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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MATTHEW W. BOZEK AND WAUNETTA L. BOZEK

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| Upon the Petition of | ) | |
| **WAUNETTA L. BOZEK,** | ) | |
| Petitioner-Appellant, | ) | Filed October 27, 1981 |
| And Concerning | ) | |
| **MATTHEW W. BOZEK,** | ) | 1-248<br>2-65648 |
| Respondent-Appellee. | ) | |

Appeal from Pottawattamie District Court - Paul H. Sulhoff, Judge.

Petitioner wife appeals from the economic provisions of the parties' dissolution decree, asserting that alimony and child support should have been awarded. AFFIRMED IN PART, MODIFIED IN PART, AND REMANDED.

Herman W. Walter of Walter & Sciortino, Council Bluffs, for petitioner-appellant.

Matt Walsh, Council Bluffs, for respondent-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

Petitioner wife appeals from the economic provisions of the parties' dissolution decree, asserting that alimony and child support should have been awarded. We affirm in part, modify in part, and remand.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. Our responsibility is to review the facts as well as the law and to determine rights anew from the credible evidence on properly presented and preserved issues. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977). While we give weight to the findings of the trial court, especially where the credibility of witnesses is involved, we are not bound by them. In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974); Iowa R. App. P. 14(f)(7). As in all cases of this type, precedent is of little value and our decision must ultimately depend on the particular facts of this case. In re Marriage of Kehrli, 241 N.W.2d 923, 926 (Iowa 1976).

This twenty-one year marriage was ended by decree on July 31, 1980. The decree awarded petitioner her household goods, a 1969 Lincoln, a snowmobile, stock valued at $925.00, and $500.00 from tax refunds. The respondent was awarded a recently purchased home in which he had acquired little equity, household goods in his possession, a 1978 Jeep, tools, a snowmobile, a camera, a coin collection, personal effects, and $325.00 from tax refunds. The family home was ordered sold with the net proceeds equally divided if neither party purchased the equity of the other for $5,000.00 within thirty days. No alimony was awarded.

Petitioner was thirty-eight and respondent was forty at the time of trial. During the marriage, the wife had worked only irregularly outside the home. At the time of trial she had been employed for about two years as a secretary-receptionist with an annual income of approximately $6,500.00. She desires to continue her education and seek better paying employment. The respondent was a maintenance man with a gross annual income of $17,000.00.

At the time of trial the parties' youngest child, a recent high school graduate, had just turned eighteen, and was employed. The respondent at trial expressed a willingness to pay an initial $400.00 and thereafter $200.00 per month if the child decided to continue her education. The trial court made no child support award but retained jurisdiction to award such support in the event that the child later continued her formal education. Petitioner states that the child is now attending school, and requests child support.

I.

Petitioner contends that the trial court's failure to award alimony was unreasonable and reversible error in light of the factual situation. Our analysis of this contention begins with section 598.21, The Code 1981. This analysis is guided by the familiar factors found in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), modified to exclude fault in In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972).

We have thoroughly reviewed the facts of this case and find that a three year temporary alimony award of $200.00 per month is justified in light of the trial court's settlement, and the parties' respective ages, educational levels, and earning capacities. This temporary award will terminate if petitioner remarries or dies. This award will enable petitioner to continue her education full time.

The trial court's property division, which equally divided the parties' equity in the house, was essentially correct, however, we feel it should be modified to allow petitioner to live in the parties' house for three years while she continues her education. During this period she is required to make the house payments. At the end of this period, petitioner may keep the home by paying respondent $5,000.00 plus 10% interest, or sell the home and divide the equity equally with respondent. Our modification of the trial court's decree will allow petitioner the opportunity to become self supporting.

II.

Petitioner now claims that the parties' eighteen year old daughter is attending college and requests child support. Petitioner's claim that the child is now attending school is a matter outside the record. See Iowa R. App. P. 10(a). We remand this issue to the trial court to determine whether child support is presently required.

AFFIRMED IN PART, MODIFIED IN PART, AND REMANDED.

All judges concur, except Oxberger, C.J., who dissents.

OXBERGER, C.J. (dissenting)

I would have affirmed the trial court.