

FILED

AUG 29 1985

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF KAREN JEAN REDMOND AND JAMES LYNN REDMOND

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Upon the Petition of	)	
KAREN JEAN REDMOND,	)	Filed August 29, 1985
Petitioner-Appellee,	)	
And Concerning	)	<u>5-330</u>
JAMES LYNN REDMOND,	)	<u>84-1455</u>
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Pottawattamie County - Leo Connolly, Judge.

Respondent appeals the property division and the child support provisions in the trial court's dissolution decree. **AFFIRMED AS MODIFIED.**

Robert J. Laubenthal of Smith, Peterson, Beckman & Willson, Council Bluffs, Iowa, for respondent-appellant.

G. Elizabeth Otte, Council Bluffs, Iowa, for petitioner-appellee.

Considered by Donielson, P.J., Schlegel, and Sackett, JJ.

Respondent James L. Redmond appeals the property division and the child support provisions in the trial court's dissolution decree. We affirm as modified.

Respondent James and petitioner Karen Redmond were married June 8, 1979, and have one child. James is, and has always been, employed at his family's service station business, and Karen is working for the Internal Revenue Service. Prior to their marriage James purchased a house located at 1815 Avenue B in Council Bluffs. He paid a \$3,000 downpayment, but instead of living there he and Karen decided to rent the house and use the rent money to make the loan payments. Shortly before the marriage, the house was vacated and both Karen and James invested their time and money to remodel and generally fix up the house. After their marriage, both James and Karen contributed toward the house payments.

In August 1981, James and Karen were interested in buying a second house on Avenue K in Council Bluffs, but did not have enough to make the downpayment. In order to purchase the house on Avenue K, James and Karen arranged to transfer the Avenue B house to his parents in return for \$6,000 and an agreement by the parents to make payments on the balance of the loan. Although James and Karen signed a quitclaim deed to his parents, the deed was never recorded and the mortgage and insurance remained in James's and Karen's names. In the proceedings James and his parents claimed that this transaction was a sale and that the house on Avenue B should not be considered by the trial court in its division of assets. In its findings of fact, the trial court determined the \$6,000 amounted to a loan and mortgage against the Avenue B house.

The court awarded Karen custody of their son and ordered James to pay \$225.00 a month in child support. Karen also received the house on Avenue K but James was awarded a \$7,000 lien against it. Karen was directed to pay

the \$7,000 in installments of \$50.00 a month without interest. Karen was awarded the 1978 Mercury and James was awarded the 1976 Plymouth. The parties were allowed to keep the personal property they had in their possession at the time of trial, but the trial court did not specifically identify any particular item. Karen was ordered to pay the Bank and Trust Visa account and the J. C. Penney account, while James was directed to pay the Omaha National Visa account, the Jennie Edmundson Hospital account and any other debt the parties acquired prior to the filing of the petition. Time certificate deposits, totalling \$1,900.00 were awarded to Karen to be used and preserved for the child's benefit according to her discretion.

Other than its conclusion in the findings of fact, the court did not mention anything about the disposition of the Avenue B house in the decree. James contends that this is error.

In all, James raises nine issues on appeal. For purposes of review, we will consolidate several issues due to their similarity. Generally therefore, the issues on appeal are: (1) whether the trial court erred in not being more specific in its division of property, both real and personal; (2) whether the property division is inequitable; (3) whether the residence on Avenue K should have been sold rather than awarded to Karen; (4) whether the child support obligation is excessive; and (5) whether there should have been interest awarded with the \$7,000 lien on the Avenue K residence. We affirm as modified.

Our review is de novo. Iowa R. App. P. 4 (1983). We examine the entire record and determine the parties' rights anew based upon all credible evidence on properly presented and preserved issues. In re Marriage of Stewart, 356 N.W.2d 611, 612 (Iowa 1984). While we give weight to the findings of the trial court, we are not bound by them. Iowa R. App. P. 14(f)(7) (1983).

I. Failure to Specify Factors. In his brief, respondent repeatedly asserts as error the failure of the trial court to specifically identify each party's debts and assets in dividing the real and personal property. However, he cites no authority that supports the proposition that a trial court is required to specifically list the factors it uses in making its decision. The law is very clear that the trial court must determine what each party has sacrificed and invested in the marriage, when making the division of property. See Schantz v. Schantz, 163 N.W.2d 398 (Iowa 1968). The Iowa Supreme Court has even provided a formula to help guide the trial court's decision. Schantz, at 405. But there is no language in the Schantz decision or any other that mandates a specific listing of factors that the trial court considers in making its decision. Iowa Code section 598.21(7) states that "... the order need mention only those factors relevant to the particular case for which the Orders are made." We do not feel that this section mandates the detailed listing respondent claims is necessary.

Respondent further alleges that the property division is not justified due to the lack of specificity in the terms of the decree. This argument is an extension of the initial issue discussed above. Beginning with the guidelines of Iowa Code section 598.21(7), that the court need only mention the relevant factors considered, the next step for review is to consider whether the record and the evidence supports the trial court's ultimate decision.

"The general rule is where an equity case is not in a condition for a final decree, none will be made by this court, but the case will be remanded." In re Marriage of Hitchcock, 265 N.W.2d 599, 607 (Iowa 1978); Locke v. Locke, 246 N.W.2d 246, 253 (Iowa 1976). In Daugherty v. Daugherty, 260 Iowa 878, 882, 151 N.W.2d 569, 572, it was said: "... Where the evidence is insufficient for the fair de novo determination of an important issue, we can and should

return the case for more evidence on the subject. . . ." See also Locke v. Locke, 246 N.W.2d at 253.

In Lessinger v. Lessenger, 138 N.W.2d 58, 61 (Iowa 1965), the Iowa Supreme Court said:

5 Am. Jur. 2d, Appeal and Error, section 962, p. 389, states: "If, because of the condition of the record, the court on appeal cannot determine what judgment should justly be rendered, it will ordinarily remand the case for further proceedings in the trial court. If the record does not justify entry or direction of a decree, as where the bill or complaint is considered insufficient, or the evidence inadequate, to support a material issue, no final decree is rendered in the appellate court except to the extent of setting aside the decree in the lower court and requiring further proceedings to be had therein." See also 5B C.J.S. Appeal and Error § 1836d.

Despite the generalities in the decree before us, we feel that the record justifies the decision by the trial court. A great deal of testimony was given as to whether the money received by James and Karen from James's parents was from a sale or a loan transaction. We agree with the trial court that this was a loan rather than a sale. Evidence that James's parents did not record the deed, that the mortgage and insurance were still in James's name, and that the parents kept the property in the event James and Karen would want it back upon repayment of the \$6,000 tends to support the trial court's decision.

II. Inequity of the Property Division. Respondent alleges that the division of the real and personal property is inequitable. However, if the Avenue B property is considered as being awarded to James, the division seems fair and equitable. We feel the trial court considered not only the Avenue B residence in its division of property, but all the remaining relevant factors concerning not only the real property but also the automobiles and the household fixtures. We concur with its decision.

III. The Sale of the Avenue K Property. Respondent alleges that, in order to do equity, the trial court should have ordered the Avenue K residence sold

and the proceeds divided. We feel this is not necessary in light of the affirmance of the trial court's treatment of the Avenue B property.

IV. Child Support. We agree with respondent that the award of child support is excessive. The evidence shows that the respondent earns only \$623.00 net per month, while Karen earns \$932.00 net per month. Both parents have an obligation to support their children. In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976). To require him to pay \$225.00 a month for child support would place on his shoulders an inordinate hardship.

Th [court] must be mindful not only of the needs of the children but of the divorced father. He should support his children the best he can. But it will not do to burden him to the extent that all incentive is to be destroyed. The Bible has expressed the thought in these words: "You shall not muzzle an ox when he treads out the grain." Deuteronomy 25:4. Some balance must be found between the needs of the children and the father's ability to pay.

Yansky v. Yansky, 172 N.W.2d 114, 118 (Iowa 1969); White v. White, 251 Iowa 440, 442-43, 101 N.W.2d 18, 20 (Iowa 1950); see also Weiland v. Weiland, 255 Iowa 477, 481, 122 N.W.2d 837, 1 A.L.R.2d 377. We conclude that the amount should be reduced to \$175.00 per month.

V. Interest on the Lien. We believe that James is entitled to interest on the \$7,000 lien on the Avenue K house, and accordingly, order that said lien shall draw interest at ten percent per annum on the unpaid balance, until the lien is fully paid. Therefore, we modify the order to provide for 10% interest commencing from the date the decree was entered.

We affirm the trial court's disposition of the property in the decree, but modify the child support order to allow \$175.00 per month, and also modify the decree to provide for 10% interest to be added to the \$7,000 lien against petitioner's Avenue K property.

AFFIRMED AS MODIFIED.