IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF MARY ANN OREN
AND GLENN MITCHELL OREN

FILED
DEC 22 1988
CLERK SUPREME COURT

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Upon the Petition of)
MARY ANN OREN,)
Petitioner-Appellant,)
And Concerning)
GLENN MITCHELL OREN,)
Respondent-Appellee.)

8-562
88-112

Appeal from the Iowa District Court for Boone County (D-2314), Newt Draheim, Judge.

Petitioner appeals from certain economic provisions in the decree of dissolution entered for the parties in district court. **AFFIRMED.**

Carmen L. Janssen and David G. Gault, Des Moines, for petitioner-appellant.

John L. McKinney, Ames, for respondent-appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

HAYDEN, P.J. 215

Petitioner-wife appeals from the economic provisions and the decree of dissolution entered for the parties in district court. We affirm.

I.

Petitioner, Mary Ann Oren, and respondent, Glenn Oren, were married in 1977. Both had received college degrees; Mary in social work and Glenn in forestry. In 1978 Glenn became a full-time student doing postgraduate work. He attended Iowa State University for three semesters, but did not get a master's degree, although he apparently completed course work sufficient to fulfill the requirements for the degree. Glenn is employed by Iowa State as a research assistant in electron microscopy at an annual salary of about $25,000. Mary is employed by the Iowa Department of Human Services as a social worker and earns $24,000 per year.

The parties agreed to a property division except that Mary asked to be reimbursed for the support she provided Glenn while he was a full-time student and the support she provided Glenn after they separated in August of 1985. The district court agreed with the parties' property division and awarded Mary a lump sum of $10,600. Mary filed a motion to enlarge findings of fact and conclusions of law on the ground the court did not consider Mary's previous support of Glenn. The trial court ruled that it had considered Mary's support to Glenn in making a

property distribution. Mary now appeals the decision of the trial court.

II.

On appeal, Mary claims she should be awarded the amount of support she provided Glenn while he pursued postgraduate education, claiming Glenn's earning capacity has been enhanced because of his postgraduate work. In addition, Mary argues she should be awarded the amount she provided Glenn for support subsequent to their separation.

Our scope of review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7). Prior cases have little precedential value, we must base our decision primarily on the particular circumstances of the parties in each case. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

III.

Mary raises two issues. First, she argues the trial court was mistaken in failing to award her the support she provided to respondent while he pursued a postgraduate education and second, the trial court failed to award her the support she provided to respondent after their separation. Because both these issues raise

questions about the propriety of the property award and require us to follow the same principles, we review them together.

When determining what constitutes an equitable distribution of property between the parties, it is mandatory we consider the listed factors of Iowa Code section 598.21(1) (1987). In re Marriage of Johnson, 350 N.W.2d 199, 201-202 (Iowa 1984). Although we note it is within our discretion to consider other factors. Id.

Mary specifically directs us to the language of section 598.21(1)(e) which provides the court consider the contribution by one party to the education, training, or increased earning power of the other. Regarding this issue, the supreme court has stated:

> [A] trial court in a dissolution case where proper evidence is presented, may consider the future earning capacity of both parties and in determining those capacities it may consider the education, skill, or talent of both parties. This statement of principle, articulated in Schantz, applies to the court's determination of an equitable distribution of assets and property and to the determination of whether alimony should be awarded and if so, the amount to be awarded.

In re Marriage of Horstmann, 263 N.W.2d 885, 891 (Iowa 1978). Thus, the court held a party's advanced degree is not a property to be divided in value, yet education is a factor to be considered on the parties' earning capacity, especially on the issue of "equitable division of assets." In re Marriage of Janssen, 348 N.W.2d 251, 253 (Iowa

1984). Therefore, the question here is not whether Glenn's training should be considered; manifestly, it is a factor in the case. The question is whether this consideration as well as other factors, permissibly considered, lead us to the same conclusion as the trial court regarding the equitable distribution of property between these parties.

Mary contends the record clearly indicates Glenn's earning potential has been significantly increased due to his further education. Mary testified Glenn did consulting work which netted him as much as $8,000 in outside income, however she conceded the amount he earned for such endeavors varied. On the other hand, Glenn argues his postgraduate education has not significantly increased his earning potential and he did not actually receive a master's degree. In any event, he argues, the incomes earned by the parties are not substantially different; with Glenn earning approximately $25,000 and Mary $24,000 at the time of the dissolution proceeding. In addition, Glenn testified he no longer did consulting work nor did he have plans to do such work in the future.

Our de novo review of the record indicates the property settlement determined in the district court was fair and equitable to the parties involved. Mary alleges the trial court did not take into consideration Glenn's increased earning potential in reaching its conclusion. However, after our painstaking review of the record we agree with the trial court.

Mary also argues the court should have forced Glenn to pay her back for the support she provided him after the separation. Glenn argues the money paid to him during this period was primarily used for bills and the repayment of loans which both parties had incurred together.

Once again we agree with the district court and hold the economic provisions of this decree are fair and equitable to both Mary and Glenn.

AFFIRMED.