



442

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF DONALD L. MAJERES and GLORY A. MAJERES

Upon the Petition of	)	
DONALD L. MAJERES,	)	Filed April 26, 1979
Petitioner-Appellant,	)	
And Concerning	)	75
GLORY A. MAJERES,	)	62339
Respondent-Appellee.	)	

Appeal from Woodbury District Court - George F. Davis, Judge.

Petitioner-husband appeals from alimony and child support provisions of dissolution decree alleging the amounts are unreasonable. AFFIRMED WITH MODIFICATION.

P. D. Furlong of Sioux City, Iowa, for petitioner-appellant.

Lorna A. Gilbert of Sioux City, Iowa, for respondent-appellee.

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

Petitioner-husband appeals from alimony and child support provisions of a dissolution decree claiming they are unreasonable in light of the property award made regarding the parties. We affirm with modification.

Donald and Glory Majeres were granted a dissolution after 21 years of marriage. They have three children who at time of trial were ages 20, 17 and 6. Glory received custody of the two minors. Donald, a journey-man plumber, grossed \$22,800 in 1977; Glory, who holds a high school equivalency certificate, has devoted her life, at Donald's urging, to homemaking, and has never been employed outside the home.

Trail court decreed that petitioner should pay the expenses and maintenance on the unencumbered homestead, valued at \$34,950.00, and that respondent should have unfettered possession and use of it until the youngest child attains majority. The homestead is then to be sold and the proceeds divided equally. Petitioner is to pay \$200 per month support for the youngest child, \$100 per month for the oldest and \$500 per month alimony. Child support is to cease as each child reaches 18, or age 22 if the child pursues higher education.

I. Appellate review of a dissolution proceeding is de novo. Iowa R. App. P. 4; Zinger v. Zinger, 243 N.W.2d 639, 640 (Iowa 1976). The court is guided by section 598.21, The Code 1977, which directs the court to make orders relating to children, property parties and their maintenance as is justified and by section 598.17, The Code 1977, which directs the court to provide reasonable support for dependent children or either spouse.

II. Petitioner alleges the support provisions are unreasonable, especially when viewed in light of the property division. He asserts that it will be impossible for him to meet an \$800 per month family support obligation and also support himself since he is subject to lay-offs. He also contends that respondent must bear part of the load of family support, citing Converse v. Converse, 225 Iowa 1359, 282 N.W. 368 (1938).

The court recognizes the duty of each party to provide family support, but also that the duty is contingent on ability to contribute. In re Marriage of Wahl, 246 N.W.2d 268, 272 (Iowa 1976). We also recognize that if it reasonably can be avoided a parent in custody of young children should not be compelled upon dissolution of his or her marriage to work outside the home. Youel v. Youel, 218 N.W.2d 449, 451 (Iowa 1974).

The record shows that petitioner has always faced fluctuating employment but has also realized a steadily increasing gross income from \$16,000 in 1972 to \$22,800 in 1977. The record also shows that his periods of lay-off have been of short duration not

substantially affecting his climbing income. During the marriage respondent was a full-time homemaker, at petitioner's request, and currently lacks marketable skills. Her ability to obtain meaningful employment has been affected by her unemployed status for the twenty-one years of marriage. Respondent has lost any chance she might have had for developing a skill or in accumulation of seniority rights, pay increases or possible pension rights.

After hearing dispute on methods of computation, trial court determined petitioner's current net income to be \$1950 per month. Against this are charges of \$800 per month family support, possibly to be reduced to \$700 in April, 1979, when the eldest minor reaches 18. Petitioner is also entitled to all applicable state and federal tax deductions.

It is acknowledged that a dissolution alters the parties' lifestyle, but it is apparent that here the needs of one party do not exceed the ability of the other to pay. In re Marriage of Stratton, 240 N.W.2d 664 (Iowa 1976).

III. The homestead, chief asset of the marriage, was acquired by both parties; Donald contributed the fruit of his outside employment; Glory contributed her industry as a homemaker. See In re Marriage of Ralston, 242 N.W.2d 269, 271 (Iowa 1976). The homestead is for the benefit of the family. Davis v. Davis, 246 Iowa 262, 277-78, 67 N.W.2d 566, 575 (1954). The trial court reasonably found this family benefit would end at the time the youngest child reaches majority when the homestead is to be sold and the proceeds equally apportioned. In light of the alimony and child support award to respondent, we believe petitioner should not be required to pay expenses of upkeep and maintenance on the homestead. Trial court's decree should be modified to eliminate this obligation of petitioner.

We find trial court's division of property and support provisions are justified. If, at a later date, the circumstances of the parties change, a petition for modification of the support provisions of the dissolution decree would be in order. In re Marriage of Full, 255 N.W.2d 153, 159 (Iowa 1977). The trial court's judgment is affirmed with modification.

Appellant shall pay \$750 towards appellee's attorney fees incurred in defending this appeal. Costs on appeal are assessed to petitioner.

AFFIRMED WITH MODIFICATION.

Snell and Carter, JJ., concur; Oxberger, C.J., and Donielson, J., each dissent.

OXBERGER, C. J. (dissenting)

I dissent. I would reduce the alimony to \$400 per month.

DONIELSON, J. (dissenting)

I dissent. I cannot agree with the majority's extension of \$500 per month alimony to Glory for life or until she remarries. Glory is 37 years old and suffers from no disability which would permanently impair her ability to work. There were two children at the time of the decree. The court provided \$100 per month for William, age 17, until he turns 18 or if he pursues further education then until age 22. The other child, Leanne, age 6, received \$200 per month in child support until age 18 or if she pursues additional education, then until age 22. So petitioner will be required to pay \$500 per month alimony for respondent's life or as long as she remains single; child support of \$100 per month for approximately one year, or as much as five years; and an additional \$200 per month child support from approximately 12 years to as much as 16 years.

There are no sizeable business or farm assets to be distributed here. Don is a laborer, albeit a skilled laborer, and to award \$500 monthly for life does not seem reasonable to me. I would modify the alimony award so as to require Donald to pay Glory \$500 a month for a period of two years to allow Glory time to acquire skills and seek employment outside the home. Thereafter, I would reduce the alimony to \$250 a month.