FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ALLEN G. SPROUT AND NANCY C. SPROUT

Upon the Petition of)
ALLEN G. SPROUT,)
Petitioner-Appellant,)
And Concerning)
NANCY C. SPROUT,)
Respondent-Appellee.)

307

Filed October 28, 1982

2-255
2-67067

Appeal from Scott District Court - J. L. Burns, Judge.

Petitioner-husband appeals from the decree dissolving the parties' marriage, asserting that the property division, alimony, and child support awards are inequitable. Respondent-wife requests attorney fees on appeal. AFFIRMED AS MODIFIED.

Seymore M. Raben of Raben, Liebbe, Shinkle & Bremer, Davenport, Iowa, for petitioner-appellant.

H. Reed Doughty of Winstein, Kavensky, Wallace & Doughty, Rock Island, Illinois, for respondent-appellee.

Considered en banc.

Petitioner-husband, Allan G. Sprout, appeals from the decree dissolving the parties' marriage, asserting that the property division, alimony and child support awards are inequitable. Respondent-wife, Nancy C. Sprout, requests attorney fees on appeal. We affirm as modified.

Petitioner and respondent were married in 1961. They have three children: Carolyn, born in 1962; Carrie, born in 1976; and Christopher, born in 1970. Respondent did some secretarial and clerical work early in the marriage, but has not worked outside the home since then, although she intends to go back to work. Petitioner is a pharmacist and owns 50% of Westfair Drug, Inc., a pharmacy and variety store. At the time of trial, petitioner owned 10 shares of Westfair stock for which he paid $9,100. Petitioner also was buying another 140 shares for approximately $104,000 on an installment plan, toward which he had paid $10,400. He has the use of a Westfair van, and has some additional income from carpentry work.

The trial court awarded respondent custody of the minor children, Carrie and Christopher, and directed petitioner to pay $160 per week child support. This child support was to be reduced to $125 per week when Carrie reached age eighteen. Petitioner was also directed to pay $50 per week alimony and all of the parites' debts. Petitioner was awarded the personal property in his possession, several listed items in respondent's possession, a $300 bank account, all his stock and interest in Westfair, and $8,400 which Westfair then owed him. Respondent was awarded all of the household furnishings and personal property in her possession, a $400 bank account, a 1964 Chevrolet, and the parties' 1980 income tax refund of approximately $1,300. Respondent was also given the right to occupy the parties' house until the youngest child reached age 18, at which time the house was to be sold. Petitioner was directed to pay the mortgage, taxes, and insurance on the house until its sale. The proceeds from the sale of the house

were to be divided equally between the parties, after (1) the costs of the sale were deducted, (2) petitioner was reimbursed for all mortgage payments he made after entry of the decree, and (3) $20,000 was given to respondent "to offset the value of Westfair Drug that was awarded to petitioner."

I. Scope of Review. Our review of dissolution proceedings is de novo. Iowa R. App. P. 4. We review the facts as well as the law and, from the credible evidence, determine rights anew on those issues properly presented. In re Marriage of Horstmann, 263 N.W.2d 885, 888 (Iowa 1978). While we give weight to the trial court's findings of fact, especially with regard to credibility of witnesses, we are not bound by them. Iowa R. App. P. 14(f)(7).

II. Alimony. Petitioner asserts that the alimony awarded surpasses respondent's needs, exceeds petitioner's ability to pay, and provides no incentive for respondent to become self-supporting. We agree.

This court is well aware that "courts are constantly faced with this dilemma of how to divide a total income insufficient for the family needs when the members are separated." Cole v. Cole, 259 Iowa 58, 59, 143 N.W.2d 350 (1966). In support of this proposition, petitioner cites the oft quoted words that "you shall not muzzle an ox when he treads out the grain." White v. White, 251 Iowa 440, 442-43, 101 N.W.2d 18, 20 (1960) (quoting Deuteronomy 25:4).

Our examination of this issue begins with reference to the codified criteria of Iowa Code § 598.21(3) (1981). "When determining the appropriateness of alimony, the trial court must consider: (1) the earning capacity of each party, and (2) present standards of living and ability to pay balanced against relative needs of the other." In re Marriage of Hitchcock, 309 N.W.2d 432, 436-37(Iowa 1981). "Alimony is an allowance to the . . . [former spouse] in lieu of the . . . [other spouse's] legal obligation to support [him or] her." Id. at 437.

The trial court found that:

> Respondent is 39 years of age. She is in good health, although she has had some medication for emotional upset over these proceedings. She has no special schooling or job skills, but feels she can do most office work. She was working as a secretary and billing clerk while petitioner was receiving much of his education. Even though petitioner was working parttime also, her income was used for family expenses during that time.

The record further reflects that the minor children will soon be 15 and 12 years of age, respectively. The facts show that respondent does possess some marketable skills which may be enhanced by additional education and experience. Respondent herself testified as to her desire to secure employment. Respondent contends that because petitioner is a partner in the business enterprise, he is capable of artificially setting his salary at a higher or lower level, depending upon the benefit to be gained by petitioner. In our review, however, we will not consider the inclusion of income which is speculative in nature. See In re Marriage of Heinemann, 309 N.W.2d 151, 152 (Iowa Ct. App. 1981).

Based upon the foregoing, we believe a four-year limit on the alimony award is appropriate. Such limits are appropriate to give respondent time to reenter the job market. See In re Marriage of Schlenker, 300 N.W.2d 164, 166 (Iowa 1981). Accordingly, petitioner is ordered to pay alimony to respondent in the amount of $50 per week for four years from the issuance of procedendo in this case. Such obligation also shall cease upon the death of either petitioner's or respondent's remarriage.

III. Property Division. Petitioner further claims that the property distribution of the trial court is inequitable. Our **de novo** review convinces us that modification of the trial court's disposition of the residence is in order. It is difficult to categorize precisely whether petitioner's obligation for house payments is in the nature of a property division or a support payment since it possesses characteristics of each. Regardless, however, for our purposes, we will

treat the trial court's disposition of the home as a property division since the money expended by the respondent is to be reimbursed upon sale.

The provision outlining the disposition of the residence provides:

> The respondent shall have the right to reside in the home presently owned by the parties until the youngest child attains the age of 18 years, when the respondent dies or remarries, or when (and if) the respondent should cohabit in the home with a member of the opposite sex, or otherwise removes herself from said home, whichever occurs first, at which time the home shall be sold. The petitioner shall pay the house payment, the real estate taxes, and the house insurance during the time respondent and the children reside in the home. . . . The parties shall hold title to the property as tenants in common.
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> When the home is sold, the cost of said sale shall first be deducted from the proceeds. The petitioner shall then be reimbursed for the amount paid on the principal from the date of the decree to the time of sale. $20,000 shall then be setoff to the respondent. This is to offset the value of Westfair Drug that was awarded to petitioner. The balance shall then be divided equally between the parties. Neither party shall be entitled to any interest as this is considered in setting the child support and alimony.

The factors to be examined in the context of a property division are located in Iowa Code § 598.21(1) (1981) and do not warrant repetition here. Additionally, we may consider the alimony award in conjunction with the property division. In re Marriage of Conley, 284 N.W.2d 220, 223 (Iowa 1979).

Consistent with the previous portions of this opinion, we conclude that petitioner's obligation to make house payments also should cease four years from issuance of procedendo, or earlier, upon the occurrence of one of the other contingencies as set forth in trial court's decree. We believe this will coincide with the time necessary for respondent to return to the job market. The priority of payments upon the sale of the house shall remain the same as that stated in the trial court's decree. The property division mandated by the trial court is affirmed in all other respects.

IV. Child Support. Petitioner does not deny his obligation to support his family, however, he asserts that an equitable and more reasonable financial obligation be imposed. We agree.

Again our review is governed by the criteria contained in Iowa Code § 598.21(4) (1981), which need not be repeated here.

> Parents are equally obligated to support their children. Gerk v. Gerk, 259 Iowa 293, 296-299, 144 N.W.2d 104, 107-108 (1966). Disparity in the amount each parent is required to contribute toward child support results from differences in ability of the parents to contribute. Each case is peculiarly dependent on its facts. In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974).

Petitioner was ordered to pay $160 per week child support until the first minor child reaches age 18, at which time the amount was to be reduced to $125 per week. Based upon our **de novo** review, we find the petitioner's child support obligation is too burdensome in light of his income. The record reflects that petitioner's net income is $338 per week, while his court-ordered obligations total $387 per week. Consistent with the previous portions of this opinion, we find that respondent is capable of contributing to the support of herself and her children. Accordingly, we reduce petitioner's child support payments to $125 per week until the first of the minor children attains age 18; at that time the obligation shall be reduced to $100 per week.

V. Attorneys Fees. Respondent seeks $2,500 in attorney fees for this appeal. In awarding attorney fees, this court does not determine what the fee should be for either party, but only that, because of the discrepancy between the present earning capacity of these parties, respondent is entitled to assistance in paying her fee. See In re Marriage of Seidenfeld, 241 N.W.2d 881, 884 (Iowa 1976). Based on the parties' present relative earning capacities, petitioner is ordered to pay respondent the sum of $950 toward her attorney fees.

VI. Summary. The decree of the trial court is modified as follows: (1) petitioner shall pay respondent $50 per week alimony for the two years following issuance of procedendo in this case; (2) petitioner's child support obligation is reduced to $125 per week while both minor children reside with respondent; when the eldest attains the age of 18, the child support shall be further reduced to $100 per week; and (3) petitioner's obligation to make house payments on the current residence is limited to the two years following issuance of procedendo. Trial court's decree is affirmed in all other respects. Petitioner is further ordered to contribute $950 toward respondent's attorney fees.

AFFIRMED AS MODIFIED.