FILED
JUN 24 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IVENA SCHIPPER,)

Plaintiff-Appellant,) Filed June 24, 1980

vs.)

BENJAMIN RAY SCHIPPER,) 0-186
63134

Respondent-Appellee.)

Appeal from Polk District Court - Anthony M. Critelli, Judge.

Petitioner-wife appeals from a dissolution decree challenging her property award as inadequate. Respondent-husband cross-appeals challenging the trial court's order that he pay $2,500 toward the petitioner's attorney fees. AFFIRMED AS MODIFIED.

Louis R. Hockenberg of Wasker, Sullivan & Ward, Des Moines, Iowa, for plaintiff-appellant.

P. F. Elgin of Elgin, Hoyman & Clogg, Indianola, Iowa, for respondent-appellee.

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

Petitioner-wife appeals from a dissolution decree challenging her property award as inadequate. The respondent-husband cross-appeals challenging the trial court's order that he pay $2,500 toward the petitioner's attorney fees. We affirm the decree with slight modification.

I. Petitioner challenges the $18,000 cash property award which she received as inadequate. Such award was in addition to the household furnishings and a 1977 Lincoln automobile, the value of which is not shown in the evidence. It also appears that petitioner, at the time of the separation of the parties, took and retained $7,000 from the parties' mutual cash assets. Respondent was required to pay all debts of the parties, including several incurred by petitioner after the separation.

Petitioner is 41 and respondent is 36. The marriage between the parties lasted slightly more than five years. The trial court found, and we agree, that the value of property brought into the marriage by each was about equal. Respondent has a $400 per month child support obligation from a previous marriage.

During the marriage the parties bought and sold real estate for a gain of approximately $37,000. Thirty thousand dollars of this amount was invested in respondent's tiling business. This business, according to financial statements offered at the trial, has a net worth of only $2,500. All interest in this business was awarded to respondent by the trial court.

In determining the cash award to petitioner of $18,000, the trial court stated that it intended this to compensate petitioner for about one-half of the gain on the sale of the real estate which was put into respondent's business. On appeal petitioner asserts that her property award should instead have been computed on the basis of 50% of the value of respondent's business, which she claims to be $39,242. We are unable to determine precisely how petitioner arrives at a value of twice $39,242 for respondent's business. We assume this has been done by totally disregarding accumulated depreciation of $75,000 on the assets of the business. While some of this rapid depreciation write-off claimed by respondent may not provide a fair reflection of the assets' true value, we are not prepared to say that all depreciation should be disregarded. If only half of this depreciation is considered in arriving at the 50% value of the business, the result is substantially close to the $18,000 sum which the trial court awarded to petitioner under a different theory. In the application of the criteria found in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1976), without regard to fault, we find

that the $18,000 award is not inequitable. In so finding, we have considered, as so did the trial court, the potential interest of the respondent in a family trust. We agree with the trial court that such interest should not serve to alter the property division which has been made.

II. We next consider petitioner's claim that it is inequitable to permit respondent to pay the $18,000 obligation in 121 equal monthly installments. Such a payment schedule may be justified in a proper case in order to provide for favorable tax consequences. But given the relatively small sum involved here, we deem that the entire $18,000 should be paid forthwith. In addition, we direct that petitioner shall receive 9% interest per annum on said sum since the date of the trial court's decree, said sum to be paid by respondent in addition to the principal amount of $18,000.

III. Lastly, we consider respondent's claim on cross-appeal that he was required to pay an excessive amount for petitioner's attorney fees. Attorney fees in dissolution of marriage proceedings are not recoverable as a matter of right. Any such allowance depends upon the wife's financial needs and the ability of the husband to satisfy them. In re Marriage of Zoellner, 219 N.W.2d 517, 523 (Iowa 1974); Geisinger v. Geisinger, 202 N.W.2d 44, 47 (Iowa 1972). While the fees allowed by the trial court are on the high end of the scale, we conclude that it was not an abuse of discretion to award this sum.

The trial court's decree is affirmed as herein modified. Costs are taxed 3/4 to petitioner; 1/4 to respondent. Each party shall be responsible for his or her own attorney fees on appeal.

AFFIRMED AS MODIFIED.