

IN THE COURT OF APPEALS OF IOWA

FILED

DEC 30 1981

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IN RE THE MARRIAGE OF VICKY LYNN FOSTER AND RANDALL EUGENE FOSTER

Upon the Petition of	)	
VICKY LYNN FOSTER,	)	Filed December 30, 1981
Petitioner-Appellee,	)	
And Concerning	)	
RANDALL EUGENE FOSTER,	)	<u>1-421</u>
Respondent-Appellant.	)	66641

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

Respondent-husband appeals from the economic provisions of the parties' dissolution decree. AFFIRMED AS MODIFIED.

Randy S. DeGeest of Morse & DeGeest, Oskaloosa, Iowa, for respondent-appellant.

David D. Dixon of Heslinga & Heslinga, Oskaloosa, Iowa, for petitioner-appellee.

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

Respondent-husband appeals from the economic provisions of the parties' dissolution decree. He argues that the property division is inequitable because he had to assume all of the parties' debts and that the amount of child support ordered is too high. We modify the child support and otherwise affirm the trial court.

Vicky and Randall Foster were married September 7, 1974, and are the parents of one child, a minor son. Both have high school educations with some additional training received on the job, and both have worked throughout the marriage with the exception of about seven months Vicky remained at home. During 1980, the last full year before the dissolution, Vicky earned \$7,200 working full time as a city clerk while Randall earned \$7,100 parttime as a carpenter.

The parties entered into a stipulation approved by the court by which Randall received title to the house the couple was buying on contract with a judgment against Randall awarded to Vicky in the amount of \$1,500 to be a specific lien against the real property. Vicky was given custody of the couple's son with visitation rights reserved to Randall. The issue of child support was submitted to the court for its determination. In making this determination, the court stated Randall was ordered to pay child support in the amount of \$65 each week until their son is 10 years of age (he was two years old at time of trial), and then to pay \$90 each week until the son graduates from high school or reaches age 18, whichever comes last.

Although the division of the property was essentially done by agreement of the parties, Randall now challenges this decision on appeal, apparently because he was ordered to pay the debts of the parties. The trial court found that the debts largely were owed on items or property given to Randall and that he should therefore be responsible for them. We agree, and affirm that part of the court's decree having to do with division of the couple's property and debts.

Randall also challenges the amount of child support he has been ordered to pay. He contends that the amount is completely out of his reach to pay and that Vicky has a responsibility to better her financial status and carry a larger share of the burden of raising their son herself. Vicky argues that any other possible job for her is highly speculative and that her income is achieved by a full year of work. On the other hand, as the trial court also noted, Randall's income was earned by working only part of 1980; the trial court and Vicky on this appeal maintain that the proper measure of Randall's ability to pay support is his earning capacity. The court found that Randall's current financial condition was voluntary and self-inflicted in part because he preferred hunting and fishing to job-hunting.

The trial court and Vicky are correct in their interpretation of legal principles in that a person cannot reduce his income to avoid paying reasonable support. Ellis v. Ellis, 262 N.W.2d 265, 268 (Iowa 1978). Vicky and her son's expenses are documented and needed. From the record it appears that Randall does have the capacity to earn substantially more, either at his chosen trade of carpentry or by seeking employment at more lucrative factory work which may be available in the area. On the other hand, given Randall's current work record and the mere possibility that there is in fact more work for him to do in either carpentry or factory work, we think the amount of child support awarded is unrealistic. The amount of child support is therefore lowered, and Randall is ordered to pay \$45 each week as child support throughout the period specified in section 598.1(2), The Code. This weekly amount due is retroactive to the date of the trial court's decree, and Randall shall be given credit for any amount in excess of this figure that he has paid. Costs are assessed equally between the parties.

AFFIRMED AS MODIFIED.