FILED
AUG 26 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF RHONDA RENE GOMEZ
AND ROBERT MANUEL GOMEZ

Upon the Petition of)
RHONDA RENE GOMEZ,)
Petitioner-Appellee,)
And Concerning)
ROBERT MANUEL GOMEZ,)
Respondent-Appellant.)

110

Filed August 16, 1987

7-281
86-1500

Appeal from the Iowa District Court for Polk County (CD 48-28676), Gene L. Needles, Judge.

Respondent husband appeals and petitioner wife cross-appeals from the decree dissolving the parties' marriage. On appeal, respondent husband asserts (1) that the trial court should not have awarded petitioner wife alimony, and (2) that petitioner wife's child support award is excessive. On cross-appeal, petitioner wife asserts that the trial court should not have made respondent husband's lien on the parties' house payable upon petitioner wife's remarriage or cohabitation with another adult. Petitioner wife also requests attorney fees on appeal. **AFFIRMED AS MODIFIED.**

Bruce E. Bergman of Des Moines for appellant.

Michael E. Hansen of Des Moines for appellee.

Considered by Oxberger, C.J., and Snell and Hayden, JJ.

PER CURIAM

The primary issue in this appeal is how much does Robert earn annually. The trial court said "Robert grossed $16,424.00 in 1985 from his barber shop." That is disputed, however, by Rhonda. She claims Robert has been earning more than he shows on his income tax for the last several years . . . . The court believes Rhonda. The court further finds that Robert's earning capacity is $16,500.00 and Rhonda's is $5,000.00.

The trial court does not specify whether Robert's earning capacity is gross or net. We assume the trial court used Robert's net income. Robert in his reply brief says:

> Rhonda contends that Robert's 'true income' for 1985 was $22,295.86 . . . . Rhonda's estimates, however, should not be considered income. Rather, her figures represent the total of deposits made to the account. As such, they are not necessarily inaccurate, but are mislabeled.

Robert said the 1985 tax return shows that he deducted $6,240.00 in business expense from his gross income of $16,424.00, making his net income $9,660.00. He says the figure of $22,295.86 is arrived at by totaling the gross income of $16,424.00 plus $1,960.00 which Rhonda earned part time, plus $3,300.00 which she earned baby-sitting, plus a $900.00 car loan totaling $22,540.00, which is only $291.00 off of Rhonda's "true income" figure of $22,295.00.

Rhonda testified that Robert barters his barbering with friends for fixing his car. She also said he doesn't have a cash register, and that he keeps the cash in his pants' pockets or a box and that he doesn't always mark down each haircut on his written record.

Rhonda testified that the $22,295.86 "true income" figure was determined from the bank deposits totaling $14,624.15 plus cash family expenses of $7,571.70. She said in 1985 she kept her baby-sitting money and part-time income expenses separate and did not deposit it into the family account.

We conclude there is substantial evidence in the record that the gross income of Robert is $22,295.86 and his net income is as determined by the trial court $16,424.00.

The issue now is whether $100.00 per week is a reasonable amount for two children based on Robert's $16,424.00 annual net income. Robert's 1985 federal income tax was $1,944.00; self-employment tax $1,378 (line 51, 1040 form); state income tax $185.00; and health insurance for himself and the children $2,676.00, leaving a balance of $10,241.00 from the $16,424.00 net income. Under the trial court's decree, Robert pays $1,800.00 alimony and $5,200.00 child support totaling $7,000.00, leaving him with $3,241.00. Additionally, Robert must pay $4,000.00 in family bills including attorney fees.

Rhonda said she needed $1,186.00 per month or $14,232.00 annually. Her income is $1,960.00 from her part-time job and $3,300.00 from baby-sitting, totalling $5,260.00 -- a deficit of $8,972.00. Robert pays her $7,000.00 leaving a shortage of $1,972.00. However, Rhonda and the children have $12,260.00 and Robert has $3,241.00 to live on. Rhonda has the family home to live in with no debt on it.

We modify the alimony award to reduce the amount to $50.00 per month from the date of the trial court's decree. Any sums paid in excess of this amount shall be credited at $25.00 per month on future payments. This will leave Rhonda and the two children $11,060.00 to live on and Robert $4,441.00. Robert's financial statement shows that he needs $530.00 per month or $6,360.00 annually for living expenses, a shortfall of $1,919.00; Rhonda and the children have a shortfall of $3,172.00.

Rhonda raises the issue of whether the trial court erred in sustaining Robert's motion to enlarge the decree to state the homestead lien given to Robert would be due and payable if she remarried or cohabited with an adult person. She argues that since remarriage does not necessarily terminate alimony, it should not make

the lien due and payable. Robert counterargues that the change in language only specifies upon what events Rhonda will have to show cause for why the lien should not become due and payable. This case is somewhat similar to In Re Marriage of Woodward, 229 N.W.2d 274 (Iowa 1975), where the court found that remarriage required the showing of circumstances that justified continuance of the alimony. We find that rationale persuasive and hold that the trial court was correct in expanding the decree, and that when a specified event occurs, Rhonda will need to show cause why the lien should not become due and payable.

Finally, Rhonda has requested that Robert pay her attorney fees for this appeal. In evaluating this request, we consider both the needs of the requesting party and the ability of the other party to pay. In re Marriage of Castle, 312 N W.2d 147, 150 (Iowa App. 1981). We have done so, and conclude that the costs of this appeal should be taxed to Robert, but that both parties should pay their individual attorneys fees.

AFFIRMED AS MODIFIED.