

FILED

AUG 26 1980

318

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

BENJAMIN LEVETT BARNES,)

Respondent-appellant,)

Filed August 26, 1980

vs.)

PATRICIA ANNE BARNES,)

Petitioner-appellee.)

0-190
2-62976

Appeal from Johnson District Court - William R. Eads, Judge.

Husband appeals the provisions regarding property division, alimony and attorney fees in a dissolution decree. - AFFIRMED AS MODIFIED.

Michael Megan, of Freed, Reisseter, Megan & Rohovit, Iowa City, for respondent-appellant.

James D. McCarragher, of Meardon, Sueppel, Downer & Hayes, Iowa City, for petitioner-appellee.

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

PER CURIAM

Appellant, Benjamin Levett Barnes, appeals the provisions of a dissolution of marriage decree regarding property division, alimony, and attorney fees. We affirm.

The parties were married for twenty-two years. Benjamin is now 45 years old, Patricia is 42. Each party has a high school education; Benjamin has some commercial college education. Patricia worked primarily during the marriage as a homemaker raising four children. One child, age 16, is still at home. Patricia has also worked in secretarial and bookkeeping jobs and currently earns \$10,700 per year. She has no accumulated retirement benefits from employment. Benjamin has been employed for fourteen years as the corporate accountant for Economy Advertising Company. With a base salary of \$18,000 and bonuses he earns \$27,700 annually.

Both parties testified to some health problems, primarily knee and ankle injuries, that caused some work difficulties. However, none prevented work.

The main controversy centers on the trial court's award of a house to Patricia worth \$46,600 less a mortgage of \$3440 leaving an equity of \$43,160. Together with other assets she would have a net worth of \$51,565. Under the trial court's division Benjamin would have total assets of \$17,096.

The trial court reasoned that with low mortgage payments and a low mortgage balance, both parties were better off financially with Patricia retaining the house to live in for herself and son Paul. As a result, she has less need for substantial alimony. The court fixed the alimony payments at \$150 per month through December 1981. Child support payments were fixed at \$300 per month until Paul graduates from high school, attains age 18, marries, dies, enters military service or becomes self-supporting.

Although frequently an equal division of assets is made, there is no requirement that this be done. In re Marriage of Conley, 284 N.W.2d 220, 223 (Iowa 1979). The provisions for alimony are considered with the disposition made of the accumulated assets. In re Marriage of Campbell, 204 N.W.2d 638 (Iowa 1973).

We apply the standards enunciated in Schantz v. Schantz, 133 N.W.2d 398, 405 (Iowa 1968). The trial court's reasoning in support of Patricia's retaining the house is well supported by the record and is affirmed. However, the division of property is inequitable and cannot be justified even in light of the short duration for alimony

payments. This inequity would be glaringly apparent if Patricia remarried in the near future, which would terminate an alimony award, yet she would retain the large property award which was in lieu of a long term alimony award.

Accordingly we modify the division of property to provide that Patricia is awarded title to the house with Benjamin having a property interest therein in the amount of \$15,000. This interest shall be secured by a lien thereon and shall draw interest at the rate of 9% per annum from the date of the trial court's decree. Patricia shall pay this indebtedness at such time as the house is sold, when son Paul ceases to live in the home, or at the expiration of his post high school education, if any, not to exceed four years, whichever event occurs sooner.

With this modification we recognize that Patricia's alimony needs are greater and therefore provide that Benjamin shall pay as alimony the amount of \$150 per month until Patricia marries, dies or Benjamin reaches age 65.

The trial court initially ordered Benjamin to pay \$750 for Patricia's attorney fees, then on its own motion determined that Patricia should pay her own attorney fees. We conclude that the amended decree is appropriate and further that each party shall pay his or her own attorney fees incurred by this appeal.

Costs are assessed to appellant.

AFFIRMED AS MODIFIED.