FILED
AUG 26 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF TIMOTHY J. WARDLOW AND DARCIA D. WARDLOW

Upon the Petition of)
TIMOTHY J. WARDLOW,) Filed August 26, 1980
Petitioner-Appellant,)
And Concerning) 0-205
DARCIA D. WARDLOW,) 2-63818
Respondent-Cross-Appellant.)

Appeal from Scott District Court - Margaret S. Briles, Judge.

Petitioner-husband appeals and respondent-wife cross-appeals from economic provisions of their dissolution decree. AFFIRMED.

Seymore M. Raben of Davenport, Iowa, for petitioner-appellant.

Gary M. Lane of Berger and Lane, Davenport, Iowa, for respondent-cross-appellant.

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

PER CURIAM

Petitioner-husband appeals and respondent-wife cross-appeals from provisions of their dissolution decree. Petitioner claims the child support award and the division of property is inequitable. Respondent claims she should be awarded alimony as well as attorney fees for this appeal. Our review is de novo. Iowa R. App. P. 4. We affirm the provisions of the decree.

I. The parties were married in 1974. Two children were born in this marriage, in 1975 and in 1978. Petitioner filed for dissolution in 1978, and the decree was entered in 1979. Custody of the two children, which was not contested, was awarded to respondent. In addition, respondent had custody of three other children by previous marriages for whom she is receiving total support payments of $85 per week on an irregular basis. Petitioner is a methods engineer. His current take-home pay is approximately $1300 per month. Respondent, on the other hand, is unskilled and in any event, wishes to stay home to take care of her five children. Trial court awarded respondent child support in the amount of $125 per week until one of the two children of the marriage reaches 18 or finishes high school, whichever occurs later. When only one such child is left to support, payments will be reduced to $85 per week.

Petitioner claims the support award is excessive. We cannot agree. The factors to be considered in determining a proper award are listed in In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974). Applying those factors to this case, we find that respondent is unskilled and in any event, does not want to work outside her home so that she can care for her children ("if it reasonably can be avoided a mother in custody of young children should not be compelled upon dissolution of her marriage to work outside the home." Zoellner, 219 N.W.2d at 525). In addition, the decree orders respondent to pay off the two mortgages on the house, such payments total about $230 per month. Although precedents in support cases are of little value, it is interesting to note that Zoellner increased a support award for two children from $250 per month to $400 per month. We cannot say that $125 per week for child support is excessive.

II. Petitioner next claims that the division of property ordered in the decree is inequitable. We disagree, applying the criteria found in Schantz v. Schantz, 163 N.W.2d 398 (Iowa 1968).

Petitioner vehemently complains that the trial court gave almost everything to respondent, leaving him only a few personal possessions. Petitioner overstates his case. In fact, the trial court effectively awarded each party what originally belonged to each.

The house was awarded to respondent who owned it before the marriage. Petitioner claims he spent a great deal of money in home improvements and furnishings. However, respondent's brother and father provided free labor in doing the home improvements. Respondent is responsible for mortgage payments of $230 per month. Petitioner has admitted, as he must, that respondent has to have a place to live with her five children and that she could not hope to find comparable living quarters without incurring tremendous expense. Petitioner was awarded the 1977 Ford truck (mortgage thereon to be paid by him), all his personal porperty, bank accounts and other assets in his name, including an interest in a deferred profit-sharing plan, the current value of his interest in which is over $16,000 and which amount he will receive on his retirement. In addition to the house, respondent was awarded a 1974 Ford LTD automobile, all the home furnishings and other assets in her name. Considering the parties' current financial status, and the assets brought into the marriage by each party, we are not disposed to disturb the property settlement.

III. Respondent argues, albeit not very forcefully, that she should be awarded alimony, at least until the youngest child could be started in preschool, at which point she could go back to work. The trial court may take the property division into account in determining whether alimony should be awarded. Zoellner, 219 N.W.2d at 524. Here, respondent unquestionably got the greater share of the marital property. In addition, we must consider petitioner's financial situation. Although he has a well-paying job, the record in this case also shows many expenses: approximately $500 per month in child support ($125 per week), $300 per month room and board, and about $120 per month for medical and insurance coverage for the two children as ordered by the decree, as well as his own personal expenses. In addition, he is also ordered to pay the mortgages on the two vehicles of the marriage (one of which was awarded to the wife), $525 as his prorated shares of delinquent real estate taxes, all other bills incurred during the marriage not specifically made payable by respondent, and a significant portion of her attorney fees. An additional expense of alimony along with everything else would place a severe financial burden on petitioner. There was no error in not awarding alimony.

IV. Respondent finally claims petitioner should pay her attorney fees for this appeal. He has already been ordered to pay $500 of her pre-appeal fees. Those orders are not at issue here. Any such award of fees, which are not allowed as a matter of right, must consider the financial circumstances and the earnings of each party. In re Marriage of Burham, 283 N.W.2d 269, 278 (Iowa 1979). Since respondent has no income

of her own and petitioner does, an award of fees to respondent is proper. Without determining respondent's obligation to her attorney, we direct that petitioner pay the sum of $700 to apply upon such fees. Costs are assessed three-fourths to petitioner; one-fourth to respondent.

AFFIRMED.