

FILED

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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF JOAN KATHLEEN POTHOVEN & JOHN PHILLIP POTHOVEN

Upon the Petition of)

JOAN KATHLEEN POTHOVEN,)

Filed February 5, 1980

Petitioner-Appellant,)

and Concerning)

JOHN PHILLIP POTHOVEN,)

$$\begin{array}{r} 365 \\ \hline 2-63398 \end{array}$$

Respondent-Appellee.)

Appeal from Mahaska District Court - James D. Jenkins, Judge.

Petitioner-wife appeals economic provisions of dissolution decree. - Affirmed as Modified.

Joseph L. Marks, of Marks, Marks & Marks, Urbandale, for petitioner-appellant.

Garold F. Heslinga, of Heslinga & Heslinga, Oskaloosa, for respondent-appellee.

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

PER CURIAM

Petitioner-wife Joan Kathleen Pothoven appeals from the decree dissolving her marriage to John Phillip Pothoven, contending that the property division, alimony, child support, and attorney fees provisions were insufficient and inequitable. We modify certain provisions and affirm the decree as modified.

Joan and John were married on May 31, 1968. They had three children: Beverly, eleven; Laura, ten; and Jason, eight. The parties agreed that Joan should receive custody of the children. Joan was awarded occupancy of the house until the youngest child reaches age eighteen or graduates from high school, whichever is later; household goods; and the family car. Joan was required to pay all the costs of occupancy of the home including mortgage payments, taxes, insurance, and maintenance until the house was sold. John was awarded his bank stock, and a lump sum award amounting to two-thirds of the net assets of the marriage including the equity in the house, the household goods, and the equity in the car, or \$18,833 plus interest at seven percent per annum. Upon sale of the house, John is to receive two-thirds of the net proceeds, or the \$18,833 lump sum plus interest, whichever is greater. John was also ordered to pay Joan \$150 per month alimony for two years, \$450 per month child support until the youngest child reaches eighteen or graduates from high school, whichever is later, and \$300 for Joan's attorney fees incurred at trial.

Our review is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of fact, but we are not bound by them. Iowa R. App. P. 14(f)(7).

I. In assessing whether a property division is fair and equitable, we are guided by the considerations set out in 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). There is no statutory prescription for a one-third or a one-half share; the determinative question being what is fair and equitable under the circumstances and in light of the Schantz considerations. In re Locke, 246 N.W.2d 246, 251 (Iowa 1976); In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975). In light of the circumstances of this case, including John's role as the primary wage-earner, and the award of possession of the assets to Joan, we cannot conclude that the award of the value of two-thirds of the marital property to John was unjust or inequitable. See In re Marriage of Tucker, 213 N.W.2d 498, 501 (Iowa 1973).

II. We also consider the Schantz factors in determining whether the alimony award was appropriate. Although alimony and the allocation of property rights are distinct awards serving different purposes, they are still so closely related that they must be considered together to determine whether the total award is equitable. Cooper, 225 N.W.2d at 919; In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974). Payment of alimony is not an absolute right, and it depends on the particular circumstances of each case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). Those circumstances include the needs of the spouse requesting alimony balanced against the other spouse's ability to pay. In re Marriage of Murray, 213 N.W.2d 657, 660 (Iowa 1973).

The record shows that John has a net monthly income in excess of \$1600, while Joan nets approximately \$185 per month working part-time. Joan's monthly expenses including maintenance of the home exceed \$1000. Prior to the marriage, Joan was employed full-time as a secretary, and the trial court determined that given some time to update her secretarial skills, Joan could return to full-time work. Consequently, the trial court awarded Joan \$150 per month alimony for two years.

It was apparently contemplated by the parties prior to the cause giving rise to the dissolution that Joan would only work part-time to allow her to maintain the household and provide for the basic needs of the children. If it can be reasonably avoided, a mother with the custody of young children should not be compelled to obtain full-time work outside the home. In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974); Youel v. Youel, 218 N.W.2d 449, 451 (Iowa 1974). Consequently, we believe the period that John is required to pay alimony should be extended from two to four years. By doing so, we are allowing Joan two extra years to spend with the children, and, at the same time, develop her secretarial skills to prepare for full-time employment. We are also allowing the children to gain two years of maturity so that they will be less dependent on their mother when the time comes for her to work full-time.

Furthermore, we think the amount of alimony awarded is inadequate. The trial court contemplated that under the decree's provisions, Joan would have difficulty maintaining the home, and speculated that, to relieve that difficulty, the home might have to be sold before all the children reached eighteen. However, we recognize the

children's need for stability after the disruption caused by this dissolution, and we conclude that Joan should be given every opportunity to raise them in the same home. See In re Marriage of Florke, 270 N.W.2d 643, 645 (Iowa 1978); In re Marriage of Beeh, 214 N.W.2d 170, 174 (Iowa 1974). Consequently, we conclude that Joan's award of alimony should be increased from \$150 to \$200 per month.

We see further justification for this increase when we consider the property division award of two-thirds of the marital assets to John. John will receive two-thirds of the proceeds of the sale of the house. We think it is appropriate that he be required to contribute sufficiently to the maintenance of the house to justify the ultimate benefit he will receive when it is sold.

III. For these same reasons, we conclude that the award of child support should also be increased. After consideration of the factors stated in In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974), we determine that John's child support obligation should be increased from \$450 to \$600 per month. We also conclude that John shall be required to continue to maintain his life insurance policies with the children as beneficiaries.

IV. Joan also contends that the award for attorney fees incurred at trial of \$300 was inadequate. The elements to be considered in determining reasonable attorney fees are set out in In re Marriage of Jennerjohn, 203 N.W.2d 237, 245 (Iowa 1972) and In re Marriage of Jayne, 200 N.W.2d 532, 534 (Iowa 1972). The trial court has considerable discretion in the allowance of attorney fees, Locke v. Locke, 263 N.W.2d 694, 696 (Iowa 1978), and our consideration of the Jennerjohn and Jayne factors leads us to conclude that its determination was reasonable.

Joan also seeks attorney fees incurred by this appeal. In evaluating a request for attorney fees incurred on appeal, we must consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Stom, 226 N.W.2d 797, 800 (Iowa 1975). Without fixing the amount of Joan's attorney's services, we conclude that John should be required to pay \$1200 toward Joan's attorney fees incurred by this appeal. Costs are taxed to John.

AFFIRMED AS MODIFIED.

Oxberger, C.J., dissents.

OXBERGER, C.J. (dissenting)

The majority relies on In re Marriage of Tucker, 213 N.W.2d 498, 501 (Iowa 1973), as authority for awarding the husband two-thirds of the marital assets when he is the principal wage earner. I do not agree Tucker requires such a division nor do I agree the division here is equitable. The record shows John's present annual salary is \$28,500 and Joan grosses \$2352 annually in her part-time job. John does not need extra capital to enlarge his holdings. I believe Joan's contributions to the marriage were equal to John's. I would divide the marital assets equally between the parties.