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IN THE COURT OF APPEALS OF IOWA CLERK SUPREME COURT

IN RE THE MARRIAGE OF KENNETH E. LUKAVSKY AND JEANNE B. LUKAVSKY

Upon the Petition of)

KENNETH E. LUKAVSKY,)

Filed September 21, 1978

Appellee,)

And Concerning)

JEANNE B. LUKAVSKY,)

586
2-60969

Appellant.)

Appeal from Linn District Court - William R. Eads, Judge.

Respondent-wife appeals from economic and visitation provisions of marriage dissolution decree. Affirmed with Modification.

Maurice L. Nathanson, of Cedar Rapids, counsel for appellant.

H. Edward Beatty & John C. Monroe, of Cedar Rapids, counsel for appellee.

Submitted to Donielson, Acting C. J., Snell and Oxberger, JJ. Carter, J., takes no part.

DONIELSON, Acting C. J.

Respondent Jeanne B. Lukavsky appeals from the dissolution decree granted by the trial court ending her 12-year marriage to petitioner Kenneth E. Lukavsky. Section 598.21, The Code 1977, provides: "When a dissolution of marriage is decreed, the court may make such order in relation to the children, property, parties, and the maintenance of the parties as shall be justified." Respondent Jeanne asserts that the trial court was unjustified (1) in not awarding her permanent alimony, (2) in awarding her only one-half of the equity in the parties' real estate and burdening her share with attorney fees, (3) in decreeing that petitioner Kenneth has the right to claim the parties' three children as income tax dependents, (4) in reserving assessment of court costs until a later date, (5) in requiring her to pay some of the parties' debts, (6) in awarding an excessive amount of visitation to Kenneth, and (7) in requiring her to make copies of the children's report cards for Kenneth.

Our review is *de novo*. Rule 4, Rules of Appellate Procedure. Although we give weight to the trial court's findings of fact, we are not bound by them. Rule 14(f)(7), R. App. P. With regard to property settlement and alimony, we are guided by the criteria set forth in *Schantz v. Schantz*, 163 N.W.2d 398, 405 (Iowa 1968), without regard to fault. In *re Marriage of Williams*, 199 N.W.2d 339, 345-346 (Iowa 1972). Precedents are of little value and a determination of what is equitable depends upon the facts of each case. In *re Marriage of Romig*, 207 N.W.2d 780, 783 (Iowa 1973).

Initially we consider the alimony award and property settlement. Neither party brought any significant assets into the marriage in 1965. What they now have was accumulated by their joint efforts, Kenneth by working and supporting the family and Jeanne by caring for the home and rearing the children.

At the time of trial, Kenneth had a full-time job which netted him \$952 monthly and a part-time sales job which netted him \$100 monthly. He stated he would like to quit the second job as soon as possible, although there was testimony that he had held it for several years for the purpose of purchasing products at a discount. Jeanne secured part-time employment after the parties separated. The parties' major asset is a home built by them valued at the time of trial at \$59,000 - \$64,000, subject to a \$27,671.62 mortgage. The remaining joint obligations at the time of trial totalled \$7,503, including

debts of \$660 incurred by Kenneth and \$680 incurred by Jeanne subsequent to the separation. These debts were each disputed by the other party.

The trial court awarded Jeanne temporary alimony of \$40 per week for six months. On appeal she contends that the trial court erred in failing to award her permanent alimony. Payment of alimony is not an absolute right. It depends upon the circumstances of each particular case in light of the Schantz criteria. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). At the time of trial, Jeanne was a 31-year old high school graduate with no particular job skills. She had had some health problems resulting in major surgery in June 1977, from which she was making good recovery at the time the dissolution decree was granted. She held full-time employment before the marriage, and indicated that she was willing and expected to work full time outside the home upon the return of good health. Her previous earning capacity was substantial. While we agree with the trial court that Jeanne should not be granted permanent alimony, we extend the temporary alimony of \$40 per week for a period of eighteen months following the expiration of the first six-month period, for a total of two years. This should enable Jeanne adequate time to recover completely from her surgery and find a full-time job outside the home.

Jeanne next contends that the trial court erred in awarding her only one-half of the equity of the parties' real estate and burdening her share with attorney fees, and in requiring her to pay \$1087 of the parties' joint obligations. By reserving to Kenneth an additional \$740 from the equity of the home, the trial court was in effect requiring each party to pay his or her own attorney fees. We think the trial court was justified in attempting to make an approximately equal distribution of the assets of the parties under the principles in Schantz. We believe the property division which was ordered accomplished that purpose fairly although not precisely, and we find no merit in Jeanne's contention to the contrary. See In re Marriage of Wahl, 246 N.W.2d 268, 271 (Iowa 1976).

Kenneth was ordered to pay \$6416, or over 85 percent of the obligations of the parties. The debts Jeanne was required to pay (one-half of a Sears charge account, insurance on the car she was awarded in the settlement, and the \$680 owed to her parents and disputed by Kenneth) were suggested as appropriately charged to Jeanne in

a proposed decree submitted to the court by her counsel. Given the nature of these debts, and the many debts assumed by Kenneth, the trial court properly ordered Jeanne to pay them. In re Marriage of Zoellner, 219 N.W.2d 517, 522 (Iowa 1974).

At trial, Kenneth requested that he be allowed to claim the two younger children as income tax dependents. In the dissolution decree the court granted him the right to claim all three children Jeanne contends that the trial court's ruling was not based on the record and was unjustified. Awards of dependency deductions are directly related to the matter of child support allowances. In re Marriage of Habben, 260 N.W.2d 401, 403 (Iowa 1977). The trial court awarded child support in the amount of \$35 per week for each child, and awarded the deductions in conjunction with this. Since this is a *de novo* review the proposal by both parties that dependent deductions be split could be allowed. Both parents will contribute to the support of the children. It is our view that federal and state tax dependency deductions should be allocated so that Jeanne is entitled to the deduction for the oldest child and Kenneth to the youngest two.

In detailing the distribution of the parties assets, the trial court decreed that each party receive one-half the equity in the parties' home, granting Jeanne 30 days to purchase Kenneth's share if she wished to remain living there. Assessment for court costs were reserved until Jeanne decided how she would dispose of the homestead. She appeals from this reservation. There is no indication in the record or in the parties' briefs filed for appeal as to how Jeanne disposed of the homestead or if court costs have yet been assessed. We find the trial court was justified in reserving assessment of court costs until Jeanne had determined the disposition of the property. Similar reservations have been made as to attorney fees. See *In re Zoellner's Marriage, supra*. Costs in the district court are to be assessed to Kenneth, pending a determination of such costs.

We review now the visitation provisions of the decree. Custody of the parties' three children was not in issue. The trial court's decree essentially provided for visitation for Kenneth every third weekend from 4:00 p.m. Friday until 7:00 p.m. Sunday, two hours on the second Thursday evening after each visitation weekend, alternate holidays, 3 days during Christmas vacation and four weeks every summer divided into two week periods. The best interest of the children requires continuing association with the non-custodial parent unless the contrary is shown. *Donovan v.*

Donovan, 212 N.W.2d 451, 453 (Iowa 1973). The testimony of Dana Ehrhart of the Family Service Agency indicated that each child expressed a "great amount of care for each parent," and "wanted to be with each parent as much as possible." Visitation can help foster a close and continuing relationship that will benefit both parent and child, and we believe the trial court was justified in ordering this visitation. See In re Marriage of McBee, 244 N.W.2d 327, 329 (Iowa 1976).

The trial court also ordered Jeanne to furnish Kenneth with copies of the children's report cards and to notify him of any health or disciplinary problems. The trial court expressed concern that the parties direct their energies to working together for the future best interests of the children. We find the trial court was quite justified in requiring the custodial parent, Jeanne, to involve the non-custodial parent, Kenneth, in the academic development of the children, and reiterate the trial court's concern. We find the issue on appeal utterly lacking in merit.

Finally, attorney fees for this appeal are sought by Jeanne. Such fees are not allowed as a matter of right and any award must depend upon financial circumstances and earnings of both parties. In re Marriage of Peterson, 227 N.W.2d 139, 142 (Iowa 1975). We find Kenneth should pay \$750 toward Jeanne's attorney fees. By so doing we do not fix the amount to be charged by Jeanne's attorney; we have only decided what portion Kenneth should pay. In re Marriage of Peterson, 227 N.W.2d at 143. Costs on appeal are assessed one-half to Jeanne and one-half to Kenneth.

We remand for entry of a decree consistent with this opinion.

AFFIRMED WITH MODIFICATION.

All judges concur except Oxberger, J. dissents.

OXBERGER, J. (dissenting)

I dissent. Kenneth earns \$17,000 annually. Jeanne was nineteen when they married and throughout the marriage devoted herself full-time to the duties of housewife and mother. She has the major custodial responsibilities for the three children. She has no particular job skills; she underwent major surgery in June of 1977 just before the trial court made its decree. I would award her alimony of \$40 per week for five years or until she remarries, whichever first occurs.