FILED
AUG 29 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MARILYN JOYCE UNDERHILL AND DONALD LOUIS UNDERHILL

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UPON THE PETITION MARILYN JOYCE UNDERHILL, Petitioner-Appellant, AND CONCERNING DONALD LOUIS UNDERHILL, Respondent-Appellee.	Filed August 29, 1985 5-235 84-1394

Appeal from the Iowa District Court for Wapello County, Richard J. Vogel, Judge.

Petitioner-wife appeals from the decree disssolving the parties' marriage. AFFIRMED.

Thomas M. Walter of Johnston, Bauerle, Hester & White, Ottumwa, for petitioner-appellant.

Timothy J. McKay of McKay & Moreland, Ottumwa, for respondent-appellee.

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

OXBERGER, C.J.

The petitioner-wife has appealed from the trial court's portion of the property division concerning sale of the parties' home, and the trial court's denial of an award to her of attorney fees. This court dismissed the first part of petitioner's appeal and now affirms the trial court's ruling regarding attorney fees. We affirm.

In its decree the trial court ordered the parties' house to be sold, with $24,500 of the net proceeds paid to the respondent, Donald Underhill, and the remainder divided equally between Donald and the petitioner, Marilyn. Marilyn objected in division II of her appeal to the court's handling of profits from sale of the house.

While this appeal was pending, Donald filed an emergency application for limited remand, asserting the mortgagee had begun foreclosure proceedings because Marilyn had not made payments on the house. Donald said he had received an offer to buy the house, and the supreme court granted limited remand to allow the house to be sold. Subsequent papers filed with this court show that after payment of all encumbrances, taxes, mortgage foreclosure costs, real estate commissions, and attorneys fees, only $534.70 was realized from the sale of the home. We deemed the issue moot as presented in division II of the petitioner's brief since there are no significant profits from the sale. That portion of the appeal was dismissed by this court's order of June 25, 1985. Appellant has not subsequently challenged the propriety of the sale and as a result there is nothing left for this court to consider on the issue.

The only issue remaining on appeal is whether Marilyn is entitled to an award of trial court attorneys fees. She says it was inequitable for the court to deny her request that Donald pay her fees considering her income of $731

per month and expenses of over $1000. Donald says that Marilyn has greatly exaggerated her expenses, and claims she admits in portions of her brief and during trial that some of these expenses were listed too high. Marilyn says Donald's income will dramatically improve, since he has obtained work in the construction business. However, Marilyn has presented no figures to show what Donald's income might be and admits the construction business is seasonal and income uncertain. The only facts in the record before this court show Donald earned $2000 in the first half of 1984, while Marilyn's income is expected to be $8840 per year. Part of the reason Donald's income is low, he points out, is that Marilyn succeeded in obtaining an injunction to keep Donald from working at the tavern they jointly owned. In her argument that she should be awarded attorneys fees, Marilyn relies heavily on the fact Donald will obtain more profit from the sale of the home under the court's decree. However, the sale of the home has not resulted in such a profit for Donald.

An award of attorneys fees is within the trial court's sound discretion. Locke v. Locke, 263 N.W.2d 694, 696 (Iowa 1978). We are to consider the resources of each spouse and their respective ability to pay. Id.

Considering that the minimal proceeds from the sale of the house do not greatly increase either party's financial situation, and considering the respective incomes of each party, we agree that the trial court's decision that Donald and Marilyn pay their own attorneys fees was within its sound discretion.

We affirm the trial court award in all respects.

AFFIRMED.