

FILED

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IN THE COURT OF APPEALS OF IOWA

CLERK SUPREME COURT

IN RE MARRIAGE OF BRUCE D. FENCHEL and SHIRLEY A. FENCHEL

Upon the Petition of

SHIRLEY A. FENCHEL,

Appellee and
Cross Appellant,

And Concerning

BRUCE D. FENCHEL,

Appellant.

Filed February 28, 1978

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3-60628

Appeal from Linn District Court - Robert Osmundson, Judge.

Appeal and cross appeal from various provisions of dissolution decree. Affirmed.

Iris E. Muchmore and Tom Riley, of Cedar Rapids, for appellant.

Timothy S. White, of White, Wenzel & Piersall, of Cedar Rapids, for appellee.

Heard by Albee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Respondent, Bruce D. Fenchel, appeals from the alimony provisions of a supplemental decree of dissolution entered April 7, 1977. Shirley A. Fenchel, petitioner, cross appeals from the supplemental decree, complaining of the amount of alimony awarded to her, trial court's allowance of a set-off against unpaid temporary alimony, and the terms of her visitation of the children. She also purports to appeal from the custody and property settlement provisions of the decree of August 25, 1976. 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).

I. Respondent's appeal.

Respondent argues that trial court erred in awarding alimony to petitioner. An examination of the governing criteria set out in Schantz v. Schantz, 163 N.W.2d 398, 403 (Iowa 1968), as modified by In re Marriage of Williams, 199 N.W.2d 339 (Iowa 1972), indicates that the award of alimony, and the amount of that award, were justified.

II. Petitioner's cross appeal.

The first issue with which we are confronted is whether the custody and property settlement provisions of the August 25, 1976 decree are reviewable. We conclude they are not. An appeal from that decree was available. In re Marriage of Downing, 210 N.W.2d 436, 437 (Iowa 1973); Shipley v. Shipley, 182 N.W.2d 125, 128-29 (Iowa 1970). Because an appeal from that decree was available upon its entry, that portion of this appeal is untimely. In re Marriage of Prybil, 230 N.W.2d 487, 488-89 (Iowa 1975); cf. In re Marriage of Winegard, 257 N.W.2d 609, 613-14 (Iowa 1977).

We are, therefore, left with questions of alimony, the treatment of unpaid temporary alimony, and visitation rights. As we said above, trial court properly considered the factors in Schantz v. Schantz, supra. The size of the alimony award is justified.¹

Petitioner asserts that trial court erred by holding that respondent's payment of a real estate tax installment for the First Avenue property and the personalty taken by

¹ The alteration of the amount of alimony was permissible in light of Shipley v. Shipley, 182 N.W.2d 125, 127-28 (Iowa 1970).

petitioner, which was not awarded to her, constituted a full and complete payment of alimony due through March 31, 1977. Such offsets may be granted. Gilliam v. Gilliam, 258 N.W.2d 155, 156 (Iowa 1977). In the circumstances of this case, trial court's action was correct.

Finally, petitioner complains that her visitation rights, even as expanded by the April 7 decree, are inadequate. Our review of the record indicates that trial court's decision in this matter was also justified.

AFFIRMED.