FILED
AUG 30 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ROBERT N. THOMAS AND PENNY M. THOMAS

Upon the Petition of	)	
ROBERT M. THOMAS,	)	Filed August 30, 1983
Petitioner/Appellee-Cross-Appellant,	)	
And Concerning	)	
PENNY M. THOMAS,	)	3-136 / 3-68591
Respondent/Appellant-Cross-Appellee.	)	

Appeal from Benton District Court - L. Vern Robinson, Judge.

Respondent-wife appeals from economic provisions of the parties' dissolution decree. AFFIRMED IN PART, MODIFIED IN PART, REVERSED IN PART AND REMANDED.

William Hill, Marshalltown, Iowa, for respondent/appellant/cross-appellee.

Michael J. Newmeister, Cedar Rapids, Iowa, for petitioner/appellee/cross-appellant.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel and Hayden, JJ.

HAYDEN, J.

Respondent-wife appeals from economic provisions of the parites' dissolution decree, asserting: (1) petitioner's child support obligation for the parties' two minor children should be increased from $400 per month to $600 per month or, alternatively, respondent and the children should be allowed to reside in the marital home until the children finish high school or attain the age of 18, whichever occurs last; (2) if the marital home is to be sold as provided in the dissolution decree, respondent should receive one-half, rather than one-third, of the proceeds; (3) petitioner should pay more than $300.00 towards respondent's trial attorney's fees. By way of an "amendment to notice of appeal," which was not timely filed, she challenges trial court's failure to award her alimony. Petitioner-husband filed a notice of cross-appeal, however, he has failed to file an appellate brief.

Penny and Robert Thomas were married in June 1975 when they were fifteen and twenty-one years old, respectively. The parties' first child, Mindi, was born in September 1975. The parties' second child, Jessica, was born in August 1978. Penny dropped out of high school after the birth of the parties' first child and essentially worked as a housewife throughout the marriage. Robert has a high school education. He was employed by Wilson Foods and, at the time of trial, was earning $26,000 per year as a truck driver. Penny and the girls were living in Belle Plaine in a house the parties were buying on contract, which the trial court valued at $15,000. The contract had a principal balance of $7,666.34 and the payments were $100 per month.

The trial court in the decree found and concluded, inter alia, as follows: "Both Penny and Robert have established relationships which may result in both of their remarriage in the near future."

Robert was ordered to pay child support in the amount of $50 per week per child. He was awarded the two automobiles purchased during the marriage and

the motorcycles, in addition to other personal property in his possession. Penny was awarded the automobile she purchased after the separation plus other personal property in her possession. Trial court ordered the marital home to be sold, with Robert to receive two-thirds of the net proceeds and Penny to receive one-third. Robert was ordered to pay $300 toward Penny's trial attorney's fees. there was no alimony award.

Our review of this equitable proceeding is **de novo**. Iowa R. App. P. 4. While we are not bound by the findings of the trial court, we do give weight especially where credibility of witnesses is involved. Iowa R. App. P. 14(f)(7). As in all cases of this type, precedent is of little value and our decision must ultimately depend on the particular facts of this case. In re Marriage of Kehrli, 241 N.W.2d 923, 926 (Iowa 1976).

I.

Section 598.21(4), Code of Iowa (1981), sets forth the factors that are to be considered by the Courts in the determination of child support payments. These factors have been discussed by the Iowa Supreme Court in numerous cases, including In re Marriage of Zoellner, 219 N.W.2d 517 (Iowa 1974).

In view of this court's decision in division II of this opinion, we do not disturb the trial court's award of child support and, accordingly, affirm on this issue on appeal as Penny requests an increase in child support only in the event she was not permitted to occupy the marital domicile of the parties.

II.

The division of property pursuant to a dissolution of marriage is governed by Iowa Code § 598.21(1). That section codifies prior Iowa case law which held that marital property is to be divided equitably between the parties, taking into account certain specified factors. See Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), and In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972). Those factors include, but are not limited to, the duration of the parties'

marriage, their respective ages and earning capacities, and the property brought into the marriage by each. The ultimate test is whether, considering all of the circumstances, the division is fair and just. Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976).

Upon a review and consideration of the record of this case in its entirety, we hold that Penny shall have the right to live in the marital domicile with the two children born of this union, until she remarries, or cohabits with another or either of the children are not subject to support by Robert, whichever event occurs first, at which time the property shall be sold. Upon sale of the real estate, the first $5,000 of the net proceeds shall be paid to Robert and the balance to Penny. Penny shall assume the contract payments and be solely responsible for them along with payment of real estate taxes, insurance and other costs of home ownership. To the extent Robert has made the payments on the real estate contract, real estate taxes, and insurance since the date of filing the trial court's decree, i.e. April 26, 1982, he shall be given credit first on the alimony payments established in division IV of this opinion; and if that be exhausted, then next against the child support payments as ordered by the trial court, until said sums are fully credited. The decree is modified accordingly.

III.

Penny argues that she is entitled to more than the $300 the trial court awarded her towards the payment of her attorney's fees. We do not agree. The trial court is vested with considerable discretion in allowing attorney's fees to be awarded in dissolution cases. In re Marriage of Lochmiller, 229 N.W.2d 228, 229 (Iowa 1975). Moreover, "[t]rial courts are familiar with the value of attorney's services in dissolution matters." In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977). We find no reason to disturb the trial court's award in the present case.

IV.

The factors to be considered in affixing an award of alimony have been set out at length in Iowa Code § 598.21(3) and need not be enumerated here. In view of Penny not having a high school diploma nor possessing any appreciable job skills, we hold she is entitled to remedial alimony in the sum of $3,000 which Robert may pay in installments of $100 per month. We reverse and remand to the trial court to enter and file a decree to conform with II and IV herein.

V.

Robert is ordered to pay $500 to apply on Penny's attorney fees on this appeal. Costs of this appeal are assessed to Robert. Except as modified in II and reversed and remanded in IV of this opinion, the Decree of the trial court is affirmed.

AFFIRMED IN PART, MODIFIED IN PART, REVERSED IN PART AND REMANDED.