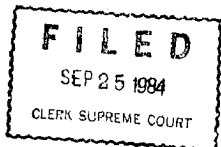


IN THE COURT OF APPEALS OF IOWA



IN RE THE MARRIAGE OF CAROLYN KEINROTH AND JOHN KEINROTH

UPON THE PETITION OF)
CAROLYN KEINROTH,)

Petitioner-Appellant/Cross-Appellee,)

AND CONCERNING)
JOHN KEINROTH,)

Respondent-Appellee/Cross-Appellant.)

Filed September 25, 1984

4-296
83-1483

Appeal from the Iowa District Court for Carroll County, M. D. Seiser,
Judge.

Petitioner-wife appeals and respondent-husband cross-appeals from the
economic provisions and award of fees in the decree dissolving the parties'
marriage. AFFIRMED.

Arthur A. Neu of Minnich & Neu, Carroll, for petitioner-appellant.

Barry T. Bruner of Bruner & Bruner, Carroll, for respondent-appellee.

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

The petitioner-wife in this appeal, Carolyn Keinroth, challenges the economic provisions of the parties' divorce decree. She claims error in the court's decision to approve the stipulation of the parties regarding division of their property. She says that she contributed to the skill and training of the respondent, John Keinroth, and that the property settlement should reflect her contribution to his increased earning potential. Petitioner also disagrees with the trial court action restricting the last five years of the years of alimony payments on the condition she not remarry or cohabitate with an adult male. Respondent cross-appeals saying the conditions she not remarry or cohabitate in order to obtain alimony should apply to the entire ten years. Respondent further argues child support payments ordered were excessive and that he should not have to pay her court costs and attorneys fees. Petitioner asserts respondent should pay her expert witness fees and her attorney fees incurred in this appeal. We affirm the trial court in all respects.

Carolyn was thirty-three years old at the time of trial, and John was thirty-six years old. The divorce petition was filed March 1983. The couple has two children still living at home, and Carolyn was awarded custody. Neither couple brought significant assets to the marriage. John has been employed by Fareway Food Stores, a job which has required him to move five times in nine years, and sell four homes. Carolyn stopped working after the first four years of the marriage to care for the couple's children and coordinate the moves. Each time John moved, she remained behind to sell their home. John's salary was \$16,597 in 1978 and has steadily increased. He is now store manager in Carroll, and his income depends on three components: a weekly salary, a quarterly bonus, and a second quarterly profit based on the corporation's profits. His 1982 income was \$65,069.13. He states that with changes in competition his estimated salary will be between \$55,000 and \$60,000. The court accepted his income for the next year

as \$56,000. Carolyn has obtained secretarial work on a part-time basis, earning ⁸¹\$100 per week. The court approved of her plans to attend college to obtain a bachelor's degree, noting it would take five years, but would increase her earning potential and compensate for her ten years out of the job market. It ordered John to pay alimony of \$600 per month for 121 months, with alimony ending in the first five years if either party dies, and ending in the second five years if either party dies, or Carolyn remarries or cohabitates with an adult male. Child support was set at \$500 per month per child.

Carolyn says her situation is similar to that of the wife's in In re Marriage of Horstmann, 263 N.W.2d 885 (Iowa 1978). There, the wife had worked and sacrificed in order for her husband to obtain his law degree, and the couple divorced just as he was beginning to reap the benefits of his education. Id. The court held that the sacrifices one party makes so that another may benefit through increased education or skill may be considered in determining property and alimony awards. Id. at 891. It indicated that while a law degree was not property, the increased earning potential of the husband made possible by the wife's efforts was an asset of the couple. Id. Carolyn says she has made extensive sacrifices so that John may enhance his earning potential, and that only now is he receiving the benefits of those efforts. John counters that this case is unlike Horstmann because, among other things, he never obtained a degree or license, and points out his financial and other contributions to the family. Any future earnings he obtains, he says, will be the result of his future efforts and not because of any past education or training.

We believe this situation is not the same as that in the Horstmann case. In that case the court noted, "This situation. . . is not analogous to a situation where both parties held full-time jobs that did not pay enough for them to accumulate any assets, or where one party held a job and the other took care of the child, or

where one or both of the parties could not obtain employment; and in all of these situations, neither one is likely to be better off in the future as a result of the employment situation and sacrifices during the marriage." Id. at 888. (emphasis added). Therefore, the Horstmann situation requires something more than the situation where the wife or husband stays home to care for children and maintain the home. The key question, as indicated by Horstmann, is whether one party "would be more likely to be better off financially in the future than (the other) because of the employment arrangement and sacrifices of the marriage." Id. at 889.

In this case Carolyn made significant contributions to the marriage in raising the children, maintaining the house, and coordinating the couple's moves. However, John also sacrificed with long hours at work, frequently working twelve hours a day, six days a week. We believe there is a difference between the natural increase in earnings accompanying hard work over a long period of time, and the instance where one party contributes directly to another's earning potential. This situation is closer to the former. John has obtained no degree and procured no skills or training other than experience on the job. Each party contributed to the marriage.

This is not to say the Carolyn's contributions and absence from the job market are not to be considered. Both this, and John's earning capacity, are factors to be considered when the court distributes assets or awards alimony. Iowa Code § 598.21(1)-(3)(1983). We believe the property award and alimony payments ordered by the trial court accurately provide for an equitable result here. The court decided each party had made equal contributions to the marriage and divided the property as the parties stipulated, leaving Carolyn with an approximate \$2500 advantage. The court noted the couple had little property to divide. In awarding alimony, the first five years while Carolyn is in school were to

be definite payments, ending only if either party died. It is not until the last five years that it would end upon her remarriage or cohabitation. Neither party is happy with this arrangement; Carolyn says there should be no conditions on her alimony, John claims the court cannot do this, and the conditions should apply to the entire ten years, since alimony is for the support of the former wife. However, we believe this award allows Carolyn to better her position through education after she spent ten years out of the job market caring for the family. While these circumstances are not those of the Horstmann case, we believe John's greater earning capacity must figure in the alimony award. Carolyn, John, and the children will benefit if she is allowed to better her earning power.

Our courts have considerable discretion in shaping an alimony award to provide for equity. In In re Marriage of Seidenfeld, 241 N.W.2d 881 (Iowa 1976) the court also faced a situation where the wife had remained at home to raise the children and maintain the household, while the husband had advanced in his career. Id. at 883. There, the court ordered the husband to pay alimony for three years so that the wife could obtain training to advance her earning capacity. Id. at 884. The payments were definite and did not end with the wife's remarriage or the husband's death. Id. We find the trial court's property division and alimony award here were proper and equitable.

Carolyn also says the trial court should not have accepted John's estimation of his future income. In a de novo review, we give weight to the findings of the trial court, particularly when the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7). We agree with the trial court that, considering all the variables in computing John's income, it is difficult to predict, and accept the trial court figure of \$56,000 as John's projected income. The trial court also pointed out that if there is a significant change in John's income, that would constitute a sufficient change for modification of the support awards.

83.1

We also affirm the trial court's child support award for the two children at \$500 per month per child. In his testimony, John indicated this was an appropriate amount. Considering the income of John and the factors set out at section 598.21(4) of the Iowa Code, the award was proper.

The trial court's decision to require contribution from John to Carolyn's attorneys fees and costs at trial is also affirmed. In determining a contribution to such costs, we look at the financial situation of the requesting party and the other party's ability to pay. Locke v. Locke, 263 N.W.2d 694, 696 (Iowa 1978). Considerable discretion is given to the trial court in making such an award. Id. These factors apply to decisions regarding other litigation costs as well. See Arnold v. Arnold, 257 Iowa 429, 445, 133 N.W.2d 53, 63 (Iowa 1965). We uphold the trial court decision declining to require John to pay the expert witness fees Carolyn incurred.

On appeal, we look at the needs of the party requesting contribution to attorneys fees, the party's ability to pay, and the results on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981). Considering the results on Carolyn's appeal, John's cross-appeal, the fact that John's income is double that Carolyn and the two children will be living on, and without fixing an amount for attorneys fees, we order John to contribute \$1968 to Carolyn's attorneys fees incurred on appeal.

AFFIRMED.