

FILED

FEB 20 1920

247

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF PHYLLIS L. SHERMAN & JAMES L. SHERMAN

Upon the Petition of	)	
PHYLLIS L. SHERMAN,	)	Filed February 26, 1920
Petitioner-Appellee	)	
And Concerning	)	
JAMES L. SHERMAN,	)	0-9
Respondent-Appellant.	)	<u>2-63192</u>

Appeal from Warren District Court - M. C. Herrick, Judge.

Respondent appeals child support and property settlement provisions of dissolution decree. - Affirmed as modified.

John J. Gajdei, of Stevens & Price, Des Moines, for respondent-appellant.

Bernard J. O'Malley & Steven M. Porto, of Connolly, O'Malley, Lillis & Hansen, Des Moines, for plaintiff-appellee.

Submitted to Oxberger, C.J., and Donielsen, Snell, Carter and Johnson, JJ.

PER CURIAM

Respondent, James L. Sherman, appeals economic provisions of dissolution decree. We affirm as modified.

The trial court dissolved the fourteen-year marriage of respondent and petitioner, Phyllis L. Sherman, January 23, 1979. On appeal, James asserts the trial court's child support award is unreasonable and its disposition of parties' property and debts is inequitable. Our review of these contentions is de novo, Iowa R. App. P. 4, and we apply the criteria of Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972).

The trial court granted custody of the couple's three children to Phyllis and ordered James to pay support of \$40 per week per child until the child reached age eighteen, was graduated from high school, or became self-supporting. James bases his argument on the relative financial standings of the parties and asserts the child support award is unfair. He claims his monthly net income of \$1092.62 is insufficient to meet his monthly personal expenses of \$609.50 and the \$520 monthly child support ordered by trial court. On the other hand, he claims Phyllis's monthly income of \$170, when supplemented by the \$520 child support, exceeds her \$626.04 monthly expenses.

We agree with James the court award should be based on the facts of each case and we apply the guidelines of In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974). Under them, we find James's position similar to that in In re Marriage of Florke, 270 N.W.2d 643, 645 (Iowa 1978):

Petitioner argues that the support burden imposed upon him by the decree creates an unreasonable hardship. His predicament, however, is not unique. Often in marriage dissolutions, incomes that were adequate to support married couples and their children are stretched precariously thin in order to cover expenses of maintaining two households. Such is the condition presented by this case.

Here, as in Florke, we find the support order is equitable in light of the circumstances.

James also claims the property settlement entered below is inequitable. The parties' assets consisted of: their home valued at \$41,000 to \$43,000 but subject to \$13,500 in encumbrances; a 1973 Chevrolet subject to a \$2500 encumbrance; a 1973 Buick subject to a \$1700 encumbrance; and household goods valued between \$1500 to \$3200 but

subject to \$650 encumbrances. The parties' outstanding debts included \$600 on a charge account, \$58 on an account, and James's personal debts of \$2700. The trial court granted James a \$14,000 lien on the couple's home to be paid upon its sale, and he received the Buick, subject to its encumbrance. Phyllis was awarded the house as encumbered and subject to James's lien, the Chevy as encumbered, and the household goods. James was ordered to assume the remaining debts of the parties. On appeal, he claims the assignment of debts and the award of household goods were inequitable, especially in light of the future earning ability of Phyllis and the ability of the parties to retire the outstanding debts. The property division is equitable in light of the Schantz criteria. However, James should be awarded interest on the \$14,000 lien on the home. Accordingly, we modify the trial court division by awarding James interest of 9% per annum on the lien, which shall accrue and be paid at the time the house is sold.

James appeals the award of \$350 toward Phyllis's attorney fees. We find the trial court did not abuse its discretion by entry of that award. See In re Marriage of Lochmiller, 229 N.W.2d 228, 229 (Iowa 1975). Phyllis also seeks attorney fees on appeal. Without determining the amount her attorneys may charge, we hold James shall pay \$350 toward those fees. See In re Marriage of Peterson, 227 N.W.2d 139, 143 (Iowa 1975).

For the reasons stated above, the trial court decree is affirmed.

AFFIRMED.