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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MARVIN WILHITE AND PHYLLIS WILHITE

504

Upon the Petition of)
MARVIN WILHITE,) Filed February 23, 1983
Petitioner/Cross-Appellant,)
And Concerning)
PHYLLIS WILHITE,) 2-527 / 2-68683
Respondent-Appellant.)

Appeal from Cerro Gordo District Court - J. W. Frye, Judge.

Respondent-wife appeals from the economic provisions of the parties' dissolution decree asserting that both the property division and the alimony award were inequitable. Petitioner-husband cross-appeals asserting that the alimony award should be terminable upon his death, that the child support award should have been made payable directly to the child and that he should receive credit for certain amounts expended on behalf of the child, and that the wife should not be awarded additional attorney fees. AFFIRMED AS MODIFIED.

Phillip L. Garland, Garner, Iowa, for respondent-appellant.

Joel J. Yunek of Laird, Burington, Bovard, Heiny, McManigal & Walters, Mason City, Iowa, for petitioner/cross-appe

Considered en banc.

JOHNSON, J.

Respondent Phyllis Wilhite appeals and petitioner Marvin Wilhite cross-appeals from economic provisions of the parties' dissolution decree. Respondent wife asserts that both the property division and the alimony award were inequitable. Petitioner husband asserts that the alimony award should be terminable upon his death, that the child support award should have been made payable directly to the child and that he should receive credit for certain amounts expended on behalf of the child, and that the wife should not be awarded additional attorney fees.[1] We affirm with modification.

The parties were married in 1965 and were, respectively, 60 and 55 at the time of trial. The husband is a truck driver with 1981 gross income of $31,351. He planned to retire in April, 1983, at which time he would have a monthly income of $1271 from social security and a pension plan. The wife testified that she had a 1981 income of approximately $4100 from employment as a waitress/cook. The parties accumulated few assets during the marriage.

The wife was awarded custody of the husband's youngest child from a previous marriage; the child turned 18 shortly after the decree was entered. The husband was ordered to pay to the wife child support of $200 per month until the child reaches the age of 22 so long as she is continuing her post-high school education and continues to live with the wife. No credit was allowed for an inheritance of $1964.77 received by the husband and apparently expended on the child's behalf. The wife was awarded alimony, terminable upon her death or remarriage, of $200 per month through April, 1983, to be reduced to $100 per month thereafter. She was also awarded certain household furnishings, her bank accounts, and attorney fees of $500. The husband was awarded a 1972 Chrysler, a 1974 Ford truck, a travel trailer, his bank account, and certain other items of personal property. From this decree the parties appeal.

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[1] We note that niether party requests attorney fees. Petitioner's argument is in rebuttal to a claim for fees respondent never makes.

I. Scope of Review.

Since this is an action in equity, our review is de novo. Iowa R. App. P. 4. In equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the trial court, but is not bound by them. Iowa R. App. P. 14(f)(7).

II. Alimony.

Respondent complains that the award of alimony in the amount of $200 per month, to be reduced later to $100 per month in May 1983, was inadequate. We agree.

The record reveals that respondent was age 55 at the time of dissolution. The respondent's earnings outside the home in 1980 were approximately $204. Respondent possesses an eleventh grade education, and her last employment was as a cook at a local cafe. The respondent's health is also questionable due to removal of a kidney in 1970 and a problem with high blood pressure.

Petitioner is currently employed as a truck driver with an income of approximately $31,000 a year. Petitioner plans to retire from that occupation in April of 1983 at which time he will have a monthly income of about $1271 from social security and a pension plan. While petitioner complained of health problems, the trial court found this was not supported by the evidence.

In light of Iowa Code section 598.2(3) (1981), we are aware that the weight to be accorded alimony as a means of rehabilitation and training is decreased for a 55-year-old woman in questionable health and, accordingly, focus more on the support aspects of alimony. Based upon our review of the record, we are convinced that the alimony awarded to respondent should be increased to $300 per month, effective from the date of entry of the final decree in this matter, to be reduced to $200 per month upon petitioner's retirement. Alimony shall terminate upon the death of either party or upon respondent's remarriage.

III. Property Settlement.

Respondent claims the trial court erred in making its property division by failing to grant her a travel trailer valued at approximately $1,200, and in awarding petitioner both autos. The trial court found that the parties did not have substantial property Pbut did have considerable indebtedness. Petitioner was ordered to satisfy all the indebtedness of the parties. A part of the total indebtedness was secured by the autos and the travel trailer. Based upon our de novo review, we find the trial court's division of property was equitable. See Iowa Code § 598.21(1) (1981).

IV. Child Support.

The trial court ordered that petitioner pay respondent $200 per month child support for Jayne Wilhite. Jayne is the natural daughter of petitioner and the stepdaughter of respondent. Jayne's natural mother died soon after her birth, and respondent is the only mother she has ever known. Jayne is currently 18 years old, but the support was ordered to continue until Jayne reached age 22, so long as she was a full-time student in a post-secondary institution. The payment of support to respondent was also limited to the time when Jayne resides with respondent.

Petitioner argues that respondent has no right to the custody of Jayne and, accordingly, has no right to support payments for Jayne. The record reveals that Jayne resides with respondent, along with a natural child of respondent from a prior marriage, and that both children contribute to the expenses of the household. Petitioner requests that any child support for Jayne should be paid directly to Jayne.

The court in In re Marriage of Jones, 309 N.W.2d 457, 462 (Iowa 1981) modified a decree to provide that the father pay sums to an emancipated daughter until age 22 so long as she was enrolled as a full-time student. We find the imposition of such a condition persuasive under the present facts as well. Accordingly, we modify the decree to provide for direct payments of $200 per

month to Jayne by petitioner until she reaches age 22 so long as she remains a full-time student. Payment of this support is not conditional upon the child's residing with respondent. While we require $200 per month, we encourage petitioner to supply "additional assistance if he is able to do so, in this period of mounting educational costs." Id.

We have reviewed the parties' other conditions and find them to be without merit. Accordingly, we affirm the trial court's decree as modified.

AFFIRMED AS MODIFIED.