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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JOAN ANN HOUSER AND JOHN DAVID HOUSER

UPON THE PETITION OF
JOAN ANN HOUSER,

Petitioner-Appellee,

AND CONCERNING
JOHN DAVID HOUSER,

Respondent-Appellant.

Filed April 8, 1983

2-444
2-67826

Appeal from Linn District Court, Thomas M. Horan, Judge.

Respondent-husband appeals from parties' dissolution decree, challenging various economic provisions. AFFIRMED AS MODIFIED.

Donna Paulsen of Lynch, Dallas, Smith & Harman, Cedar Rapids, for respondent-appellant.

Gerald J. Kucera of Keyes, Bennett & Kucera, Cedar Rapids, for petitioner-appellee.

Considered en banc.

PER CURIAM

Respondent-husband appeals from parties' dissolution decree, challenging various economic provisions. We affirm as modified.

Petitioner Joan Ann Houser and respondent John David Houser were married in 1972. They are the parents of three children, born in 1973, 1975, and 1979. The children were placed in Joan's custody; their custody is not an issue in this appeal. Joan is employed at a department store and earns about $700 per month. John is a sheet metal worker whose earnings in recent years have been over $15 per hour and over $30,000 per year. Shortly before trial John was laid off. Under the 1982 decree of dissolution, John was ordered to pay Joan child support of $400 per month. John was also ordered to maintain health and accident insurance on the children regardless of his state of employment. He was allowed to claim two of the children as income tax exemptions; Joan was authorized to claim one child as an income tax exemption.

The parties' residence, valued at $90,000 and subject to indebtedness of $44,000, was awarded to both parties as tenants in common. Joan and the children were permitted to occupy the house; John was directed to make the mortgage payments of $406 per month "as further child support." When all of the parties' children have reached adulthood or have otherwise become ineligible for child support, the house is to be sold and the net proceeds to be divided equally between the parties.

Each party was also awarded a vehicle and various personal effects. Each party was directed to assume about $600 in debts. Neither petitioner nor respondent was awarded alimony. John was directed to pay $500 toward Joan's attorney's fees in trial court.

John has appealed, challenging the division of property, the child support award, the award of attorney's fees, and the provisions relating to health insurance and tax exemptions. He argues the parties' house should be sold immediately and the net proceeds divided between the parties. He also argues the child support award should be reduced to reflect his unemployment, with provisions for a modification in the event he finds work. In this connection he complains that the trial court acted with unwarranted optimism in characterizing his unemployment as temporary.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. We review the facts as well as the law and determine anew those rights properly presented and preserved. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977). We give weight to the findings of the trial court, particularly when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

On our de novo review, we conclude that the provisions of the trial court's decree which have been challenged on appeal were, with one exception, proper and in accordance with Iowa Code § 598.21. The property division was "based on each marital partner's right to a just and equitable share of the property accumulated as the result of their joint efforts," In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981), and the child support award was based on the rule that "both parents are liable for the support of their children, not necessarily in equal shares but proportionately according to their ability to pay." Dworak v. Dworak, 195 N.W.2d 740, 743 (Iowa 1972). We do agree with John, however, to the extent that we think the provision on the sale of the parties' homestead should be modified to provide that the house shall be sold upon the occurrence of any of the following: (1) "when the youngest child of the parties reaches the age of 18 or graduates from high school, whichever occurs later, or until said youngest child marries, dies or

becomes self-supporting, whichever occurs first" (as provided in the original decree); (2) when Joan dies or remarries; or (3) when (and if) Joan cohabits in the house with a member of the opposite sex. See In re Marriage of Heinemann, 309 N.W.2d 151, 153 (Iowa Ct. App. 1981). Upon the sale of the house, the net proceeds shall be equally divided between the parties, as provided in the original decree.

Primarily for purposes of clarification, we also make the following modifications of the trial court's decree. The child support payments in the sum of $400 per month shall be reduced in the amount of $100 per month when the obligation to the first child ceases, then reduced again in the amount of an additional $100 per month when the obligation to the second child ceases.

John's obligation to maintain his present health and accident insurance coverage on the minor children of the parties shall cease as to each child when his obligation to make payments for the support of that child ceases or when that child attains majority, whichever occurs first. John shall be allowed to claim two of the minor children, Daniel and Mark, as tax exemptions on his federal and state income tax returns, and Joan shall be allowed to claim Kelly as a tax exemption on her returns. In all other respects, the trial court's decree is hereby affirmed.

AFFIRMED AS MODIFIED.