IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF
HELEN M. LESTER AND GARY L. LESTER

Upon the Petition of )
HELEN M. LESTER, )
Petitioner-Appellee, )
And Concerning )
GARY L. LESTER, )
Respondent-Appellant. )

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Appeal from the Iowa District Court for Polk County (CD 57-33728), Rodney J. Ryan, Judge.

Respondent appeals from certain provisions of the decree of dissolution entered by the district court. **AFFIRMED AS MODIFIED.**

James H. Cothern, Osceola, for respondent-appellant.

John R. Hearn, Des Moines, for petitioner-appellee.

Considered by Schlegel, P.J., and Hayden and Habhab, JJ.

**PER CURIAM** 240

Respondent husband appeals from certain provisions of the decree of dissolution entered by the district court. We affirm as modified.

I.

Petitioner Helen M. Lester and respondent Gary L. Lester were married in 1967. They have two children, one of whom is an adult, and the other, Karmon, was born in November of 1971. The district court awarded custody of Karmon to Helen and ordered Gary to pay $50 per week in child support. The parties have more debts than assets, and Gary was awarded a negative value of $9,485, while Helen was awarded a negative value of $3,000. Gary was also ordered to pay $350 of Helen's attorney fees. Gary appeals certain provisions of the decree of dissolution.

II.

In this appeal, Gary claims the trial court erred in: 1) the amount of child support he was ordered to pay; 2) failing to make equitable property division of the marital property; and 3) ordering him to pay attorney fees.

Our scope of review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering credibility of witnesses but we are not bound by them. Iowa R. App. P. 14(f)(7). Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the

parties in each case. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

III.

**A. Child Support.** Gary contends the trial court erred in its ruling establishing child support in two ways. First, the trial court's determination Gary should pay $50 a week for child support is not fair and equitable based on his current financial situation. Second, Gary urges the trial court was incorrect in providing automatic percentage increases when his financial picture improves, without taking Helen's employment progress into consideration.

Iowa Code section 598.21(4) (1987) lays out criteria which the court must look to in determining child support obligations. The statute provides upon every judgment of dissolution the court may order either parent to pay an amount reasonable and necessary for support of the child. Among the permissible considerations listed is the financial resources of both parents.

In determining the financial resources of the parents, we take into consideration the parties' age, health, present earning capacity, future prospects, amount of resources, and indebtedness. In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974). These factors are weighed against the needs of the child to reach a suitable support level. Iowa Code § 598.21(4) (1987).

Prior to the divorce, both Gary and Helen left good paying jobs. Gary attempted unsuccessfully to operate his own trucking business and Helen left her position at Norwest Bank because of personal difficulties including financial problems and family matters. Helen is now employed by Kelley Services as a temporary employee while Gary is employed by Murray Products--both earn considerably less than in their prior employment. The record indicates both parties are in debt. Gary more so, by virtue of the decree. Our de novo review of the record leads us to agree with Gary that $50 per week at this time is not reasonable. Considering his limited salary, debt load, and his responsibility for the medical care of his daughter, we find $30 per week would be a more equitable figure. In addition, we do not find it necessary for Gary to report to the court when his financial picture improves, and thus, we delete from the decree the requirement of automatic percentage increases in child support.

**B. Division of Property.** Gary contends the trial court failed to make an equitable division of property as required by Iowa Code section 598.21(1) (1987). This section provides the court shall divide all property, except inherited property and gifts received by one party, equitably between the parties after considering several enumerated criteria. Most relevant to this case, the statute provides:

> f. The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.

Iowa Code § 598.21(1)(f) (1987).

Our review in light of the foregoing principles indicates the trial court's division of property was equitable with one exception. We modify the decree to delete the $1,500 judgment against Gary in favor of Helen and thus, remove the lien from the Murray, Iowa, real estate.

**C. Attorney Fees.** Gary next contends the trial court erred in determining he should pay Helen's attorney fees. We disagree. We have stated attorney fees are not recoverable as a matter of right in a dissolution. Such an allowance depends upon one spouse's needs and the other spouse's ability to satisfy them. In re Marriage of Lovetinsky, 418 N.W.2d 88, 90 (Iowa 1987). Each party is currently employed; however, using past employment history as a guide, Gary has greater earning potential, if not right now, in the future.

Finally, because we have modified the district court's decision and consider the financial difficulties both parties currently suffer, we hold both parties should pay their own attorney fees for this appeal. Costs for this appeal should be divided evenly between Helen and Gary.

**AFFIRMED AS MODIFIED.**

Schlegel and Hayden, JJ., concur; Habhab, J., dissents.

**HABHAB, J.** (dissenting)

I respectfully dissent. I would affirm the trial court.