

FILED

MAY 30 1980

CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF SHIRLEY ANN HOYLA AND KENNETH ANTHONY HOYLA

Upon the Petition of)

SHIRLEY ANN HOYLA,)

Petitioner-Appellant,)

Filed May 30, 1980

And Concerning)

KENNETH ANTHONY HOYLA,)

0-109
2-63410

Respondent-Appellee.)

Appeal from Polk District Court - Harry Perkins, Judge.

Petitioner appeals economic provisions of parties' dissolution decree, asserting property division was inequitable and she should receive alimony and additional attorney fees for both the trial and this appeal. Affirmed as modified.

Robert D. Hall, Ankeny, for petitioner-appellant.

Robert M. Benton, Des Moines, for respondent-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

DONIELSON, J.

Petitioner, Shirley Ann Hoyla, appeals economic provisions of parties' dissolution decree. She asserts the property division was inequitable and she should have been awarded alimony and additional attorney fees for both the trial and this appeal. We affirm as modified.

Our review is de novo. Iowa R. App. P. 4. We review the facts and law, determining anew from credible evidence all properly presented contentions. While we give weight to the trial court's fact-findings, especially when the credibility of witnesses is involved, we are not bound by them. In re Marriage of Novak, 220 N.W.2d 592, 597 (1974). Each determination must be made on the facts of the case, precedents are of little value. In re Marriage of Kehrl, 241 N.W.2d 923, 926 (Iowa 1976).

I.

Shirley filed on May 30, 1978, for dissolution of her marriage to respondent, Kenneth Anthony Hoyla. After trial, the court entered a decree awarding custody of the two minor children, Tammy and Tony, to Shirley, along with child support of \$160 per child per month and attorney fees of \$250, but no alimony. The court also awarded Shirley possession of the house as long as she and the children live there, she remains unmarried, and Kenneth's child support obligation continues. When the right to possession terminates, the house is to be sold with the net proceeds divided equally after Shirley receives credit for her payments of principal after January 1, 1979. Shirley is responsible for paying the monthly house payments of \$309. The parties' personal property was also divided.

II.

Section 598.21, The Code 1979, provides "when a dissolution of marriage is decreed, the court may make such order in relation to the children, property, parties, and the maintenance of the parties as shall be justified." Id. Justified property divisions are those that are equitable under the circumstances. In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975); Bowman v. Bowman, 259 Iowa 820, 822, 146 N.W.2d 333, 334 (1966). Criteria to be used in determining an equitable award are set forth in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), modified, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972) (fault is not considered). Using those criteria, we examine these facts to determine the equities of the award.

Kenneth and Shirley were married October 26, 1968. The marriage lasted about ten years. They had two children, Tammy and Tony, ages seven and four respectively at the time of the dissolution.

Kenneth is a high school graduate with two years of college education. At the time of the dissolution he was employed as a senior draftsman, with an annual gross income of \$13,000, which after deductions gives him a net monthly income of approximately \$830. His career advancement with his present employer is limited, but he has contacted other firms concerning employment. Kenneth also has earned income from various part time jobs throughout their marriage. His prospects for substantial increases in compensation are at best doubtful. Kenneth enjoys good health.

Shirley is a high school graduate with little or no specific job skills or training. She is an epileptic and presently takes medication for it, which she has done since before the marriage. Shirley has sought employment, but so far has been unsuccessful in her efforts. She contends she has been denied employment because of her epilepsy. Her lack of employable skills limits her earning capacity.

During the course of the marriage, Kenneth provided the income for the family. Except for some part-time jobs, Shirley with Kenneth's agreement stayed home and took care of the house and the children. This non-cash contribution to the family must be recognized. See In re Marriage of Moorhead, 224 N.W.2d 242, 245 (Iowa 1974).

At the time of the dissolution, the parties' assets consisted of a home with an approximate value of \$50,000 and subject to a \$27,000 mortgage, household furnishings and belongings, a 1972 automobile, a 1973 automobile, and bonds amounting to \$1200. The house payments are \$309 per month. There was an \$800 encumbrance on the 1973 automobile. Other miscellaneous debts totalled approximately \$1200.

Shirley estimated living expenses for herself and the two children to be \$586 per month. Kenneth estimated living expenses for himself and the two children to be \$797.50 per month. The major discrepancy between their estimates is the \$164 Kenneth included for child care expenses. Kenneth now claims this figure overstates child care expenses since the children as of September 1, 1979, will be of school age and Shirley will also be able to obtain free babysitting. Since Shirley will likely be forced to obtain employment, there still exists a need for some child care. Accordingly, we find a

reasonable estimate of living expenses for Shirley and the two children to be \$750. Subtracting Kenneth's support payments of \$320 per month from this figure gives a difference of \$430 per month. We think it reasonable to expect Shirley to be able to obtain employment to make up this difference.

A determination of the economic provisions of a dissolution decree requires balancing of one party's needs against the other party's ability to pay. See In re Marriage of Freese, 226 N.W.2d 800, 802 (Iowa 1975). Increases in Kenneth's income capacity appear to be limited at the moment to modest annual salary increases. He estimated in his filed financial statements his expenses including the child support payments to be \$883 per month. He testified at trial, however, his rental expense would be about \$250, \$100 less than the rent estimate in his financial statement, thereby reducing his living expenses to \$783. Subtracting \$783 from his net monthly income of \$830 leaves him with \$47 per month for savings and emergency expenses. The fact Kenneth has lived with his parents since the separation does not mean he will always live with them or should be forced to do this by awarding a larger amount to Shirley or the children.

We find this arrangement equitably satisfies each parties' current needs within their current respective earning capacities, and additional child support is not warranted. See In re Marriage of Downing, 210 N.W.2d 436, 438 (Iowa 1973). This is not to say the parties may not experience economic difficulties under these terms. But this is often the unfortunate and insolvable problem facing a trial court: how to support two households on limited resources where previously only one had existed. See Yansky v. Yansky, 172 N.W.2d 114, 117 (Iowa 1969) (quoting from Cole v. Cole, 259 Iowa 58, 59, 143 N.W.2d 350, 351 (1966)). Due to the difficulties Shirley may have in obtaining employment, however, we award her alimony of \$1 per year to preserve this issue for subsequent modification if justified.

We find the property division equitable under the circumstances. The dividing of the proceeds from the future sale of the house fairly compensates each party for the economic contributions to the accumulation of that and their other assets. See In re Marriage of Briggs, 225 N.W.2d 911, 913 (Iowa 1975). We do not find Shirley should be awarded an increased interest in the house. Kenneth provided the bulk of the cash

income during the marriage. Further, Kenneth was ordered to pay the major debts of the parties, totaling approximately \$2000, \$800 of which was an encumbrance on the 1973 automobile he was awarded. To deny him any interest in the parties' major asset would not be justifiable.

III.

Shirley seeks an increase in the award for attorney fees incurred at trial and for fees incurred on appeal. Attorney fees are not recoverable as a matter of right in a dissolution proceeding and such allowance depends on balancing one spouse's financial needs against the other spouse's ability to satisfy them. Locke v. Locke, 263 N.W.2d 694, 696 (Iowa 1978). We find Shirley is not entitled to an increased attorney trial fee award or to an award for attorney fees incurred in this appeal.

Kenneth and Shirley shall each pay one-half of the costs of this appeal.

Trial court decree is affirmed as modified.

AFFIRMED.