FILED
DEC 28 1977
CLERK SUPREME COURT

341

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF JAMES ARNOLD FRAHM AND MARY ANN FRAHM:

Upon the Petition of	)	
JAMES ARNOLD FRAHM,	)	Filed December 28, 1977
Appellant,	)	
And Concerning	)	327
MARY ANN FRAHM,	)	2-58950
Appellee.	)	

Appeal from Polk District Court - A. B. Crouch, Judge.

Petitioner appeals alimony and property settlement provisions of a dissolution decree. Respondent cross-appeals child support and attorney fee provisions. - Affirmed.

R. J. Wagener, of Ankeny, for Appellant.

Richard D. Hermann, of Ankeny, for Appellee.

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

PER CURIAM

Petitioner, James Arnold Frahm, appeals the alimony and property settlement provisions and respondent, Mary Ann Frahm, cross-appeals the child support and attorney fee provisions of the dissolution decree. Our review is de novo. Rule 4, Rules of Appellate Procedure. In matters of property settlements and alimony, we are guided by the criteria set forth in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except that the fault concept has been eliminated by In re Marriage of Williams, 199 N.W.2d 339, 345-46 (Iowa 1972). In reviewing child support, we are guided by the factors set forth in In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974). Each case is peculiarly dependent upon its own facts and therefore precedents are of little value. In re Marriage of Romig, 207 N.W.2d 780, 783 (Iowa 1973). While we give weight to the trial court's findings of fact, we are not bound by them. Rule 14(f)(7), R. App. P.

James and Mary Ann were married August 30, 1964, after having recently graduated from college. Following the marriage, the Frahm's moved to California where James entered medical school and Mary Ann began work at an educational television station in order to provide the necessary income to support the parties. During the period the Frahms were in California, Mary Ann began and completed work on a masters program in drama. The Frahms moved back to Iowa in 1968 when James took up residency at Iowa Lutheran Hospital in Des Moines. In 1969, they moved to Ankeny where James currently practices medicine with three other doctors.

At time of trial, the Frahms, both age 33, had been married almost 11 years. Two children were born during the marriage: James Bradley Pierre, born June 7, 1969, and Heidi Elizabeth, born September 26, 1971. The children were ages six and four respectively at the time of trial. Custody of the two children was awarded to Mary Ann, and is not at issue on appeal.

The trial court awarded the family residence valued at $31,000 with an equity of $17,500 to Mary Ann; she was also required to assume the balance of the mortgage in the amount of $13,514.75. Mary Ann also received the household furniture, her personal property, a 1973 Ford Pinto and $40,000 in cash. James received a 1975 Ford LTD, his personal effects, his professional equipment valued at $2200, a 1/4 interest in a medical building worth $6200, and his share of the accounts receivable from his practice worth

$17,200 after a 20% adjustment for bad debts. James also received the balance in the savings accounts over and above $40,000, which is estimated at $25,400.

On appeal, James argues that the property settlement awarded to Mary Ann was inequitable. In her brief, Mary Ann contends that an equitable property settlement would have given her all the cash in the saving accounts. The trial court found the total value of the Frahm's assets to be $120,700, excluding personal items. Of that amount, Mary Ann received $62,800 and James, between $55,800 and $57.900 (depending upon whether he received the entire $2100 in cash which was not specifically distributed). From a review of the criteria set out in **Schantz** as applied to the facts of this case, we find the property settlement decreed by the trial court equitable.

James's second contention on appeal is that the alimony award was excessive. The trial court awarded alimony in the amount of $1000 per month for a period ending December 31, 1977. At such time alimony is reduced to $800 per month until such time as Mary Ann remarries or until the youngest child completes high school. At the time of trial, Mary Ann was working toward a doctorate degree in english at Drake University. She had completed 36 of the 66 hours required for the degree. Her monthly expenses for books and tuition were estimated at $130. She estimated it would take approximately two years to complete her work. This was the trial court's justification for the higher alimony ending December, 1977.

The evidence also shows James's income from his medical practice, National Guard and interest exceeded $64,000 in 1974. In the first seven months of 1975, it was over $31,000. Although James's interest income is drastically reduced by the cash award to Mary Ann and his National Guard salary ends shortly, his medical practice has grown each year and there is no evidence to suggest it will not continue to do so. Further, James's plans to incorporate in order to reduce income tax considerations, thereby reducing his available income, should not have an effect on Mary Ann's right to alimony. From a review of the evidence, we find the trial court's alimony award was justified.

The final two assertions on appeal are raised by Mary Ann in her cross-appeal. First, Mary Ann argues that the trial court failed to grant sufficient child support. The decree fixes child support at $250 per month per child. Mary Ann asserts that this is inadequate based on the standard of living the parties enjoyed prior to the dissolution.

The criteria for reviewing child support are set out in Zoellner, supra. After reviewing the evidence and taking into consideration James's responsibilities under the decree, which amount to almost 1/4 of his gross income, we find the child support awarded is sufficient.

The final issue raised concerns the trial court's award of $900 in attorney fees to Mary Ann's attorney. She argues the award is wholly inadequate in light of the complexity of the case and the time spent. The criteria for evaluating an award of attorney fees is set out in In re Marriage of Jennerjohn, 203 N.W.2d 237, 245 (Iowa 1972); In re Marriage of Jayne, 200 N.W.2d 532 (Iowa 1972). From a review of the record and James's ability to pay as well as the factors set out in **Jennerjohn**, we find the trial court's award is sufficient. Mary Ann has $40,000 in cash from which to pay the balance of her attorney fees. Each party shall pay his own attorney fees on this appeal. The decree is affirmed.

Oxberger, J. dissents.

OXBERGER, J. (dissenting)

I find no justification in this record for the award of a higher proportion of the marital assets to Mary Ann. James has asked this court to reduce Mary Ann's cash award from $40,000 to $25,500. I believe we should order the parties to share equally in the savings accounts, which total $65,000. This would have the ultimate effect of reducing the cash award to Mary Ann by approximately $7250. James has also asked that the alimony award, after the first two years, be reduced to $500 per month. The trial court anticipated that Mary Ann would have completed her doctoral program by that time. I find James's reduction request wholly reasonable. An alimony award of $800 per month to a young woman of excellent health possessing professional training to the extent of a doctoral degree who has already received a property settlement of in excess of $55,000 can not be justified.

I would reduce the cash awarded to Mary Ann to one half the savings account balances and alimony to $500 per month after the initial two-year period ends.