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MAY 26 1981 219

CLERK SUPREME COURT

IN THE IOWA COURT OF APPEALS

IN RE THE MARRIAGE OF STEPHEN RAY HENNEMAN AND CONNIE KAY HENNEMAN

Upon the Petition of)

STEPHEN RAY HENNEMAN,)

Filed May 26, 1981

Petitioner-Appellant,)

And Concerning)

CONNIE KAY HENNEMAN,)

1-56
2-649II

Respondent-Appellee.)

Appeal from Cerro Gordo District Court - M. L. Mason, Senior Judge.

Petitioner husband appeals from economic provisions of the parties' dissolution decree, contending that the property division and the child support award are inequitable. **AFFIRMED AS MODIFIED.**

M. Wayne Oltrogge, Clear Lake, for petitioner-appellant.

Gilbert K. Bovard of Laird, Burington, Bovard, Heiny & McManigal, Mason City, for respondent-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

Petitioner Stephen Henneman appeals from the economic provisions of the parties' dissolution decree, contending that the property division and child support award were inequitable. Respondent Connie Henneman requests attorney fees on appeal. We affirm the decree as modified.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4.

I.

The six and one-half year marriage of the parties was dissolved by a decree entered on March 6, 1980. The respondent wife was awarded custody of the parties' three-year-old daughter and the petitioner was ordered to pay \$300 per month in child support. The respondent was also awarded personal effects, most of the household goods and furniture, a 1977 automobile, and the entire \$8400 equity in the parties' home; her share of the property division amounted to somewhat over \$10,500. The petitioner was awarded various items the total value of which was approximately \$1300, but since he was also required to pay over \$1000 of the parties' debts incurred prior to the filing of the petition, his share of the property division was approximately \$300. Both parties were 25 years old at the time of trial. Respondent wife is a secretary and nets \$588 per month. Petitioner is a route supervisor for a beer company and earns a net income of \$888 per month.

II.

Petitioner contends that he should have been awarded some share of the parties' equity in the house and we agree. As the property division now stands, the respondent received approximately 97% of the parties' assets. Although we acknowledge that there is no mechanical rule that each spouse must receive one half of the marital assets, In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980), we think that the result in the instant case is neither equitable nor justified by the criteria enumerated in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968) (modified to exclude fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972)). The parties are the same age and have attained essentially the same level of education. Both are in good physical and mental health; both were employed outside the home during the marriage to provide financial support for the family. While it is true that the petitioner nets approximately \$75 per week more than the respondent and the latter has custody of the parties' minor child, we do not think that these factors alone justify denying the petitioner any share in the

house. Consequently, we modify the decree to provide that the house be sold upon the occurrence of any of the following: 1) when the youngest child attains the age of 18; 2) when the respondent dies or remarries; or 3) when (and if) the respondent cohabits in the house with a member of the opposite sex. When the house is sold, respondent shall pay to the petitioner \$4200 plus 10% interest thereon in satisfaction of petitioner's equitable interest in the house. Should the parties reach a mutual decision to sell the house before the time we have specified, the same provisions apply. In order to secure respondent's obligation to the petitioner, we hereby create a lien on the house in petitioner's favor.

III.

Petitioner further contends that the child support award of \$300 per month is inequitable and requests that it be reduced to \$225 per month. We decline to reduce the award.

Section 598.21, The Code 1979, which provides statutory authority for child support awards upon dissolution of marriage, is designed to enforce the "legal as well as moral duty of support between parent and child." In re Marriage of Zoellner, 219 N.W.2d 517, 524 (Iowa 1974). Both parents are under the same legal duty to support their children. In re Marriage of Wahl, 246 N.W.2d 268, 272 (Iowa 1976). The obligation to support, however, is not necessarily to be borne equally, but should be apportioned according to the reasonable ability of each parent to contribute. In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976); Wahl, 246 N.W.2d at 272. While precedent is of little value in determining the extent of the child support obligation and each case is dependent upon its own particular facts, Zoellner, 219 N.W.2d at 525, the Iowa Supreme Court has set forth various criteria to be considered in the determination. Id. Careful examination of these factors leads us to conclude that a support award of \$300 per month is justified in the instant case.

The respondent wife has a net income of \$588 per month and at the present time pays \$559 per month for babysitting, mortgage payments, and transportation alone. We also note that she does not receive alimony under the decree. It is obvious that she can realistically contribute virtually nothing to the support of the parties' child. Petitioner nets \$888 per month; requiring him to provide \$300 in child support leaves him, like the respondent, \$588 per month to live on. For all these reasons, we affirm the child support provisions of the decree.

IV.

Finally, the respondent has requested attorney fees incurred in this appeal. In evaluating such a request, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Erickson, 228 N.W.2d 57, 59 (Iowa 1975); In re Marriage of Stom, 226 N.W.2d 797, 800 (Iowa 1975). On the basis of these considerations, we think the respondent is entitled to \$600 to apply on her appellate attorney fees.

AFFIRMED AS MODIFIED.