

FILED

NOV 19 1979

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JAMES P. PRIER AND MARGARET L. PRIER

UPON THE PETITION OF)

JAMES P. PRIER,)

Petitioner-Appellant,)

AND CONCERNING)

MARGARET L. PRIER,)

Respondent-Appellee.)

Filed November 19, 1979

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2-62875

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

Petitioner-husband appeals economic provisions of dissolution decree alleging trial court's decree was inequitable in its division of property, in requiring petitioner to make child support payments for the parties' son after he becomes 18 years old or completes high school, and in awarding respondent alimony. **AFFIRMED WITH MODIFICATION.**

Donald G. Senneff of Shaff, Farwell & Senneff, Clinton, for petitioner-appellant.

J. Reed Doughty of Winstein, Kavensky, Wallace & Doughty, Rock Island, Illinois,
for respondent-appellee.

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

PER CURIAM

Petitioner-husband, James P. Prier, appeals economic provisions of decree dissolving his marriage to respondent-wife, Margaret L. Prier. Petitioner alleges trial court's decree was inequitable: (1) in its division of property; (2) in requiring petitioner to make child support payments for the parties' son, Martin, after he becomes 18 years old or completes high school; and (3) in awarding respondent alimony. We affirm with modification.

Petitioner and respondent were married 24 years and had five children, two of whom were minors at the date of dissolution: Martin, age 17; and Scott, age 11.¹ Martin developed cancer in his left arm at the age of 13 and, as a result, has lost the arm by amputation. He is mentally retarded, has emotional problems, is hyperactive and is hard to control.

Petitioner, age 47, is in good health and employed as an operating engineer in construction. He is paid \$11.80 an hour and, after withholding for social security and income taxes, has approximately \$315 a week take-home pay.² He receives approximately \$124 per week unemployment benefits during the months when work is unavailable. Petitioner has health and medical insurance and is the beneficiary of a pension program, all of which are through his union.

Respondent, age 46, has an eighth grade education. She is not in good health, having suffered congestive heart failure and gall bladder ailments, the latter of which required surgery two weeks prior to trial. During the school year, she has been employed as a day-time bartender, earning approximately \$3,000 per year.

In its decree, trial court ordered petitioner to pay respondent alimony in the amount of \$50 per week so long as respondent lives and remains unmarried. Alimony will increase to \$75 per week at such time as there is only one dependent child in the home. Trial court imposed \$75 per week child support for the two children and ordered support for Martin to continue until he reaches age 18 or completes high school, whichever occurs later. The support for Martin is to continue thereafter so long as he is dependent upon the parties because of his physical and mental disabilities.

¹ The parties' original marriage of September 27, 1951 ended in divorce in June, 1953. They remarried August 17, 1954.

² His gross income for 1977 was approximately \$17,000.

Of the approximately \$91,300 in personal assets acquired by the parties during their marriage, respondent was awarded \$49,800 while petitioner received \$41,500. Petitioner also was ordered to pay a \$5,000 loan from respondent's brother which was used to finance one of the older daughter's weddings.

I. Scope of Review. Appellate review of a dissolution proceeding is *de novo*. Iowa R. App. P. 4; Zinger v. Zinger, 243 N.W.2d 639, 640 (Iowa 1976). The court is guided by section 598.21, The Code 1977, which directs the court to make orders relating to children, properties, parties and their maintenance as is justified, and by section 598.17, The Code 1977, which directs the court to provide reasonable support for dependent children or either spouse.

II. Division of Property. Petitioner asserts trial court's division of the property is unjustified. On review of the record, however, we cannot agree. We cannot divide the property with mathematical precision. In re Marriage of Briggs, 225 N.W.2d 911, 913 (Iowa 1975). Neither party brought anything of substantial value to the marriage. The assets were acquired through the joint efforts of both parties during the marriage. In applying the Schantz criteria,³ we particularly note in this instance respondent's extraordinary efforts in the care of Martin and the liquid nature of petitioner's assets as compared with those awarded to respondent. Although respondent received approximately \$8,300 more than petitioner, respondent's share of the assets include a house which provides a home for the parties' two minor sons. Such a distribution of property is fair and equitable under the circumstances.

III. Child Support. Petitioner also urges trial court should not have ordered support for Martin until he is no longer dependent upon his parents. Once again, we find petitioner's contentions unpersuasive.

Generally, support payments ordered in a dissolution proceeding must cease when the child reaches age eighteen. Locke v. Locke, 246 N.W.2d 246, 250 (Iowa 1976). Payments may be extended, however, if a child of any age is dependent on the parties to a dissolution proceeding due to physical or mental disabilities. Section 598.1(2), The Code 1977. The record in this case establishes the fact Martin falls within this exception. He has lost an arm due to cancer. In addition, he is hyperactive and has emotional problems for which he is receiving special education in school. Consequently,

³ Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except fault, In re Williams' Marriage, 199 N.W.2d 339, 344 (Iowa 1972).

there is a strong probability Martin will be a dependent child for some time due to inability to care for himself or earn a living in adult society. So long as Martin's disability continues, petitioner has a duty to provide support.

IV. Alimony. As a final issue for review, petitioner alleges trial court should not have awarded alimony to respondent in light of the property settlement. In any event, petitioner claims the amount allowed respondent is excessive.

Applying the criteria of Schantz, 163 N.W.2d at 405, except fault, In re Williams' Marriage, 199 N.W.2d at 344, we find the award of alimony to be equitable. Respondent's health is not good. She has little education and no real marketable skills. Respondent is charged with the care of the parties' two minor children. It will be some time before she will be free to engage in full-time employment. In light of the other provisions of the decree, however, we find no special circumstances justifying alimony as a charge on petitioner's estate. We, therefore, modify trial court's decree to provide for alimony to respondent only until her remarriage or the death of either party.

V. Attorney Fees. Respondent has applied for an award of attorney fees on appeal in the amount of \$1200. We do not determine the amount respondent's attorney is entitled to receive in this case, but merely any amount petitioner will be required to pay. In re Marriage of Horstmann, 263 N.W.2d 885 (Iowa 1978). Petitioner is ordered to pay \$600 of those fees. Costs of this appeal are assessed against petitioner.

Trial court's judgment is affirmed with modification.

AFFIRMED WITH MODIFICATION.