



468

IN THE COURT OF APPEALS OF IOWA

JAMES D. SCHINTGEN,	)	
Appellee,	)	Filed April 26, 1979
vs.	)	
SHIRLEY M. SCHINTGEN,	)	<u>77</u>
Appellant.	)	2-59002

Appeal from Cerro Gordo District Court - C. H. Wild, Judge.

Wife appeals economic provisions of dissolution decree. - AFFIRMED.

R. Michael Sweesy, Mason City, for Appellant.

Warren L. De Vries, Mason City, for Appellee.

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

PER CURIAM

This is an appeal from a decree dissolving the seven-year marriage of petitioner James Schintgen and respondent Shirley Schintgen. Shirley contends she should receive a more substantial property settlement and should be awarded alimony. We affirm the trial court.

At the time of trial, James, age 50, was employed as a baking instructor with a net income of \$736 per month. Shirley, age 40, had been employed prior to the marriage as a grocery store clerk. She quit this job after marrying James and devoted her energies to maintaining the household and raising James' six children from a previous marriage. The parties also had one child of their own. Custody of this child was awarded to Shirley, and James was given custody of a minor son from his first marriage. Both parties testified they were in good health and capable of gainful employment. Their only substantial asset was the family home valued at \$30,000 with a \$17,056 mortgage.

We review this case de novo and apply the criteria listed in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968) except fault. In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972). Trial court decreed that the family residence be sold with one half of the proceeds given to each party. This provision, combined with the court's further distribution of assets and liabilities, results in an almost equal division of property between the parties. Shirley argues that James overstated his tax liabilities and overvalued the parties' personal property thereby distorting the couple's financial situation in his favor. Based on our review of the record, we find this contention is without merit. We affirm trial court's property settlement.

Shirley next maintains that James should pay her alimony in addition to his \$200 monthly child support obligation. James estimated that monthly living expenses for himself and his son would be \$511. This amount plus the \$200 child support payments to Shirley leave James with a net surplus of only \$25 per month. It appears that Shirley could earn at least the minimum wage if she obtained outside employment. Under the circumstances of this case, we find the trial court was justified in denying alimony. See In re Marriage of Peterson, 227 N.W.2d 139, 142 (Iowa 1975).

Shirley's application for allowance of appellate attorney fees was ordered submitted with the appeal. Although we do not determine the amount Shirley's attorney

may charge, we hold James should pay \$350 towards those fees. See In re Marriage of Wahl, 246 N.W.2d 268, 272 (Iowa 1976).

By order of the supreme court, dated April 6, 1976, each party was required to pay fifty percent of the mortgage, tax and insurance payments as they accrued on the homestead pending appeal. Shirley filed a motion with this court alleging that James has failed to comply with the order and that she has made all the above payments since the date the order was entered. James is responsible for one half of the mortgage, tax, and insurance expenses on the house from April 6, 1976, until the property is sold. If the residence is not sold within 60 days of the date of filing this decision, James shall no longer be responsible for house payments accruing thereafter. In case the parties cannot agree on the amount, if any, which is owing to Shirley for her overpayments, the district court shall hold a hearing to determine the question. This amount shall be charged against James' interest before he takes any of the proceeds of the sale.

Costs on appeal are taxed to James.

AFFIRMED.