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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF CARROLL BENTON and LOIS

Upon the Petition of)
CARROLL BENTON,)
Appellee,)
And Concerning)
LOIS (WANDA) BENTON,)
Appellant.)

Filed September 9, 1977

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2-58437

Appeal from Guthrie District Court - M. C. Herrick, Judge.

Appeal from economic provisions of a dissolution decree. Affirmed as modified.

Robert W. Brennan, of Alder, Brennan, Joyce and Steger, of Des Moines, for appellee.

Taylor, Taylor and Feilmeyer, of Guthrie Center, for appellant.

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

PER CURIAM

Respondent, Lois Benton, appeals the economic provisions of the decree dissolving her marriage of 17 years to petitioner, Carroll Benton.

We review the evidence related to these matters de novo. With respect to the economic determinations which we make in this case we apply the criteria stated in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968) excluding considerations of fault. Precedent is of little value in making such determinations and each case must be determined on its own peculiar circumstances.

At the time of the trial, Lois was 38 and Carroll was 62. There were four minor children whose custody was awarded to Lois. One of these children has attained his majority during the pendency of this appeal. Carroll retired from farming at age 62 and his income consisted of social security benefits of $172.10 per month and share rental income from a 140 acre farm owned by him. The evidence would support a finding of a gross income of approximately $12,000 from these combined sources. Lois, at the time of trial, was working in a nursing home 16 hours per week earning $2.05 per hour. She had additional potential earnings from house cleaning of $16 per week during the school year and $8 per week during the summer months when her children were not attending school.

I. Child support. The trial court provided that Carroll should pay no child support for the four minor children of the parties in view of the fact of his retirement and resulting social security benefits payable to Lois and the children. The record shows that this social security benefit totalled $131 per month, part of which was a wife's benefit and part of which was children's benefits. The breakdown between these two sources does not appear in the record.

We view the failure to award any child support as inadequate considering Carroll's financial position. While his earnings are not great his net worth is substantial. Accordingly the decree is modified so as to require Carroll to pay (from date of trial court's decree) monthly child support payments of $400 per month during the time that four children are eligible for support under section 598.1(2), The Code. When only three children are so eligible for support this monthly payment shall be reduced to $ 375 per month. Subsequent modifications of the decree, as the additional two children cease to qualify for support under § 598.1(2), may be made by the trial court on application of

either party when such event occurs. Carroll shall receive credit against the required child support payments for that portion of any of his social security benefits received by Lois as children's benefits. Such credit shall not be given for wife's benefits. Child support payments under the modified decree shall not draw interest until the date of the issuance of the procedendo on this appeal.

II. Property division. The record establishes that the parties had, at time of trial, a combined net worth of approximately $95,000, the greater share of which was represented by a 140 acre farm valued at $77,000. The record shows that the farm in question, except a 1/8 interest which was inherited, was acquired by purchase during the marriage.

Of this property Lois received a car valued at $500; household goods valued at $2235; and $20,000 cash payable to her by Carroll at the rate of $150 per month. We deem this property division to be inequitable and modify the decree in accordance with the following directions. The $20,000 property settlement and subsequent $150 monthly payments are cancelled and any such payments already paid shall be credited against Carroll's child support obligation. We direct that this action be indexed as one affecting real estate in accordance with § § 617.10, 617.11, The Code, and counsel for respondent shall furnish such descriptive information as the clerk may require to so designate the 140 acres in question. No third persons may acquire an interest in such real property except on conveyance or incumberance joined in by both of the parties to this action. Title to the farm shall remain in Carroll and he shall be responsible, as between the parties, for payment of real estate taxes, general and special, levied on said property. Upon Carroll's death or upon the youngest child of the parties attaining 18 years of age, Carroll or his personal representative shall pay to Lois or her personal representative, devisees or heirs at law, a sum of money equal to 7/16 the value of the 140 acres at the time the above named contingency occurs. Failing such payment within 90 days of said contingency the property shall be sold and the proceeds divided 9/16 to Carroll; and 7/16 to Lois or their respective personal representatives, devisees or heirs at law. If the parties cannot agree on the value of the 140 acres at the time the contingency occurs the value shall be fixed by the trial court following a supplemental hearing on this issue.

III. Alimony and attorney fees. Payment of alimony is not an absolute right and in determining the issue the court must weigh the needs of the wife against the

husband's resources and ability to pay. In re Marriage of Fleener, 247 N.W.2d 219 (Iowa 1976); In re Marriage of Freese, 226 N.W.2d 800 (Iowa 1975). In view of the child support payments now ordered we believe the payment of alimony to Lois would be inappropriate.

Attorney fees are to be allowed under section 598.11, The Code, where necessary "to enable a party to prosecute or defend the action." In re Marriage of Zoellner, 219 N.W.2d 517, 523 (Iowa 1974). Where the property division effected equips a party to pay their own attorney fees, such fees should not be charged against the other party. Craft v. Craft, 226 N.W.2d 6, 9 (Iowa 1975). Applying these principles to the present appeal we do not fix the value of services performed by Lois's counsel but direct that Carroll pay the fees ordered by the trial court and, in addition, that he pay the sum of $1500 to apply upon Lois's attorney fees incurred on appeal.

The action is remanded to the trial court for a modified decree in accordance with this opinion. Except as so modified the decree is affirmed.