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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ROSEMARY HILDEGARD REICHERTS
AND LUYERNE LEONARD REICHERTS

Upon the Petition of	)	
ROSEMARY HILDEGARD REICHERTS,	)	
Petitioner-Appellee,	)	Filed March 31, 1980
and Concerning	)	
LUYERNE LEONARD REICHERTS,	)	
Respondent-Appellant.	)	<u>0-73</u> 2-63933

Appeal from Black Hawk District Court - C. W. Antes, Judge.

Respondent appeals and petitioner cross-appeals the economic provisions of the decree dissolving their marriage. AFFIRMED WITH MODIFICATION.

C. A. Frerichs of Fulton, Frerichs, Nutting, Martins & Andres, Waterloo, Iowa, for respondent-appellant.

Walter W. Rothschild of Waterloo, Iowa, for petitioner-appellee.

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

PER CURIAM

Respondent, Luverne Reicherts, appeals and petitioner, Rosemary Reicherts, cross-appeals the economic provisions of the decree dissolving their marriage. We affirm with modification.

The parties were married in 1947. Ten children were born of their marriage, three of whom had failed to attain majority at the time of trial. The decree of dissolution, entered June 18, 1978, awarded Luverne custody of John, born October 19, 1964, and awarded Rosemary custody of Patrick, born October 19, 1964, and Jody, born October 5, 1968. Rosemary was awarded alimony of \$400 per month for one year and child support of \$200 per week until the youngest child reaches age eighteen, dies, or becomes self-supporting.¹ The trial court ordered the sale of the parties' real property and stock with the net proceeds, which should be slightly in excess of \$222,000, to be divided equally between the parties. The decree also awarded Rosemary a 1977 Buick automobile valued at \$7,600, a savings account valued at \$11,523.94, the household goods in the parties' residence property, and various items of personal property. Luverne received a 1929 Essex automobile valued at \$3,000, a one-half interest in the University Car Wash, which the trial court determined had no net value, the household goods in his apartment, and various items of personal property. Luverne was left solely responsible for the \$31,751.48 balance owing on two personal notes and a \$2,616 balance remaining on a pledge to Columbus High School. He was also ordered to pay \$957 for court costs and \$1,250 towards Rosemary's attorney fees. Additionally, the trial court ordered Luverne to pay the unpaid balance of temporary support ordered previously.²

On appeal our review is *de novo*. Iowa R. App. P. 4. In order to achieve a fair and equitable determination of the property rights of the parties, we apply the guidelines of Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), as modified in In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972). Although allocations of support money, alimony, and property have a different purpose, they are closely related in the matter

¹ The decree requires Luverne to:

... pay for support, the sum of \$100 per week per child
 ... until each child attains the age of eighteen years,
 dies, marries or becomes self-supporting. [A]t the time
 one of the children reaches the age of eighteen years,
 ... the child support for the remaining child shall
 increase to the sum of \$200 per week

² On April 25, 1978, the trial court ordered Luverne to pay temporary support to Rosemary as follows: "1. The sum of \$240 for residence payments as they fall due and real estate taxes. 2. The sum of \$250 per week"

of determining the amount to be awarded. In re Marriage of Peterson, 227 N.W.2d 139, 142 (Iowa 1974). In reviewing the evidence presented, we give weight to the trial court's findings of fact, but we will not abdicate our function as a trier *de novo* on appeal. Iowa R. App. P. 14(f)(7).

I. Luverne contends he should receive a greater share of the marital assets. We disagree. The parties were married for thirty-two years. At the time of their marriage neither party had substantial assets although both had graduated from high school. The record establishes that both parties have made valuable contributions to the marriage in different, but equally important ways.

At the time the decree of dissolution was entered, Luverne was 53 years of age. He was experiencing no problems with his health although previously he had suffered two strokes and had a history of tuberculosis. For much of the marriage he had leased and operated different service stations. At the time of trial he had recently become employed by Howe Engineering Sales in a managerial position. His annual salary in that capacity was \$18,600 and his net monthly pay was \$1,142.50. Additionally, he owned a one-half interest in the University Car Wash, a partnership. Although there was conflicting testimony as to the value of this business, we agree with trial court's finding that it was essentially valueless. A statement of affairs filed by Luverne indicated he would need \$1,000 per month to sustain himself and one child.

Rosemary, at the time of trial, was age 52 and in good health. Throughout the marriage she had been a full-time homemaker and mother. She has received no job training and has no marketable skills. Presently she remains a homemaker and mother for the parties' two youngest children. She testified that she would need \$1,950 per month to sustain herself and two children.

The division of the marital property made by the trial court substantially favors Rosemary. Excluding personal property and household furnishings, she was awarded property having a net value of \$133,714. In light of her inability to be competitive in the job market, she is dependent upon the return generated by this property for the largest share of her income. Luverne, who possesses unusual managerial skills, was awarded property valued at \$116,590, but was made solely responsible for debts totalling \$33,767.48. After carefully reviewing the record and applying the Schanitz criteria, we believe the trial court's division of the marital assets was correct and justified.

II. Rosemary, in her cross-appeal, contends her award of alimony should not be limited to one year. The trial court awarded her \$400 per month for one year, which was to be used to train herself for employment. While we believe an award is justified under the Schantz criteria, we agree with Rosemary's contention that it should not be limited to one year. The record indicates Rosemary has been a homemaker and mother throughout the marriage and that she presently has no marketable employment skills. Additionally, she has custody of the couple's two youngest children. In light of her responsibilities to these children, as well as her lack of training for employment, we do not feel the trial court's limitation of alimony to one year for job training is appropriate for this case. See In re Marriage of Baeh, 214 N.W.2d 170, 174 (Iowa 1974).

However, we also believe the amount of the trial court's award of alimony to Rosemary is excessive. When making a determination of the proper amount of alimony to be awarded, in addition to a consideration of the Schantz factors, the division of the marital assets must also be considered. In re Marriage of Copper, 225 N.W.2d 915, 919 (Iowa 1975). As a result of the division of the marital assets which substantially favors Rosemary, she will receive property having a value of \$133,714. As a result of this income, Rosemary will be much less dependent upon Luverne for support. Additionally, with support payments and his own living expenses, Luverne's financial resources are not unlimited. We believe, therefore, Rosemary should be awarded alimony of \$200 per month until she reaches age sixty-five, remarries, or either party dies. Said obligation on Luverne's part shall be retroactive to the date of trial court's decree.

III. Rosemary was also awarded child support payments of \$200 per week from Luverne. Luverne contends the award is excessive in light of the annual incomes of each party. We agree. The factors to be considered in making an award of child support are discussed in In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974). Applying these guidelines to the record in this appeal, we believe the trial court's decree does not require Rosemary to fulfill her share of the support obligation for the parties' three minor children. Both parties have an obligation to support their children according to their fair ability to contribute. Brown v. Brown, 269 N.W.2d 819, 822 (Iowa 1978); In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976). The division of the marital property contained in the dissolution decree substantially favors Rosemary. Comparing Rosemary's projected gross income with that of Luverne's, we conclude she will receive approximately one-third of the parties' combined gross incomes. Under the circumstances, Rosemary should be able to contribute substantially toward the support

of the parties' minor children. We believe the amount of Luverne's child support obligation should be \$150 per week until either child in Rosemary's custody attains the age of eighteen, marries, or becomes self-supporting. At the time one of the children in her custody no longer qualifies for support under the provisions of the decree, Luverne's support obligation for the remaining child shall increase to \$90 per week until he attains the age of eighteen, marries, or becomes self-supporting.

IV. Luverne contends the trial court erred in ordering him to pay \$1,250 towards Rosemary's attorney fees and \$957.50 for court costs. He correctly argues an award of attorney fees and suit money is not allowable as a matter of right but rather depends upon the financial circumstances of both parties and their respective abilities to pay. In re Marriage of Burnham, 283 N.W.2d 259, 278 (Iowa 1979); In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977). Trial courts, however, have considerable discretion in allowing attorney fees in dissolution cases. Id. Although presenting a close question, we are unable to find an abuse of discretion by the trial court in making its awards and they should not now be disturbed on appeal.

For this appeal, Rosemary requests an additional award of attorney fees. We decline to make such an award. The decree of dissolution awards Rosemary the greater share of the couple's marital assets, as well as monthly alimony. Additionally, she will receive a substantial monthly income from her share of the marital assets. On the basis of this record, we believe an additional award of attorney fees is not justified.

V. Lastly, Luverne contends the trial court's award to Rosemary of temporary support was excessive and should be reduced. A timely notice of appeal from the order fixing the amount of temporary support was never filed. See Iowa R. App. P. 4(a). The Iowa Supreme Court has ruled the failure to timely file a notice of appeal from an order fixing temporary support precludes review of the matter on a later appeal of the provisions of the dissolution decree. In re Marriage of Prybil, 230 N.W.2d 487, 488 (Iowa 1975). We are, therefore, unable to consider Luverne's contention with respect to the order fixing temporary support.

Costs on appeal are taxed equally to each party.

AFFIRMED AS MODIFIED.