FILED
AUG 29 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

373

IN RE THE MARRIAGE OF SHARON L. SONIER AND HENRY A. SONIER

Upon the Petition of)

SHARON L. SONIER,)

Petitioner-Appellee,) Filed August 29, 1985

And Concerning)

HENRY A. SONIER,) 5-265
84-730

Respondent-Appellant.)

Appeal from the Iowa District Court for Woodbury County - Dewie J. Gaul, Judge.

Respondent husband appeals from the decree dissolving the parties' marriage. He asserts that the district court erred in the amount of the property division, child support and alimony awarded to petitioner. He further asserts that the district court erred in awarding attorney fees to petitioner. AFFIRMED AS MODIFIED.

William A. Shuminsky of Shuminsky & Molstad, Sioux City, for respondent--appellant.

Karen M. McCarthy of Baron & Wenell, Sioux City, for petitioner-appellee.

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

PER CURIAM

Petitioner Sharon L. Sonier and respondent Henry A. Sonier were married in 1965. The couple had twins who were seventeen at the time of trial.

In 1965, Sharon had all of the household goods and appliances to furnish a home and she brought these into the marriage. She also owned a vehicle which she brought into the marriage and purchased their wedding rings. Henry got out of the Air Force in 1965 and had no household furnishings nor a car at that time.

Henry became a refrigeration specialist and is presently employed by Iowa Beef Processors. At trial, Henry estimated his 1983 net earnings at $14,000 or $15,000. However, his affidavit of financial status indicates his net income is $17,000. The trial court found that he had a net income of $17,000 per year.

Sharon held a variety of part-time jobs during the marriage, including running a day care center at home. However, at the time of trial Sharon was unemployed. She was receiving $315 per month from ADC, $35 in food stamps, $175 per month from babysitting. Sharon also received $325 per month for the care of a foster child with cerebral palsy.

The parties' major marital asset was their home, which at the time of trial was the subject of a foreclosure decree. The parties' right to live there was to terminate as of July 1984.

The parties' separation occurred in 1982. Henry was transferred to Kansas by his employer. He initially sent back $600 per month for support of the family, but he later ceased the contributions. In May of 1983, the marriage was dissolved by decree of a Kansas court. In June of 1983, the district court ordered Henry to pay $200 per month child support until the entry of an order in the present action.

The district court ordered Henry to pay child support payments of $225 per month for each child until each child attains eighteen. The same payments were to continue after eighteen, so long as the child meets the educational criteria set forth in Iowa Code section 598.1(2).

The court also ordered Henry to pay alimony of $100 per month until Sharon dies, remarries, or cohabits with a person of the opposite sex, or March 31, 1987 arrives, whichever event occurs first.

Finally, the court awarded Sharon $2,800 in personal property and awarded Henry nominal personal items.

Our review is de novo. In re Marriage of Deck, 342 N.W.2d 892, 894 (Iowa Ct. App. 1983). We give weight to the fact findings of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7).

Property Division. The factors we consider to determine if a property division is equitable are set forth in Iowa Code section 598.21. In this case, the parties' have few marital assets to divide. They lost their major asset in the home foreclosure action. Therefore, the personal property of the parties is the subject of this property division dispute.

Before the marriage, Sharon owned all of the household goods and appliances to furnish a home. It is most appropriate that she should leave the marriage with the great majority of such household items.

Furthermore, Henry testified that all he wanted were his guns, archery and fishing gear, clothes, rolltop desk, and Bible. The trial court awarded him these items.

We find the property division to be equitable and affirm the order of the lower court.

Alimony. In light of the great disparity in earning capacity of the parties, we conclude that the alimony award of $100 per month to Sharon is proper.

Child Support. The child support award until each child reaches eighteen is affirmed. However, the conditional award beyond the age of eighteen is inappropriate at this time. The twins were seventeen at the time of trial and and are now over eighteen years of age. Under Iowa law, support must cease when a child reaches the age of eighteen unless the evidence establishes that one of the statutory provisions applies. In re Marriage of Byall, 353 N.W.2d 103, 107 (Iowa Ct. App. 1984). Iowa Code section 598.1(2) provides that the parental support obligation may include support for a child who is between the ages of eighteen and twenty-two years who is pursuing further vocational training or college education.

To determine the appropriate amount of the educational support obligation, consideration must be given to a variety of factors including whether the twins are or will be full-time or part-time students, if they can be employed while they are students, and if they can be self-sustaining during the time they are students. See Byall, 353 N.W. 2d at 107. There is no evidence in this record that either child will be an adult student. Therefore, even conditionally imposing the statutory obligation of support beyond the age of eighteen upon Henry is not proper at this time.

We affirm only the trial court's award of child support of $225 per month for each child until each attains the age of eighteen.

The trial court is vested with considerable discretion in allowing attorney fees to be awarded in dissolution cases. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa 1983). The allowance here appears fair and reasonable and should not be disturbed.

Furthermore, in evaluating a request for attorney fees on appeal, the appellate court must consider the needs of the party making the request and the ability of the other to pay. In re Marriage of Castle, 312 N.W.2d 147, 150

(Iowa Ct. App. 1981). We order respondent to pay $500 of the attorney fees incurred by petitioner on appeal.

AFFIRMED AS MODIFIED.