FILED
MAY 30 1980
SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF HELEN C. LOVE AND PAUL A. LOVE

Upon the Petition of)
HELEN C. LOVE,)
Petitioner-Appellant,)
and Concerning)
PAUL A. LOVE,) 0-112 / 2-63457
Respondent-Appellee.)

Appeal from Johnson District Court - Robert Osmundson, Judge.

Petitioner appeals economic and visitation provisions of dissolution of marriage decree. - Affirmed as modified.

John W. Hayek, of Hayek, Hayek & Hayek, Iowa City, for petitioner-appellant.

Philip A. Leff, of Leff, Leff, Leff, Haupert & Traw, Iowa City, for respondent-appellee.

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

PER CURIAM

Petitioner, Helen C. Love, appeals economic and visitation provisions of decree dissolving her marriage to respondent, Paul A. Love. We affirm as modified and remand for entry of provisions.

The 11-year marriage of Helen and Paul was dissolved by the trial court on March 28, 1979. In its dissolution decree, the trial court granted Paul custody of the couple's children, awarded each party specific items of personal property, awarded the couple's home, as encumbered, to Paul since he was the custodial parent and ordered a deferred lump sum payment of $10,750 be made to Helen in lieu of her interest in the home. Additionally, on Helen's motion for new trial the trial court amended the decree and granted Helen $1.00 annual alimony. Neither child support nor attorney fees were awarded. Helen appeals the economic and visitation provisions of the amended decree and we review her claims de novo. Iowa R. App. P. 4.

I. Property division and alimony.

We review economic provisions of a dissolution decree under the criteria of 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). Helen claims the property division of the trial court is inequitable because it does not provide for immediate payment of the lump sum award. She also asserts her financial condition requires that she receive immediate payment for her interest in the home or, alternatively, that she receive alimony.

These same claims were raised in In re Marriage of Burham, 283 N.W.2d 269, 277 (Iowa 1979). In Burham, division of the couple's equity in the home was delayed until the time of sale. Also, the husband, who had custody of the couple's two children and who earned $19,000 annually, was ordered to pay $40 per week alimony to the wife, who earned $5280 per year. Here, Paul has custody of three children and has a $19,200 gross annual income while Helen earns $8788 in gross income per year. We think the facts here sufficiently distinguish this case from Burham and find additional alimony should not be awarded.

However, here, as in Burham, modification of the award of the home is necessary to achieve an equitable property distribution. Rather than awarding Helen a lump sum award secured by a lien on the house, we think she should share equally in the net proceeds of sale of the home after Paul receives credit for payments of principal he has

made since the date of the original dissolution decree. Therefore, we modify the property division below by granting Helen one-half the proceeds of sale remaining after Paul receives credit for principal paid since the dissolution. Such sale shall occur at the time Paul and the children no longer occupy the house, the youngest child reaches age eighteen or graduates from high school, whichever is later, or when none of the children reside with Paul. Paul shall maintain the home until the time of sale and delinquent mortgage payments, taxes, or insurance premiums shall be charged against him before he takes any of the proceeds. See id. On remand the trial court shall enter provisions implementing this modification.

II. Child visitation.

Helen asserts the trial court should have granted her more liberal child visitation. The trial court decree provided Helen with visitation every other weekend from 10 a.m. Saturday to 6 p.m. Sunday and as the parties agree. Helen seeks additional visitation during the week and during the summer.

We apply the criteria of In re Marriage of Winter, 223 N.W.2d 165, 166 (Iowa 1974) to issues of child custody and visitation. In our de novo review, we find the best interests of the children would be served by allowing additional visitation periods during the children's summer vacation. On remand, the trial court shall enter provisions extending Helen's visitation rights to include two one-week periods of visitation during the children's summer vacation.

III. Attorney fees.

Helen appeals the trial court's denial of attorney fees incurred at trial. Considerable discretion is assigned the trial court in allowance of attorney fees, Locke v. Locke, 263 N.W.2d 694, 696 (Iowa 1976), and given the financial circumstances of the parties, we find the denial of fees was within the trial court's discretion. However, in light of the circumstances and earnings of the parties, we find Paul shall pay $400 toward Helen's appellate attorney fees. By so finding, we do not fix the amount to be charged by her attorney. Id. See Burham, 283 N.W.2d at 278. Costs of appeal are taxed to Paul.

For the reasons stated in Divisions I and II, we modify the decree of the trial court and remand for entry of provisions.

AFFIRMED AS MODIFIED AND REMANDED.