FILED
MAR 21 1977
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

In re the Marriage of	)	
HELEN G. GATHERCOLE,	)	Filed March 21, 1977
Appellant,	)	
And Concerning	)	
PAUL GATHERCOLE,	)	73 2-57901
Appellee.	)	

Appeal from Polk District Court - A. M. Critelli, Judge.

Petitioner wife appeals the economic provisions of dissolution decree. Modified, affirmed and remanded with instructions.

Robert G. Bridges, of Des Moines, for Appellant.

Appellee, proceeding pro se, filed no brief or argument on appeal.

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

OXBERGER, J.

Petitioner Helen G. Gathercole, appeals the economic provisions of the dissolution decree of November 21, 1974. The respondent, Paul, proceeding pro se has not filed an appeal brief or argument. We modify and remand.

Helen urges on appeal 1) that she is entitled to alimony, 2) that the child support award of $50 per week is inadequate, and 3) that she should not have been ordered to pay the joint indebtedness of $5250.

Our review is de novo and we examine the whole record and adjudicate rights anew; while we give weight to the findings of the trial court, we are not bound by them. In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974).

This matter was tried in 1974; the parties had been married 15 years. Helen earned $7574 during 1973 and Paul earned $13,860. Both were steadily employed throughout the marriage. The parties had no other source of income to augment their earnings. One minor child of 14 years remained in the home.

In considering the alimony issue we use the criteria set forth in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), excluding considerations of fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972).

Alimony is not an absolute right. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). In *Fleener*, the court denied alimony. The parties had two children, ages eleven and seven. The wife had a high school education; the husband, a degree in agronomy. He worked for a family-owned business earning $16,473.29 annually. The wife was unemployed throughout the marriage; however, during the separation she obtained a job earning a gross salary of $5100 annually. *Fleener* clearly shows alimony is not a matter of mathematical

income equalization. Adding the child support payments ($80 per week for two children) to Mrs. Fleener's income, she has an annual gross of $9260. Subtracting child support from Mr. Fleener's, he has an annual gross income of $12,313. The parties were married 12 years and at the time of the divorce were ages 28 and 29 and apparently in good health. Mrs. Fleener, who was 16 when the parties married, stayed home and did not further her education. During the marriage the husband completed his college education and established his professional career. Mrs. Fleener was awarded "virtually the total net worth of the parties" which was fixed by the trial court at $5,853.89. 247 N.W.2d at 220. Mr. Fleener was awarded the home and furnishings and the debts of the parties, "Although . . . this amounted to little more than an opportunity to redeem it from almost hopeless indebtedness . . . "

Helen at 43 has secure employment and good health; she can reasonably expect many productive years ahead. She and Paul were married for 15 years. The basic facts of this marriage are similar to *Fleener*. The Gathercoles were married approximately the same length of time as the Fleeners. In both situations the parties have many productive years ahead. After each dissolution the wives were working and were not staying home to raise the children full-time. Mrs. Fleener perhaps was entitled to more consideration for alimony since she remained home full-time throughout the marriage and consequently developed no job skills. Since we discern no distinguishing features between this case and *Fleener*, Helen is not entitled to alimony. We affirm the trial court's refusal to award alimony.

In considering the child support obligations of the parties we use the criteria set forth in In re Marriage of

Zoellner, 219 N.W.2d 517, 525 (Iowa 1974). Further, we note that this obligation must be apportioned according to the fair ability of each parent to contribute. In re Marriage of Carney, 206 N.W.2d 107, 112 (Iowa 1973).

Helen claims the $50 a week support for daughter Paula, age 14, is inadequate. An examination of the record concerning Paula's needs, as opposed to the combined needs of Paula and Helen, reveals that under the *Zoellner* criteria the $50 per week ordered by the trial court is adequate.

We have examined the property division and find it should be modified. Helen was ordered to pay the $200 a month obligation of the parties. She was awarded no alimony. Paul, 49, received the following assets: a pension plan providing monthly income of $550 at age 55, a truck valued at $500, his tools valued at $1600 and some household items. Helen received the remainder of the household furniture and an automobile that is the subject of the bulk of the indebtedness.

Since unquestionably Paul has the superior earning power and received a greater share of the property, he should be required to pay the indebtedness of the parties. We direct the trial court to modify its decree to provide Paul shall pay to Helen the additional sum of $200 per month until the indebtedness of $5250 is paid. Such payment shall be payable through the clerk of court's office upon the first day of each month.

In all other respects the trial court is affirmed.

Modified, affirmed and remanded with instructions.

All judges concur except DONIELSON, J. who dissents.

DONIELSON, J. (dissenting)

I dissent. The trial judge found that Paul had an income of approximately $190 per week take-home. Helen made $120 a week take-home. He was to pay $50 a week in child support thusly reducing Paul's income to $140 and increasing Helen's to $170. The majority now orders him to pay an additional $50 for debt retirement reducing his income to $90 and increasing Helen's to $220 but now to include debt retirement. Note should be made that appellant's brief only requested $30 per week for three years to retire the debts, although there was a request for $10 per month alimony until the child support obligation had ceased.

The debt retirement consists primarily of payments on Helen's older model Chrysler automobile which had a remaining debt of some $4800 and the balance being primarily debts on that automobile.

Out of Paul's $90, he is to pay some additional attorney fees, the medical and hospital bills for cosmetic facial surgery estimated to be at $900, some additional medical bills for Helen of $450, subject to whether or not these would be covered by insurance. Although the decree has this provision, the record is not clear whether the insurance is likely to or not likely to pay for this surgery.

Both Helen and Paul have been employed with their respective employers approximately 15 years and have good pension plans; his approximately $500 per month at the age of 57, according to the court findings, and hers at $574 per month at age 65. There were a few other assets and they were divided.

I would at best have modified the award by some split of the debts on Helen's automobile, but I see no reason for Paul to pay the entire debt particularly on the accelerated basis and, therefore, would affirm the trial court.