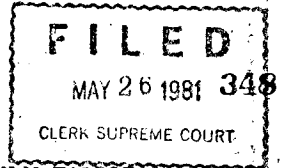


IN THE IOWA COURT OF APPEALS



IN RE THE MARRIAGE OF KATHLEEN A. TALBOT AND JOHN M. TALBOT

|                       |   |                        |
|-----------------------|---|------------------------|
| Upon the Petition of  | ) |                        |
| KATHLEEN A. TALBOT,   | ) |                        |
| Petitioner-Appellee,  | ) | Filed May 26, 1981     |
| And Concerning        | ) |                        |
| JOHN M. TALBOT,       | ) |                        |
| Respondent-Appellant. | ) | $\frac{1-79}{3-65321}$ |

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Appeal from Appanoose District Court - James D. Jenkins, Judge.

Respondent appeals decree dissolving his marriage to petitioner, challenging the alimony, property division, child custody, visitation, child support, and attorney fees provisions contained therein. AFFIRMED.

John A. Pabst of Pabst & Pabst, Albia, Iowa, for respondent-appellant.

James G. Milani, Centerville, Iowa, for petitioner-appellee.

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

## PER CURIAM

Respondent, John Talbot, appeals, challenging the alimony, property division, child custody, visitation, child support, and attorney fees provisions contained in the decree dissolving his marriage to petitioner Kathleen Talbot. We review the facts *de novo*. Iowa R. App. P. 4.

The record contains evidence of the following facts. Kathleen and John were married in Centerville, Iowa, on September 15, 1970. Two children have been born of this marriage: Christina, born June 29, 1971, and Brenda, born September 5, 1974. Kathleen and John met when they were both employed in the St. Louis area. At about the time of their marriage, John was laid off from his employment in St. Louis and the parties returned to reside in Centerville. John is a high school graduate and has completed three years of college training in engineering. He is 30 credit hours away from graduation. At the time of trial he was 35 years of age. Kathleen, who was 31 at the time of trial, has the equivalent of two years of college in electrical engineering. After the return of the parties to Iowa, she has primarily been a full-time housewife, however, she has assisted John in his business operation. After returning to Iowa, John completed work on a device which he patented, trademarked and manufactured. This device, Digitrol, is an electronic sensor system which can be adapted to farm machinery and equipment to automatically control the operating height of the machine from the ground. The marketing of Digitrol initially produced a substantial income for the parties. In 1974 John grossed \$32,000 therefrom. Beginning in 1976, the business dropped off and by 1978, John claimed to have grossed only \$300 from sale of this product. It was John's testimony at trial that the value of the patent and trademark nevertheless might be as much as \$1,000,000. As John's business began to decline, the parties began to experience troubles in their marriage. They had substantial unpaid bills in 1978 and Kathleen urged John to seek other employment. John testified at the trial that he felt he was capable of earning \$500 per week. He made no substantial effort, however, to obtain employment.

After John's mother died in 1977, he and Kathleen moved in with John's father, where they lived rent free with Kathleen keeping house for the family. There was testimony during the trial of several incidents where both John and his father have had confrontations with Kathleen and her parents over physical custody of the children. At least two incidents of physical violence practiced upon Kathleen were established by the evidence. On one of these occasions John was ostensibly returning one of the children

from Centerville to St. Louis, where Kathleen was residing with her parents, following a period of temporary custody. Upon arriving in St. Louis, John drove away with this child and the other child of the parties and in the process, drove over Kathleen's foot. On this occasion the child who had been visiting in Centerville was forced to travel from Centerville to St. Louis, back to Centerville, and back to St. Louis, all on the same day. There was other testimony concerning alleged acts of harassment by John and his father towards Kathleen, including misuse of subpoenas at or about the time of trial. Since the separation of the parties, Kathleen has returned to the St. Louis area with the children, and has obtained a job in a plant producing electrical heating elements for industrial uses. She presently earns \$5.40 an hour for a forty hour week. She lives in an apartment in Bridgeton, Missouri, a suburb of St. Louis, and provides adequate child care services for the children while she is working. The children were shown to be doing well and adjusting satisfactorily to their new environment.

The trial court's decree dissolved the marriage of the parties; awarded Kathleen permanent custody of both children; denied John visitation for a period of eleven months, subject to further hearing at that time; awarded each party the personal property in his or her possession; awarded Kathleen \$1,100 for her share of property John had sold to his father; awarded Kathleen a 40% interest in the patent and a 50% interest in the trademark regarding Digitrol; ordered John to pay \$50 per week alimony for a period of five years; awarded child support of \$100 per week; and directed John to pay \$3,200 for Kathleen's attorney fees at trial. The court also granted a permanent injunction restraining John from coming within one mile of Kathleen's residence, or telephoning, or contacting Kathleen, the children, Kathleen's parents, or Kathleen's employer.

I. On appeal John challenges each of the following determinations of the trial court: (1) the award of alimony; (2) the property division; (3) the award of child custody; (4) the award of child support; (5) the denial of his visitation rights; and (6) the award of attorney fees to Kathleen's attorney for services performed in the trial court.

In reviewing the issues of child custody, we apply those principles discussed in In re Marriage of Winter, 223 N.W.2d 165 (Iowa 1974). In reviewing the economic issues presented we adhere to the principles set forth in Schantz v. Schantz, 163 N.W.2d 398 (Iowa 1968), excluding fault. In reviewing the record *de novo*, subject to these standards, we are satisfied that the trial court's decree effectuates a just and equitable determination of the issues of child custody, child support, alimony, property

settlement, and trial court attorney fees, and we do not disturb said decree as it relates to such matters.

II. On the matter of child visitation, we conclude that while the trial court might have been justified in determining that some cooling-off period was necessary before John could be afforded visitation with the children of the parties, it erred in delaying the final determination on visitation for eleven months. As we read the record, this eleven-month period dates from June 4, 1980. That time has already expired, thereby rendering any corrective action which we might take with respect thereto moot. We direct that upon issuance of procedendo the matter of final hearing on John's visitation rights be promptly scheduled and an appropriate order entered. While John on appeal does not directly challenge the injunction which was placed in force prohibiting his contact with Kathleen and the children, we note that the trial court indicated an intention to review such injunction at the time of the final visitation hearing. This should be done as contemplated by the trial court.

Costs on appeal, including costs of supplemental appendix, are taxed three-fourths to John, one-fourth to Kathleen. Each party shall pay his or her own attorney fees on appeal.

**AFFIRMED.**