At the time of the dissolution, the parties were purchasing a home in which they had \$14,000 equity. Throughout the marriage, the parties contributed equally to the house payments.

At the time of trial Rosemary was employed by Iowa Lutheran Hospital as a nurse. Her 1980 gross income was reported at \$13,750; however, evidence was presented at a hearing subsequent to trial that she had transferred to a day shift and consequently her projected 1981 gross income was approximately \$16,000. William had been employed by Townsend Products as a tool and die maker, with a 1980 gross income of \$19,600, but at trial he testified that he had submitted his resignation to his employer.

The trial court granted a dissolution of the parties' marriage in July of 1981. The court awarded custody of the three children to Rosemary and ordered William to make child support payments in the amount of \$25 per week per child. The court further ordered Rosemary to maintain the group health and accident insurance she had through her employer for the benefit of her children, while William was made responsible for any uninsured medical expenses of the three children. Finally, the parties' homestead was awarded to Rosemary, subject to a \$7000 lien in favor of William, to draw interest at the legal rate of ten percent. It is from the trial court's disposition of these matters that Rosemary appeals.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. We review the facts as well as the law and determine anew those rights properly presented and preserved. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977). We give weight to the findings of the trial court, particularly when considering the

credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

On appeal Rosemary contends that the child support award of \$25 per week per child is inequitable because it is inadequate to support the three children, and because William is capable of contributing greater support. We agree and modify the trial court's child support award accordingly.

The factors to be considered in determining an inequitable child support award are listed in Iowa Code § 598.21(4). We first consider the "financial resources of both parents." § 598.21(4)(b). In this case William's income is somewhat higher than Rosemary's, yet his expenses are substantially less. William admits that Rosemary's house payment and food expenses for herself and her children total \$568 per month, whereas he lives with his parents and pays only \$200 per month for room and board. Rosemary spends approximately \$125 per month for utilities and telephone bills, whereas William's testimony at trial indicates that he does not have to share these expenses with his parents. In addition, Rosemary spends at least \$50 per week for babysitting. "The cost of day care" is another factor to be considered by the trial court in reaching an equitable child support award. Iowa Code § 598.21(4)(e). The trial court's award of only \$75 per week for all three children is inequitable because it requires Rosemary to pay for all but \$25 per week of the expenses, other than babysitting, of raising three children. In light of these factors, we conclude that a child support award of \$35 per week per child represents a more equitable division of financial responsibility between the parties, and will more closely maintain the standard of living the children would have had if there had not been a dissolution. See Iowa Code § 598.21(4)(c).

In his brief William argues that such an increase in his child support obligation would be financially burdensome and would leave him with little incentive to work. He states that he "submitted his resignation to his employer

because of apprehension raised by Petitioner's proposed decree." We are unpersuaded by this argument. Such an award is consistent with results reached by the Iowa courts in other cases. E.g., In re Marriage of Huston, 263 N.W.2d 697, 700 (Iowa 1978). The duty to support extends to adopted children as well as to natural children, In re Marriage of Carney, 206 N.W.2d 107, 112 (Iowa 1973), and a parent cannot expect to reduce or avoid this duty by willfully terminating his employment. Cf. McNabb v. Osmundson, 315 N.W.2d 9, 15 (Iowa 1982)(parent who owes child support would be held in contempt of court if he gambled away inheritance that could have been used to make payments).

On appeal Rosemary also requests that a provision be added to the decree providing for automatic adjustment of child support payments to reflect increases in the consumer price index. A provision cost of living adjustment is often desirable because it reduces the loss of purchasing power to the custodial parent while eliminating the need for the parent to incur additional legal expenses at modification proceedings. See In re Marriage of Stamp, 300 N.W.2d 275, 277, 279 (Iowa 1980). Furthermore, if based on changes in the consumer price index, the appropriate adjustment will be easily ascertainable. We therefore conclude that the trial court's decree should be modified by providing that: "the child support payments shall be automatically adjusted each year on the anniversary date of the trial court's decree to reflect any increase or decrease in the National Consumer Price Index, as published by the United States Department of Labor for the most recent twelve-month period for which data is available, provided that William's actual gross salary for that period has increased by at least the same percentage. If William's gross salary increased by a lesser percentage, then the payments to Rosemary shall increase by this lesser percentage. However, this cost-of-living adjustment shall not be used to reduce William's support obligation below the

amount established in trial court's decree."

We have considered Rosemary's other contentions and find them to be without merit. The trial court equitably distributed the financial responsibility for the medical expenses of the children by requiring Rosemary to maintain the group health and accident insurance she had through her employer, while ordering William to pay all uninsured medical expenses of the children. The trial court also equitably divided the value of the parties' major asset, the house, by awarding the house to Rosemary subject to a lien in favor of William in the amount of one-half its value, to draw interest at the legal rate. The trial court did not abuse its discretion by setting the interest at the legal rate of ten percent. See In re Marriage of Conley, 284 N.W.2d 220, 224 (Iowa 1979). William could earn more than ten percent if he could invest the \$7000 himself. We reject Rosemary's apparent conclusion that William's testimony at trial that he "could accept" Rosemary's proposed decree constituted acquiescence in all of the terms she proposed. In fact, William never signed the proposed decree.

We therefore modify the trial court's decision by increasing the child support award to \$35 per week per child and including a COLA provision based on the National Consumer Price Index, and affirm the decision in all other respects. We have considered and hereby reject Rosemary's request for an award of attorney's fees on appeal. The parties shall be responsible for their own expenses on appeal.

AFFIRMED AS MODIFIED.