FILED
APR 28 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF ZANE HURKIN and CAROL HURKIN

Upon the Petition of)
ZANE HURKIN,) Filed April 28, 1978
Appellee,)
And Concerning) 481
CAROL HURKIN,) 2-60765
Appellant.)

Appeal from Winnebago District Court - L. E. Plummer, Judge.

Respondent appeals from economic provisions of a marriage dissolution decree. Affirmed as modified.

R. Michael Sweesy, Mason City, for appellant.

Robert P. Cooper, of Cooper, Sinnard & Beebe, Forest City, for appellee.

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

PER CURIAM

This appeal by respondent, Carol Hurkin, challenges the economic provisions of a decree dissolving the parties' marriage of nearly 22 years. Respondent contends that the decreed alimony and child support are both insufficient; she also asserts that petitioner, Zane Hurkin, should be required to repay her mother the $9100 borrowed by the parties for a down payment on the present family home. In resolving the issues presented by this appeal as trier de novo, we must examine the entire record, giving weight to trial court's findings, but not being bound by them. In re Marriage of Winegard, 257 N.W.2d 609, 613 (Iowa 1977).

In considering the interrelated questions of child support and alimony we are guided by the factors set forth in In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974) and Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), as modified by In re Marriage of Williams, 199 N.W.2d 339 (Iowa 1972). See In re Marriage of Beeh, 214 N.W.2d 170, 174 (Iowa 1974).

The record reveals that petitioner, a 46 year old osteopathic physician, moved his practice from Winterset to Forest City in September, 1975, the month during which the parties separated. His first full year of practice in Forest City, 1976, yielded a significant increase in his adjusted gross income: from $39,273 in 1975 to $73,512 in 1976. However, trial court found that his average yearly adjusted gross income for the five years ending December 31, 1976, was $41,250.87. Petitioner testified he anticipated some future reduction in his income because he expected other doctors to locate in the community.

The financial statements and the evidence showed that the parties were heavily indebted. Their major assets included the family home, household goods, two cars and accounts receivable from petitioner's medical practice. Most of the parties' tangible property was encumbered. Each of the parties claimed high living expenses.

Trial court's difficulty was one of fairly and realistically apportioning petitioner's earnings among competing needs: maintenance for respondent, support for the minor children, payment of the substantial liabilities and provision for petitioner's personal and professional expenses.

Trial court's decree awarded the bulk of the parties' tangible assets to respondent, and left her with the mortgage indebtedness on the home and the obligation to repay the loan by her mother. She received alimony of $1000 per month and child support of $150 per child per month. Petitioner was awarded his accounts receivable, some tangible property and the remaining debts.

Due to the uncertainty which existed on the date of the decree regarding petitioner's level of earnings and because of the sums he will be required to expend to satisfy liabilities accrued during the marriage, trial court was justified in limiting the alimony to the sum it did at the time of entry of the decree and under the then existing conditions and circumstances. The provision which assigned to respondent the responsibility for repaying the loan made by her mother was likewise justified.

There is merit, however, in respondent's complaint that the child support award is inadequate. Balancing the competing needs present here and petitioner's greater earning capacity, we find that the child support should be increased by $50 per month per child to $200 per month per child.

Respondent also seeks allowance of attorney fees for this appeal. Such fees are not recoverable as a matter of right; any award must depend upon the financial circumstances and earnings of both parties. In re Marriage of Peterson, 227 N.W.2d 139, 142 (Iowa 1975). We find that petitioner should pay $1000 toward respondent's attorney fees. By so doing we do not fix the amount to be charged by respondent's attorney; we have only decided what portion petitioner should pay. In re Marriage of Peterson, supra at 143. Costs on appeal are taxed to petitioner.

Affirmed as modified. Trial court shall enter a decree consistent with this opinion.

OXBERGER,J., dissents.

OXBERGER, J. (dissenting)

I dissent upon the issue of child support. I would raise the trial court's award to $300 per child per month. The father makes $73,000 per year and is able to continue to give his children the standard of living he has provided in the past.