FILED
MAR 29 1978
CLERK SUPREME COURT

270

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF HENRY OSCAR FICHTNER and CREOLA MARIETTA FICHTNER

Upon the Petition of

HENRY OSCAR FICHTNER,

Appellee,

And Concerning

CREOLA MARIETTA FICHTNER,

Appellant.

Filed March 29, 1978

440
2-60426

Appeal from Scott District Court - James R. Havercamp, Judge.

Wife appeals from economic provisions of dissolution decree. Affirmed as modified.

L. Jeffrey Zearley, of Norton & Freese, of Lowden, for appellant.

James M. Hood, of Davenport, for appellee.

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

PER CURIAM

Respondent, Creola Marietta Fichtner, appeals from the economic provisions of the February 10, 1977, decree which dissolved her 40 year marriage to petitioner, Henry Oscar Fichtner. On appeal our review is de novo. Rule 4, Rules of Appellate Procedure. In making economic determinations we are guided by the criteria set forth in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968) as modified by In re Marriage of Williams, 199 N.W.2d 339, 345-46 (Iowa 1972). Precedents are of little value; each case is governed by its own peculiar facts. In re Marriage of Romig, 207 N.W.2d 780, 783 (Iowa 1973).

At the time of trial Henry was 67 years old, retired, and in poor health. Creola was 65 years old and in good health. The parties stipulated to the amount of their incomes and assets. Henry's monthly income of $605 is comprised as follows: social security benefits, $302, an Alcoa Corporation pension, $245, and a Rock Island Arsenal pension, $58. Creola's $290 monthly income consists of social security benefits of $146 and income from housecleaning of approximately $144. The parties' combined assets were stipulated to be worth $50,050 including a bank account of $18,000, and the following items valued as indicated: a 1977 auto, $4000, a 1962 auto, $50, the dwelling house of the parties, $27,500, and household goods, $500.

The trial court decree awarded each party $9000 from the bank account, and in addition gave Creola the household goods and the 1962 auto. Henry received the 1977 auto and was ordered to pay $250 toward Creola's attorney fees. Provision was also made for sale of the dwelling house after two years and equal division of the proceeds. Creola was allowed to live in the dwelling house rent free for the two year period prior to sale and was to assume sole responsibility for payment of taxes and insurance on the property. The trial court did not award alimony.

On appeal Creola seeks alimony and an increased property award. The resolution of the issues on this appeal reduces itself to balancing Creola's evident needs against Henry's rather limited ability to pay.

We conclude that Creola's needs with respect to the dwelling house of the parties is such that she should be permitted to occupy same until she remarries or dies. We therefore modify the trial court's decree so as to provide: (1) each party is awarded an undivided one-half interest in said dwelling house subject to the right of occupancy

which we have determined should be granted Creola; (2) upon Creola's remarriage or death, or in the event Creola ceases to employ said dwelling house as her domicile either of the parties or their respective heirs or assigns shall have a right of partition by sale; (3) during the period of occupancy granted to Creola hereunder, Henry, during his lifetime, shall be responsible for payment of all general property taxes and special assessments on the real estate and shall provide adequate fire and extended coverage insurance with respect thereto.

The trial court's decree is modified in accordance with this opinion and as so modified is affirmed. Costs of appeal are assessed to Henry. Each party shall pay their own attorney fees.

AFFIRMED AS MODIFIED.