FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF SUSAN MYRA SIEMS AND EDWIN RAY SIEMS

Upon the Petition of)

SUSAN MYRA SIEMS,)

Petitioner-Appellant,)

And Concerning)

EDWIN RAY SIEMS,)

Respondent-Appellee.)

243

Filed February 26, 1986

5-635
85-186

Appeal from the Iowa District Court for Hardin County (No. 4-55) David R. Hansen, Judge.

Petitioner wife appeals from the decree dissolving the parties' marriage. **AFFIRMED AS MODIFIED.**

Gordon D. Greta of Greta & Greta, Eldora, for petitioner-appellant.

Walt H. Byers, Des Moines, for respondent-appellee.

Considered by Oxberger, C.J., and Donielson and Snell, JJ.

DONIELSON, J.

Petitioner wife appeals from the decree dissolving the parties' marriage. She asserts that the property division is inequitable and that the trial court should have directed respondent husband to pay more of her attorney fees. She also requests attorney fees on appeal.

Petitioner, Susan Myra Siems, and respondent, Edwin Ray Siems, were married in 1968. They have three children who range in age between ten and fifteen years old. Susan is a clerk at a K-Mart Store. Edwin has been involved with various businesses, including construction and fur-buying.

The parties stipulated that Susan would have custody of the children; they also agreed on a division of their personal property. The trial court directed Edwin to pay $550 per month child support. The trial court also ordered the parties' house sold. The net proceeds were to be used to pay off two debts that the parties jointly incurred against the house and then divided equally between the parties; provided that a third debt against the house incurred solely by Edwin was to be paid before Edwin received any of the proceeds. All three debts, totalling $30,500, against the house apparently related to Edwin's fur-buying business. The trial court also awarded Edwin his fur-buying business and two parcels of real estate with negative net values. The trial court denied Susan's request for attorney fees; it found that Edwin had paid $3,000 toward Susan's attorney fees while the action was pending and that he should not be required to pay more.

Our review is de novo. Iowa R. App. P. 4. While we give credibility to the findings of the trial court, we are not bound by them. Iowa R. App. P. 14(f)(7).

I.

The parties have a bleak financial situation. The trial court noted that Susan was a dedicated mother raising three children, trying to make ends meet.

The parties own a house valued at $54,000 with $24,000 in equity and a remaining mortgage of $30,000. In addition to the mortgage, which is held by the Ackley State Bank, the house is also encumbered by three notes held by the same bank which are in the amounts of $9,500, $11,000, and $10,000. These notes were entered on May 5, 1982; December 2, 1982; and January 14, 1983, respectively. All of these notes were for loans to the fur business, but Susan only cosigned the first two notes. The trial court ordered that the house be sold, the proceeds would be applied to pay the parties' notes and, as to Susan, any remaining funds would be divided equally. This means Susan would receive $12,000 in proceeds, but have to pay $10,250 towards the first two notes she signed. Edwin would receive $12,000 and have to pay $20,250 (representing one-half of the first two notes and the entire balance of the third note).

Susan seeks two alternatives: (1) that the house not be sold until the youngest child reaches majority age under In re Florke, 270 N.W.2d 643, 645 (Iowa 1978), and In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977), or (2) that if the house is sold, she not be held responsible for the notes because they were for Edwin's fur business and she did not cosign to the second extension on the $9,500 note or any of the three extensions on the $11,000 note which relieves her of an obligation to pay under American State Bank v. Leaver, 261 Iowa 124, 129, 153 N.W.2d 348, 351 (1967).

First, this case is distinguishable from Florke and Willcoxson because in this case the parties' debts and the foreclosure action require the house to be sold, whereas in Florke and Willcoxson the parties could pay the debts. Second, Susan seeks to be relieved from the $9,500 and $11,000 notes because she did not cosign on any of the extensions. Leaver involved an accommodation party which means a party that cosigns a note but none of the loaned funds are transferred to such party. See Iowa Code § 554.3415 (1985). Susan was not an accom-

modation party, but was a co-debtor. Thus, the rule on extension which is used to protect the rights of an accommodation party is not present here. Further, the notes covered the fur business from which both parties reaped benefits during their marriage.

Susan's monthly net income from her job is $564 and she receives $550 in monthly child support, which totals $1,114. Susan claimed monthly expenses of $1,105, which were submitted as follows:

IDS Life Insurance	$ 16.41
Hot Lunches (3 boys)	24.00
Car Payment	157.88
Loan Payment to Pioneer F.S. & L.	60.00
Cable TV	10.25
Natural Gas (average)	92.00
IPS Electric	75.00
Water/Trash Pickup (average)	30.00
Telephone	35.00
AT&T	3.70
Car Expenses (estimated)	100.00
Medical, Dental, Optometric	35.00
House Insurance	12.00
Car Insurance	10.00
Clothing/Shoes (estimated)	100.00
Groceries	344.00
Miscellaneous (sports equipment, school activities, etc.)	60.00
Property Taxes (estimated monthly)	27.00
	$1,105.24

Thus, Susan nets $9 per month. Susan seeks to keep the house at least until the children have reached majority age. While we can appreciate the financial straits Susan faces because her expenses do not account for rent and she must house three children, we cannot hold that Edwin is able to bear this financial responsibility either. Susan claims it is inequitable for her to split the debts on the two notes with Edwin because he was awarded the fur business. We find it equitable for the parties to split the debts on the two notes and for Edwin to take the fur business because the business is not profitable and Edwin has sole liability for at least $26,000 of debts.

Apparently, Edwin purposefully keeps poor financial records but claims to gross $1,050 monthly and has monthly expenses of $1,094. Edwin stated he could clear $1,400 a month and was ordered to pay $550 in monthly child support. If the house is sold and Susan rents an apartment, $69 in monthly expenses (house insurance, property taxes, and garbage) would not be present and the $167 for gas and electricity would surely decrease. While we do not seek to impose Draconian measures which would leave the children homeless, we find certain monthly expenses which should be eliminated from the budget of a financially-struggling family (e.g., $10.25 monthly for cable television) and other expenses which should be decreased (e.g., $100 monthly clothing and $100 car expenses).

Even though Susan will not be relieved from the two notes she signed as a co-debtor, we modify the distribution of property so that any remaining proceeds after the mortgage and two notes are satisfied shall be awarded entirely to Susan. Based on the figures presented, Susan will receive $3,500 in equity instead of $1,750. Susan shall receive such proceeds regardless of whether or not the $10,000 note entered into on January 14, 1983, is paid by Edwin.

II.

Edwin placed $9,637 in a trust account upon commencement of these proceedings to cover his attorney fees and temporary support obligations. Edwin has paid $3,000 towards Susan's attorney fees and $3,000 towards his attorney fees. The remaining funds in the account were spent on child support. The trial court did not order an additional award to Susan. Susan seeks an additional $4,793 for trial attorney fees and $3,970 for appellate attorney fees.

The court considers the resources of the party requesting such fees, the ability of the other party to pay, and whether the requesting party was obligated

to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981).

Neither party has substantial resources, although Edwin's record-keeping practices complicate this finding. However, Susan, not Edwin, sought this appeal. In addition to the $9,637 Edwin set aside for attorney fees and support payments, he had furs in storage valued at $2,000. We note that Susan was held responsible for $20,500 worth of debts from the fur business and yet the business, with its other debts and earning capacity, was awarded to Edwin. We find that Edwin should contribute an additional $1,000 toward Susan's appellate attorney fees, which represents one-half of the value of the furs in storage. Susan shall pay the remainder of her attorney fees.

AFFIRMED AS MODIFIED.