OCT 27 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF LESLIE R. UITHOVEN and DARREL W. UITHOVEN

Upon the Petition of	)	
LESLIE R. UITHOVEN,	)	
Petitioner-Appellee,	)	Filed October 27, 1981
vs.	)	
And Concerning	)	
DARREL W. UITHOVEN,	)	1-346 2-66283
Respondent-Appellant.	)	

Appeal from Marshall District Court - David R. Hansen, Judge.

Respondent-husband appeals from dissolution decree and challenges the division of property, the amount of child support, and the awarding of custody of two minor children to petitioner-wife without making the custody award contingent upon certain conditions. AFFIRMED.

Curtis A. Ward of Mowry, Irvine, Brooks & Ward, Marshalltown, Iowa, for respondent-appellant.

Charles F. Fairall of Fairall, Fairall, Reeves & Kaplan, Marshalltown, Iowa, for petitioner-appellee.

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

PER CURIAM

Respondent-husband appeals from dissolution decree and challenges the division of property, the amount of child support, and the awarding of custody of two minor children to petitioner-wife without making the custody award contingent upon certain conditions. He asserts that he should either have received more personal property and been allowed to retain an equity interest in the couple's house or been given a larger lump sum cash award. He also argues that the child support award of $450 per month was too high and that, in any case, custody should not have been given to the wife unless the court made the custody contingent upon her refraining from premarital sexual conduct. We review these claims **de novo**. Iowa R. App. P. 4; In re Marriage of Joens, 284 N.W.2d 326, 327 (Iowa 1979).

Leslie and Darrel Uithoven were married March 4, 1978, and had two children, approximately one and two years of age at the time of the dissolution. The final dissolution decree was entered January 12, 1981; by its terms Leslie was given custody of the two children and $450 per month child support. No alimony was awarded. Leslie also received the residence, and most of the household goods. Each party retained a vehicle and personal property owned prior to the marriage, each was ordered to repay his or her own education loans as well as one-half of an outstanding loan from Leslie's father. Leslie was also ordered to pay Darrel $2,500.00 in installments of $50 per month for his share of the equity in the house. Annual interest of six percent was imposed upon the unpaid obligation. Both parties have completed their education, Leslie as a registered nurse and Darrel as a mechanical engineer. Both are employed.

I. Property Settlement. Each party received personal property owned before the marriage as well as a car. As to the balance of the property settlement, the trial court specifically found that Leslie had brought $6,937 in cash to the marriage (a gift from her grandmother); Darrel had brought $1,500. The couple initially lived on $1,200 given to them by Leslie's father, student loans to both of them, and part-time jobs by Darrel until after the two children were born and Leslie had graduated, at which time both Darrel and Leslie worked fulltime. They purchased a home for $47,525 using Leslie's money for the down payment and borrowing $4,000 from Leslie's father to cover moving and living expenses. At time of trial, the house was worth $50,000 and had a mortgage against it of $41,600, leaving a net equity of $8,400.

In assigning the house to Leslie the court carefully noted and relied upon sections 598.21(b) and (g), The Code 1981, which read in pertinent part:

> The court shall divide all property, except inherited property or gifts received by one party, equitably between the parties after considering all of the following:
>
> * * *
>
> (b) The property brought to the marriage by each party.
>
> * * *
>
> (g) The desirability of awarding the family home or the right to live in the family home for a reasonable period to the party having custody of any children.

The court then gave its reasons based upon the Code and the facts in the present case for disposing of the house in this manner:

> Because Leslie's grandmother's gift money is tied up in the house and represents most of the equity therein, and because a forced sale would result in a substantial loss of that equity once the expense of sale including a realtor's commission were paid, and because the children are entitled to be raised in as close to the standard of living as they would have enjoyed had there not been this dissolution, the residence property . . . is hereby set off and awarded to the Petitioner to be hers alone in fee simple absolute together with the obligation to assume and to pay the mortgage indebtedness against the same and to hold the Respondent harmless from any liability.

We find that both the trial court's reasoning and result in the division of property is justified under the statutes and applicable case law and that no change should be made with respect thereto.

II. Child Support. The court ordered Darrel to pay $450 per month in child support for the couple's two minor children. The figure was based upon the documented expenses of Leslie and the children[1] and was determined also by considering income earned by both Leslie and Darrel.[2] Given this evidence, we find the amount of monthly support to be needed by the children and within Darrel's ability to pay.

III. Custody. The court awarded custody of the two minor children to Leslie and noted that this was in substantial accordance with the pretrial agreement of the parties. Leslie initially requested that Darrel's visitation be restricted because he had been violent on occasion with her, and Darrel requested that custody in Leslie be contingent upon her refraining from premarital sexual conduct. In the court's final decree, however, no mention was made of either requested limitation. The denial of the

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[1] Leslie demonstrated monthly expenses of $1,413.00 which included $300.00 per month for child care while she was working.

[2] Darrel was earning $1,360.00 gross per month at time of trial and Leslie approximately $1,000.00 (her salary varies with shift differential and overtime).

requested limitations was well within the trial court's discretion and need not be made the subject of relief on this appeal. Future recourse to the court is always available should either situation become a problem to the safety or welfare of the children.

IV. Attorney's Fees. Leslie has requested attorney's fees on this appeal. An award of attorney's fees is within the discretion of the court and is dependent upon the needs of one spouse and the means and ability of the other spouse to pay. In re Marriage of Williams, 303 N.W.2d 160, 167 (Iowa 1981); In re Marriage of Winegard, 278 N.W.2d 505, 512 (Iowa 1974). Leslie has included in her brief an itemized list of these fees. Without fixing the amount of the fee, we order Darrel to pay $450 to be applied towards Leslie's attorney's fees on appeal.

We have considered all of the issues raised by the parties and find no reason to disturb the trial court's disposition of this case. We therefore affirm the trial court.

AFFIRMED.