

480

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF BARBARA LOU HOGAN AND EUGENE JOSEPH HOGAN

Upon the Petition of
BARBARA LOU HOGAN,

Appellant,

And Concerning

EUGENE JOSEPH HOGAN,

Appellee.

Filed April 14, 1977

47

No. 2-57426

Appeal from Black Hawk District Court -- Carroll E. Engelkes,
Judge.

Dissolution case involving an issue on child support and property settlement. Affirmed in part - Modified in part - Reversed in part and Remanded.

Charles B. Hoffman, of Waterloo, counsel for appellant.

Eugene J. Hogan, of Waterloo, pro se.

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

DONIELSON, J.

This is an appeal in a dissolution case involving a 41-year-old petitioner-appellant. She had been employed at one time or another for seven years of the 24-year marriage. She had worked part-time as a waitress in a Chinese restaurant for two months prior to the dissolution earning \$25 per week with an additional \$10 in tips. The respondent was a 48-year-old man employed at John Deere Tractor Works in Waterloo, Iowa, who earned between \$12,000 and \$13,000 per year. He earned \$250 per week with a take-home pay of approximately \$190 per week at the time of the trial.

They lived in a house purchased in the early 1960's for \$11,000. The parties estimated the house was worth approximately \$15,000 with a mortgage of approximately \$4,000 at the time of the trial. Personal debts of the parties were small in nature.

The parties were married in May of 1950 and had four daughters. The youngest child will turn 18 in September of 1978.

Among other provisions, the trial court provided that the respondent was to pay \$60 per week as long as the two children were living with the petitioner, and when one child remained, the petitioner was to receive \$30 per week. The petitioner could live in the residence until the youngest child reached the age of 18, died, married or became self-supporting, whichever occurred first. The *petitioner* was to make all the real estate, insurance and mortgage payments in the amount of \$90 per month.

The decree also provided that after the respondent's child support payments legally terminated, the house was to be

sold and the balance after payment of the mortgage was to be divided equally between the parties. An interesting and "unique" provision was included in the decree that if Barbara permitted anyone else to live in the house, the respondent could deduct \$50 per month for each month from his *child support* payments during the time the third person resided in the household.

We modify and remand.

We have reviewed the entire record and find that the original disposition to be unjust and not in conformity with the criteria set forth in *Schantz v. Schantz*, 163 N.W.2d 398 (Iowa 1968) and 598.21, The Code 1973.

We, therefore, make the following findings: 1. The house to be of a value of approximately \$15,000 with a mortgage of \$4,000. 2. That the respondent shall be entitled to a lien on the home in the amount of \$5500 non interest bearing and at the time the youngest child shall become 18, marries, dies or leaves the homestead, the house shall be sold and the respondent paid \$5500, or the petitioner may refinance the home, pay the respondent the \$5500 and retain the homestead free and clear. 3. The petitioner shall assume the existing mortgage. 4. That the respondent shall pay \$35 per week as child support for each child living with the petitioner until such child becomes 18, marries, dies or becomes self-supporting. 5. That when there remains only one child entitled to support, under the decree, the amount of child support shall be \$40 per week until that child becomes 18, marries, dies or becomes self-supporting. 6. There shall be no deduction of any amount made from child support, as provided in the original decree, of any amounts should another party live in what is now the petitioner's house. The other provisions in the decrees, we do not disturb.

Precedence are of little value in determining what is right in each case. Cooper v. Cooper, 259 Iowa 277, 282, 144 N.W.2d 146 (1966). Each case must be decided on its merits and facts presented.

We have reviewed this matter de novo, rule 344, Rules of Civil Procedure, and we have given weight to the findings of the trial court, but they are not binding upon this court, rule 344(f)(7), R.C.P. * In re Marriage of Tucker, 213 N.W.2d 498, 500 (Iowa 1973).

We affirm that portion of the trial court's order not specified here, and, therefore, the trial court is affirmed in part, modified in part, and remanded with directions.

All judges concur.

* The appellant in this matter has filed the appropriate brief and appendix, and we have a letter written by the appellee requesting us to give due consideration to the trial court's findings. We have done so.