FILED
MAY 28 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF BEVERLY LINDA VINCENT AND ARLON WAYNE VINCENT

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Upon the Petition of	)	
BEVERLY LINDA VINCENT,	)	Filed May 28, 1985
Petitioner-Appellant,	)	
And Concerning	)	5-210 84-991
ARLON WAYNE VINCENT,	)	
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Polk County - Luther T. Glanton, Judge.

Petitioner-wife appeals from the economic provisions of the decree dissolving the parties' marriage. AFFIRMED AS MODIFIED.

Ray Sullins, Des Moines, Iowa, for petitioner-appellant.

Harlan M. Hockett and David P. Jennett, Des Moines, Iowa, for respondent-appellee.

Considered by Snell, P.J., Hayden, and Sackett, JJ.

HAYDEN, J.

Petitioner-wife appeals from the economic provisions of the decree dissolving the parties' marriage.

Petitioner Beverly Vincent and respondent Arlon Vincent, ages 38 and 37 respectively, at the time of trial, were married in 1971. They have two children: an adopted son, Stephen, age 16, and a daughter, Susan, age 12.

Prior to their marriage Beverly completed two and one-half years of college and Arlon completed one year of college and served in the Navy. In 1976 the parties engaged in an unsuccessful farming operation in Illinois. Beverly worked outside the home to supplement their income. In 1981 they moved to Des Moines.

At the time of trial Arlon was employed as a commodities broker. In 1983 his gross earnings were $110,000. However, at the end of the year his personal trading account was almost $40,000 in debt. In addition his clients' accounts were approximately $29,000 in debt. Arlon is responsible for repaying these debts if the clients are unable to do so. Both Arlon and his employer testified that his income for 1984 would probably be $50,000 to $60,000 due to new federal regulations and Arlon's inability to generate commissions from his own trading as long as his account is in debt. Arlon's gross income from his employment for the first three months of 1984 was approximately $3,200 per month. In addition, he receives $172 per month veterans' disability and $447 per month rental income from a farm. The farm income is not paid to him on a monthly basis. Beverly is employed at a high school as a cheerleader sponsor and hall monitor and earns approximately $600 per month in gross income.

The parties do not own any real property. Arlon inherited an undivided one-half remainder interest in a farm in Illinois. Although his grandmother has a life estate in the property, she allows him to receive the rental income. Beverly's father purchased the house in which the parties live. The evidence on this point was not clear at trial. It appears, however, that there is a $70,000 mortgage on

the home which the parties have been paying at the rate of $700 per month. Beverly testified that the house was to be transferred into Arlon's and her names when the mortgage was paid off.

The trial court granted joint custody with Beverly having physical care pursuant to an agreement between the parties. This provision has not been challenged on appeal. The court awarded Beverly the 1981 Dodge, the 1982 Chevette,[1] the furniture and appliances in the homestead, $2,400 in jewelry, and $7,000 in equity in the homestead. Arlon received the furniture in his apartment and $900 in jewelry. The parties' main asset was an estimated $56,000 income tax refund. The court ordered the refund to be divided equally between the parties after certain debts were paid, including the $30,000 owed to Arlon's employer for trading losses. Beverly was awarded child support of $300 per month per child, $100 per month alimony for two years, and $1,000 in attorney fees. Beverly has appealed from all of the economic provisions in the decree and further requests an award for attorney fees on appeal.

Our review of this proceeding in equity is de novo. Iowa R. App. P. 4. We give weight to the findings of fact of the trial court, especially where the credibility of witnesses is involved, but we are not bound by them. Iowa R. App. P. 14(f)(7).

I. Beverly raises several issues regarding the division of the parties' assets. First, she argues that the trial court did not consider Arlon's dissipation of marital assets between the time of the parties' separation and the hearing. After examining the record we do not agree with this contention. The trial court considered that Arlon had purchased a $22,500 Cadillac and awarded the vehicle to him. However, the court noted that Arlon had no equity built up in the car and

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[1] This automobile, which was a gift from Beverly's father, is listed on the affidavit of financial status as a Chevette, but Arlon testified at trial that it is a Vega.

expressly found the $705 per month car payment to be an unreasonable expense. The court also considered that Arlon spent $9,000 on furniture when he moved out of the house. That furniture was awarded to Arlon as part of the division. Beverly also complains that the losses in Arlon's trading account were a dissipation of assets. The evidence showed, however, that Arlon generated income by receiving commissions from his own trading. He testified that his account was making money until November of 1983. We do not find this to be an intentional dissipation of assets.

Beverly also argues that the trial court erred in ordering Arlon's $30,000 personal trading loss to be paid from marital assets. It is interesting that Beverly considered the money in the account to be a marital asset but does not consider the losses to be a marital debt. As stated above, this account was a method of generating income for the parties. Although the losses are unfortunate, there is no reason they should be borne by Arlon alone.

Finally, Beverly maintains that the trial court erred in considering $7,000 equity in the house as part of her share of the property. We agree with Beverly that there was little evidence from which the court arrived at this figure. However, we are aware of the trial court's predicament on this issue. Since Beverly's father was not a party to the proceedings, the court could not conclusively determine the rights and obligations of the parties regarding this house. At the same time the evidence showed that the parties had been paying $700 per month with the understanding that title to the house would be transferred to them when the final payment was made. We find no error with the trial court's decision on this issue, especially since the property division is approximately equal even disregarding any equity in the house.

Therefore, after considering the factors in Iowa Code section 598.21(1), we affirm the following division of property made by the trial court:

Beverly		Arlon	
1981 Dodge	$ 4,350	1983 Cadillac	no equity value
1982 Chevette	$ 3,325		
Furniture	$10,000	Furniture	$ 9,000
Equity in house	$ 7,000	Jewelry	$ 900
Jewelry	$ 2,400	1/2 tax refund	$10,500 (est.)
1/2 tax refund	$10,500 (est.)		
	$37,575		$20,400

As the trial court noted, Arlon is solely responsible for $1,700 in miscellaneous debts and the $25,517 contingent liability to his employer for losses in his clients' accounts.

II. In making an award of child support, the court considers the factors listed in Iowa Code section 598.21(4). Both parties have an obligation to support their children commensurate with their abilities. In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976). In view of the great disparity between the incomes of the parties, we modify the trial court decree and increase the child support to $400 per month per child until each child graduates from high school or attains the age of eighteen, whichever shall last occur, or marries, becomes self-supporting. or dies. Furthermore, we approve the trial court's provision that Arlon should be entitled to claim the two children as dependents on federal and state income tax returns. We note that this is applicable only if he remains current in support payments.

III. The factors to be considered in awarding alimony are found in Iowa Code section 598.21(3). The trial court awarded Beverly $100 per month for two years. The evidence showed that Beverly desires to complete college in order to become self-supporting. She also expressed a desire to work on a graduate degree. In view of the length of the marriage, Beverly's contributions to the marriage, and Arlon's superior financial position, we find that the rehabilitative alimony should be increased both in amount and duration. See In re Marriage of Janssen, 348 N.W.2d 251 (Iowa 1984). Therefore, we modify the decree to order Arlon to pay $400 per month alimony for five years or until Beverly remarries. In any event the alimony shall terminate upon the death of either party. The five-year period shall run from June 1, 1984, the date specified in the decree.

IV. We reject Beverly's contention that the award of $1,000 for attorney fees made by the trial court was insufficient. However, we award her $500 to apply upon her attorney fees incurred in connection with this appeal. Costs of appeal are taxed to Arlon.

AFFIRMED AS MODIFIED.