IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF GERTRUDÉ HELEN JANDA AND PAUL JOHN JANDA

Upon the Petition of)
GERTRUDE HELEN JANDA,) Filed January 28, 1977
Appellee,)
And Concerning)
PAUL JOHN JANDA,) 4
Appellant.) 2-57543

Appeal from Linn District Court - Ansel J. Chapman, Judge.

Respondent appeals from economic provisions of dissolution of marriage decree. - Modified, affirmed, and remanded.

James L. Chipokas, of Cedar Rapids, for appellant.

Pickens & Barnes, of Cedar Rapids, for appellee.

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

FILED
JAN 28 1977
CLERK SUPREME COURT

OXBERGER, J.

Paul, age 55, appeals the economic provisions of the decree dissolving his 33 year marriage to Gertrude, age 53. Gertrude was awarded the homestead, valued at $20,000 with an encumbrance of $3845, and the household goods. Paul was to receive $3000 from her for his equity. We modify the decree to provide for a more equal division of the equity in the homestead.

The trial court explained the property settlement as a substitute for an award of periodic alimony. We must, therefore, establish whether or not an alimony award is justified in this case. The proper focus under *Schantz* for an alimony consideration is the relative position of each party to the dissolution. Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968) as modified by In re Marriage of Williams, 199 N.W.2d 339, 344 (Iowa 1972).

Recently the Iowa Supreme Court reemphasized that alimony is not an absolute right. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). In *Fleener*, the court applying the *Schantz* criteria denied alimony. The parties had two children ages eleven and seven. The wife had a high school education. The husband had a degree in agronomy. He worked for a family-owned business earning $16,473.29 annually. The wife was unemployed during the marriage, however, during the separation she had obtained a job earning a gross salary of $425 per month.

Applying the *Schantz* standards to the parties before the court, we find that Gertrude is not entitled to an award of alimony. Paul's health is impaired by a heart condition. Gertrude is in good health. Paul earns approximately $5800 annually and Gertrude earns approximately $5000. Both parties have jointly contributed labor and income to the maintenance of their marriage There is neither a disparity of income nor of income-producing skills. The record discloses no difference in pension benefits available to either party.

Since Gertrude is not entitled to alimony, the property division may not be made in reference to such considerations. The homestead is the joint accumulation of their efforts over a considerable period of time. Arnold v. Arnold, 257 Iowa 429, 439, 133 N.W.2d 53, 60 (1965). However, this court is fully aware that a forced sale with an equal division of proceeds would leave Gertrude facing a difficult future with modest earnings and no claim to further support from Paul. Further, such a sale would deprive the children, one of whom reached the age of majority during the pendency of this appeal, of any anticipation of remaining in or returning to their old and familiar home.

This court sits in this case as a trier de novo. It is our duty to review the whole record and adjudicate the rights anew and fashion the remedies justified under §598.21, The Code. In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974), and In re Marriage of Cook, 205 N.W.2d 682, 684 (Iowa 1973).

Title to the homestead is hereby vested in Gertrude with a lump sum of $6400 awarded to Paul for his interest in the equity. Gertrude may remortgage the house to satisfy this lump sum payment to Paul. She is granted a reasonable time to promptly comply with this decree. This award of $6400 represents an award of roughly 1/2 of the equity in the homestead with some allowance for the attendant cost to Gertrude of sale or remortgage.

Gertrude asks an allowance of attorney fees on this appeal. Her attorney has submitted an itemized statement in the amount of $914.60, including an estimate of $300 for oral argument. The matter was submitted without oral argument; therefore, the estimated cost is eliminated. This reduces the claim to $614.60 which we order paid by Paul. Costs of this appeal are taxed equally against Paul and Gertrude.

With the modifications herein provided, the decree of July 24, 1974 is affirmed.

MODIFIED, AFFIRMED AND REMANDED