FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

589

IN RE THE MARRIAGE OF BARBARA J. DORENKAMP and LARRY A. DORENKAMP

BARBARA J. DORENKAMP,
Petitioner-Appellant,
And Concerning
LARRY A. DORENKAMP,
Respondent-Appellee.

Filed September 23, 1980

0-265
2-64176

Appeal from Cerro Gordo District Court - B. C. Sullivan, Judge.

Petitioner-wife appeals from economic provisions of dissolution decree claiming trial court erred in failing to award her more alimony, child support and attorney fees. AFFIRMED.

Phillip J. Stone of Stillman, Goranson & Stone, Clear Lake, Iowa, for petitioner-appellant.

R. Michael Sweesy of Mason City, Iowa, for respondent-appellee.

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

Petitioner-wife appeals from economic provisions of dissolution decree. She claims trial court erred in failing to award her more alimony, child support and attorney fees. She also contests that portion of the decree regarding disposition of the parties' Clear Lake home. Our review is de novo. Iowa R. App. P. 4. We affirm.

I. Larry and Barbara Dorenkamp were married in 1968. Three children were born—Steve in 1969, Matt in 1973 and Larry in 1977. Barbara filed her petition seeking dissolution on September 22, 1978. A hearing was held on August 29, 1979, and on September 7, 1979, the decree was entered. Barbara was awarded custody of the three children subject to Larry's reasonable visitation rights. She was also awarded the household goods, a 1973 Chevrolet car in her possession, and two bank accounts, one of which was in the amount of $1,000. Larry was awarded a 1973 Pontiac subject to $2,400 indebtedness which he was directed to pay. He was also awarded a boat and motor, his interest in a pension fund maintained by his employer, Northwestern States Portland Cement Company, and various life insurance policies with the children being named as beneficiaries. He was also directed to maintain those policies as well as Blue Cross-Blue Shield in effect for the children's benefit until they reach eighteen years of age, marry or become self-supporting. Finally, he was ordered to pay a debt to Sears in the amount of $475.

Larry and Barbara were joint owners of a house in Clear Lake. This joint ownership was ordered to continue with Barbara having the right of occupancy with her children until November 1, 1980. She was also ordered to make the necessary mortgage, tax and insurance payments up to that time. Barbara indicated she would earn her certificate as a licensed practical nurse (LPN) in June, 1980 from North Iowa Area Community College, take her state board for an LPN in October, 1980 and will be self-supporting after that time. After November 1, 1980 or if she discontinues her LPN education, the house is to be sold. Barbara is to recover the monthly payments made by her as described above from the proceeds. Sale costs and the balance of the mortgage will then be paid, the remainder being divided equally between Larry and Barbara.

Larry was ordered to pay $125 per month for each of the three children in support until each child reaches the age of eighteen, dies or becomes self-supporting. He was also ordered to pay $150 per month in alimony to Barbara while she pursues her LPN education and until November 1, 1980 unless she discontinues her education before that time; at such a time, alimony shall cease. Finally, Larry was ordered to pay $172.50 for Barbara's attorney fees in addition to $350 already paid for that purpose.

II. Before considering Barbara's arguments, it is necessary first to examine the parties' financial situations in light of trial court's decree. The Clear Lake home has a market value of $60,000 with an outstanding mortgage of about $23,800. Pursuant to the decree, Barbara is to make monthly payments of $260 per month until the house is sold, at which time she will recover those payments. She claims total monthly expenses of $1,257.00. At this time she has no income since she is taking classes towards her LPN certification. At that time, however, she expects to earn $8,000-$9,000 per year. In addition, she receives $240 per month from the Comprehensive Employment and Training Act (CETA) to defray educational expenses. She has $1,000 in a savings account which represents one-half of Larry's 1978 income tax refund.

Larry is currently employed at Northwestern States Portland Cement Company with a gross monthly salary of $1,965.19; the net figure is $1,235.14. He owes $2,400 (payable at the rate of $86 per month) on the car awarded to him in the decree. He claims monthly expenses of $684.65.

Barbara claims the alimony, child support and attorney fees awarded her in the decree are insufficient. We do not agree. Regarding alimony and child support, the relevant factors in determining an appropriate award are found in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), and In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974). Initially, we note Barbara is apparently unsure just how much alimony and support she will need to meet her expenses. In her trial brief dated August 29, 1979, she claims total monthly expenses of $1,257.00; in her affidavit in support of application for support dated October 2, 1978, however, her claimed expenses amount to only $902.50. At the hearing she could not say with certainty that $780 per month, her starting salary as an LPN, would not be enough to meet her expenses.

Under the decree, Barbara receives $150.00 in monthly alimony and $375 monthly child support. She also receives $240.00 per month from CETA for educational expenses. She also has $1,000.00 in a bank account and will recover the house payments made by her and one-half of the net proceeds upon the future sale of the house. At that time, alimony will cease but she will also have started her LPN job, earning $8,000 to $9,000 as starting annual salary. Given these various financial resources, we see no reason to disturb the trial court judgment regarding the alimony and support awards.

Barbara also claims trial court erred in failing to award a greater amount for attorney fees incurred at trial. Larry was ordered to pay $172.50 for Barbara's attorney fees in addition to $350.00 previously paid by him. Thus, he was ordered to pay $525.50,

or more than one-half of her total attorney fees of $1,002.50 and expenses of $15.00. Trial court has considerable discretion in allowing attorney fees in dissolution actions. Locke v. Locke, 263 N.W.2d 694, 696 (Iowa 1978). That discretion was not abused here and we see no reason to disturb trial court's ruling on this matter and therefore affirm.

III. The dissolution decree provides that the parties' house is to be sold after November 1, 1980 or if Barbara discontinues her LPN education. She will then recover the house payments made by her pursuant to the decree, pay off the balance of the mortgage and divide the rest evenly with Larry. She claims this portion of the decree is unfair. We disagree.

Section 598.21, The Code 1979, allows the trial court in a dissolution action to "make such [an] order in relation to the . . . property . . . as shall be justified." See, e.g., In re Marriage of Tierney, 263 N.W.2d 533 (Iowa 1978) (trial court in dissolution action may order judicial sale of homestead so that parties' equity can be used to pay business debts). We think the trial court's order is fair. First, as Barbara concedes, Larry should not be forced to wait many years to recover his share of the equity in the house. Second, Barbara herself will benefit. Once the house is sold, she will recover the house payments made by her and will also share in the net proceeds, thus alleviating her current financial problems. Trial court's order is justified and we affirm.

IV. Finally, Barbara asks for attorney fees incurred on this appeal. Such an award is not allowed as a matter of right, but depends on the financial circumstances and earnings of each party. In re Marriage of Burham, 283 N.W.2d 269, 278 (Iowa 1979). Without fixing the amount Barbara's attorneys may charge for this appeal, we find Larry should pay $450 toward that obligation.

AFFIRMED.

All judges concur except Oxberger, C.J., and Snell, J., who dissent.

OXBERGER, C.J. (dissenting)

I dissent.

Alimony is not granted solely for the purpose of rehabilitating and preparing a spouse to become a wage earner, rather than a welfare recipient. It should also serve to continue a life style to which the spouse has contributed by her support and sacrifice. In this case, Barbara sacrificed her career development for ten years and devoted her energies to Larry and the three children. Her actual employment went to further the family's finances rather than developing her independent skills. Her expected earnings of $8000 - $9000 after completion of nursing studies will not compare with Larry's established income of over $23,000. I would award Barbara permanent alimony.

Snell, J., joins in this dissent.