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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JUDITH ANN HOSCH AND RICHARD HOSCH

Upon the Petition of)
JUDITH ANN HOSCH,)
Petitioner-Appellee,)
And Concerning)
RICHARD HOSCH,)
Respondent-Appellant.)

Filed November 30, 1983

3-342
2-69566

Appeal from Dubuque District Court - L. John Degnan, Judge.

Respondent husband appeals from economic and visitation provisions of the parties' dissolution decree. AFFIRMED AS MODIFIED.

Joseph J. Bitter of Joseph J. Bitter Law Firm, Dubuque, for respondent-appellant.

Thomas J. Gilloon, Dyersville, and Michael J. Huberty, Dyersville, for petitioner-appellee.

Heard by Oxberger, C.J., and Snell and Sackett, JJ.

SACKETT, J.

Respondent, Richard Hosch, appeals from the economic and visitation provisions of the parties' dissolution decree claiming that the economic provisions, including child support, were inequitable and that a specific visitation schedule should have been provided. We affirm as modified.

The parties were married in 1972. Prior to the marriage, Richard was involved in a single car accident while returning home from Judith's one evening. Richard received injuries from the accident which resulted in long-term hospitalization and permanent brain damage. Richard has seizures and should not drive any motorized vehicles. Judith was told in Iowa City that he functions well considering his handicap.

Richard farms with his unmarried twin brother. In 1975 the brothers purchased, as co-tenants, 269 acres for $135,000 on a 5 1/2% contract with a balloon payment due in the year 2000. There is a balance due on the farm contract of $98,265.62. Permanent improvements costing $174,212.37 were made to the farm subsequent to its purchase. The brothers have run their farming operation as a 50-50 partnership despite the fact that with Richard's handicap he has been unable to furnish his share of the labor. The partnership showed a net loss of $12,529 in calendar year 1981.

Richard values his undivided one-half interest in the farm, less the unpaid contract balance, at $104,567. Judith, through her appraisor, values it at $222,867. Of course, neither the opinion of the parties nor of the expert is conclusive on the trier of fact (in the first instance the trial court and now, on de novo review, this court). In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975). Richard's interest in grain and livestock is $35,150. His one-half interest in machinery is worth $11,010. Household furnishings in Judith's possession are valued at $12,000. Judith has a $3,000 car, one-half of which apparently is an asset of the partnership. Richard has a one-half interest in a truck worth $2,200.

Judith worked outside the home during the early months of the marriage. Both parties assisted in the farming operation. Richard's parents have paid personal and partnership debts for Richard and, at time of trial, he owed them $12,416.12. Judith entered the marriage with $8,000 in savings. In 1975, her father purchased 24 cows for the farm partnership. When the cows were purchased, Robert gave Richard an undivided one-half interest in his machinery. The record does not reflect the price paid for the cows.

The income of the parties since 1975 has been minimal. In 1975 they had a net loss of $2,131; in 1976 their loss was $1,988; in 1977 they showed a $5,309 profit; in 1978 a $4,916 profit; in 1979 an $11,770 profit; and, in 1980, a profit of $11,757. In 1981 Richard filed separately and showed a loss of $5,501.

Richard was 33 years of age at the time of trial, and Judith was 32. Judith was in good physical and emotional health.

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 to determine rights anew from the credible evidence on issues properly presented and preserved. In re Marriage of Lattig, 318 N.W.2d 811, 812 (Iowa Ct. App. 1982).

I. Property Division

We have considered Iowa Code section 598.21 and the guidelines set out in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), excluding consideration of reward or punishment on the basis of fault. In re Marriage of Williams, 199 N.W. 2d 339, 345 (Iowa 1972). Neither section 598.17 nor section 598.21 sanctions a division of the assets of the parties in a dissolution proceeding based on a one-third share to the wife, or an equal division, as might be the case in descent and distribution situations. In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975). The question is always what is an equitable and just award in a given set of circumstances. Id.

We are aware that the Iowa Supreme Court has recognized the reasonableness of awarding a farm to the spouse who operated it and in fixing the award and schedule of payments to the other spouse without reaching equality so the farmer-spouse might retain ownership of the farm. In re Marriage of Callenius, 309 N.W.2d 510, 515 (Iowa 1981). We believe, considering the facts herein enumerated, that such a finding in this case is equitable. While the trial court here chose to award the farm to the husband, to require the husband to immediately make a lump sum payment is not practical in this situation considering the long term contract, the undivided ownership with Richard's brother and the tax consequences on a sale.

After considering all the factors on our de novo review, we affirm the property settlement award to the wife of $138,000. We modify the award, however, to provide that the sum shall be paid in installments of $13,800 per year, the first installment to be paid by November 1, 1983, with subsequent installments due on the first of November each year thereafter until the amount is paid in full. Interest at 7% per annum shall be payable on the unpaid amounts commencing November 1, 1983. Interest shall be paid at 10% on any delinquent installments. The award shall be a lien on the real estate until paid.

II. Child Support

Three children were born to this marriage: Nicholas in 1973; Christina in 1974; and Katherine in 1980. The trial court ordered Richard to pay $160 per month per child. Richard claims the award of child support should be modified. We agree.

Richard's adjusted gross income for the past seven years averages less than $3,500 per year. However, in the past three years it has averaged $6,000. Richard is disabled and works slowly, making other employment difficult. Richard does live on the farm, which results in some non-taxable living benefits. We are well aware of the additional burden the payments due Judith will place on his income.

In discussing parental obligations for support, the Iowa Supreme Court has followed the prevailing view that the same legal obligation rests upon both husband and wife, not necessarily equally but proportionately according to their ability and circumstances. In re Marriage of Carney, 206 N.W.2d 107,112 (Iowa 1973). There are three children to support. Each party has an obligation to support them.

The supreme court has expressed the view that if it reasonably can be avoided, a mother in custody of young children should not be compelled, upon dissolution of her marriage, to work outside the home. In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974). A child support allowance cannot be made or evaluated in a vacuum; the entire record must be examined. Id.

Richard's child support obligations shall be modified as follows. Respondent shall pay a total of $300 per month child support for the three children. At such time as the first child ceases to qualify for support under section 598.1(2), the child support payments shall be reduced $50 per month, so Respondent shall pay a total of $250 per month for two children. At such time as the second child ceases to qualify for support, the support shall be reduced $50 per month to $200 for one child. The decree of the trial court is so modified.

III. Visitation

Respondent indicates the court should have specified visitation. We agree. Without going into details here, we find in the record evidence that visitation has not been without problems and that court intervention was necessary. Considering these facts, we find visitation should be specified so that Richard shall have visitation with his minor children as follows: (1) From 6:00 p.m. on the first Friday of each month through 7:00 p.m. the following Sunday; (2) On the third Sunday of each month from 10:00 a.m. to 6:00 p.m.; (3) From 11:00 a.m. on July 1 to 8:00 p.m. on July 15 of each year; (4) From 10:00 a.m. to 6:00 p.m. Thanksgiving day in even years; (5) From 10:00 a.m. December 24 to 10:00 a.m. December 25 in even years; (6) From 10:00 a.m. to 6:00 p.m. on Easter Sunday in

odd years; and (7) From 10:00 a.m. to 6:00 p.m. December 25 in odd years. It shall be Respondent's responsibility to arrange to have the children transported to his home and back.

IV. Grandparent Visitation

Respondent has indicated that grandparent visitation should be ordered. Iowa Code Section 598.35 provides:

> GRANDPARENTS VISITATION RIGHTS. The grandparents of a child may petition the district court for grandchild visitation rights when:
> 1. The parents of the child are divorced, or
> 2. A petitioner for dissolution of marraige has been filed by one of the parents of the child.
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> * * *
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> A petitioner for grandchild visitation rights shall be granted only upon a finding that the visitation is in the best interests of the child.

We recognize the rights given grandparents by section 598.35. It appears herein that the grandparents have access to the children during the father's visitation and that further visitation on their part is not necessary.

The decree of the trial court is affirmed as modified.

AFFIRMED AS MODIFIED.