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JUN 30 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ROSS J. VALONE AND DOROTHEA JENNE VALONE

Upon the Petition of)
ROSS J. VALONE,)
Petitioner-Appellant,) Filed June 30, 1981
And Concerning)
DOROTHEA JENNE VALONE,) 0-430
Respondent-Appellee.) 2-64085

Appeal from Polk District Court - A. B. Crouch, Judge.

Petitioner-husband appeals and respondent-wife cross-appeals from various provisions of their dissolution decree. AFFIRMED AS MODIFIED.

Dennis L. Ruben of Kutak, Rock & Huie, Omaha, Nebraska, and Joseph S. Brick and Patrick W. Brick, Scalise, Scism, Gentry, Brick & Brick, Des Moines, for petitioner-appellant.

Raymond Rosenberg of Rosenberg & Margulies, Des Moines, for respondent-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, and Carter, JJ. Johnson, J., takes no part.

DONIELSON, J.

Petitioner-husband appeals and respondent-wife cross-appeals from various provisions of their dissolution decree. Both parties contend that the property division, alimony, and child support provisions are inequitable. Petitioner also claims his visitation rights should be specified, while respondent seeks further attorney fees and suit money incurred in hiring an accountant to investigate and testify as to the value of petitioner's professional corporation. Our review is de novo. Iowa R. App. P. 4. We modify the alimony and visitation provisions and otherwise affirm.

I.

The nine and one-half year marriage of Ross and Dorothea Valone was dissolved by decree filed on September 17, 1979. Custody of their daughter Jennifer, born on November 18, 1975, was awarded to Dorothea with liberal visitation for Ross. He was ordered to pay $100 per week in child support until Jennifer finishes high school and then to provide four years of college education if she decides to attend college. Ross was also ordered to pay all medical, hospital, and dental costs for Jennifer and to maintain a $50,000 life insurance policy payable to Dorothea as long as he is liable for alimony or support. Beginning August 1, 1979, he was ordered to pay alimony of $1000 per month until Jennifer is in school full time; at that point, he is to pay $800 per month terminable upon Dorothea's remarriage or cohabitation with another male on a regular basis or when Jennifer finishes four years of college.

Ross was awarded his interest in his professional corporation to which the court assigned a net worth of $49,215. He was also awarded the equity in the residence at S.W. 12th Street, the shop equipment at the Wakonda Drive residence, the $3500 boat deposit, the Wakonda membership, cash on hand, and his corporation's bank account for a total award of $71,554. He was also ordered to pay various debts totaling $13,138, leaving him with a net award of $58,416. Dorothea was awarded the equity in the Wakonda residence, household furnishings therein, lawn equipment and a Volvo car, the total value of which was $29,827. She was also awarded a $15,000 lump sum property settlement payable in five equal annual installments bearing no interest. Finally, she was awarded $2750 for attorney fees and $300 which represented part of the cost of hiring an accountant to determine the financial details of Ross' professional corporation and its assets.

Ross is a doctor of osteopathy operating as a professional corporation in

partnership with another doctor. His 1978 gross income was $62,806 and has increased since then. Dorothea is an attorney currently working part time for a Des Moines law firm and earning a net weekly income of approximately $100. She has claimed monthly expenses for herself and Jennifer of $2213.99.

II.

Both parties complain about the trial court's division of property. Ross contends that the court overvalued his professional corporation while Dorothea claims that the $15,000 award should be payable immediately rather than in installments. We reject both arguments.

Although we are not bound by them, we give weight to the trial court's findings of fact, especially as they relate to the credibility of witnesses. Iowa R. App. P. 14(f)(7). In this case, the court determined, after viewing all of the evidence, that Ross' corporation had a net worth of $49,215. After reviewing the record, we find no reason to alter that finding. We also conclude that the division of property decreed by the court effected an equitable result. We are guided by the familiar factors found in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968) modified to exclude fault in In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972)). In this case we note that both parties have made significant contributions to the marital unit, leading the court to attempt an approximately equal division of property. Because we are convinced that the decree achieves that goal, we affirm those provisions.

Dorothea claims that her $15,000 lump sum award should be payable at once. The trial court was obviously concerned about Ross' ability to absorb this expense, which it thought to be necessary in order to equalize the property settlement, and ordered him to pay it in five installments. We think that decision is equitable.

III.

Both parties also complain about the alimony awards; Ross claims it is excessively high and Dorothea claims that it, along with the child support award, is excessively low. After again considering the relevant Schantz criteria, we agree with the trial court that $1000 per month is an appropriate figure given Dorothea's current needs and the parties' relative financial situations. We agree with Ross, however, that the court failed to give adequate consideration to Dorothea's future earning potential as an attorney. She testified that she is currently working only part time in order to be able to devote more time to raising Jennifer. This is certainly a laudable goal for which Dorothea should not

be penalized; see In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974). This reasoning, however, will become less compelling once Jennifer is old enough to be in school all day. At that point, Dorothea will be able to work full time at her law firm, thus reducing her need for alimony. We therefore modify that provision of the decree such that Ross' obligation to pay alimony will cease five years after the date of the decree. Until that time, alimony will remain at $1000 per month.

In her cross-appeal, Dorothea also claims that the child support award of $100 per week is inadequate. We determine the sufficiency of the support provision by viewing it in relation to the property division and alimony provisions which were made, In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976), as well as by applying the criteria listed in Zoellner, 219 N.W.2d at 525. After doing so, we find no reason to modify the support award.

IV.

Ross argues that the trial court erred in failing to be more specific about his visitation rights. After the parties separated and during this litigation, they informally agreed to a schedule of times when Ross would have visitation rights with Jennifer. He testified at trial that he wanted this schedule to continue; Dorothea agreed that it was important for Ross and Jennifer to maintain a close relationship and had no objection to continuing the present arrangement. We find that since the parties agree, there is no need for this court to set specific visitation rights.

V.

Dorothea raises a number of other issues in her cross-appeal. First, she claims that the trial court erred in failing to order Ross to pay the entire cost of services of the accountant, William Lyons, hired by her to examine the financial details of Ross' corporation. Lyons submitted a bill for $2715; the court ordered Ross to pay $300 toward that bill as expert witness fees. We fail to see why Ross should be responsible for paying the entire fee of someone hired by Dorothea for her own benefit, especially since the terms of the decree will make it economically feasible for her to pay the rest of the fee. We reject her request to order Ross to pay any additional amount of that fee.

Dorothea also claims that Ross should be ordered to pay more than the $2750 ordered by the trial court toward her attorney fee obligation of $7678. Such fees are not recoverable as a matter of right in dissolution proceedings and are subject to the

considerable discretion of the trial court. In re Locke, 263 N.W.2d 694, 696 (Iowa 1978). From our review of the record, we cannot say that the court abused its discretion in failing to award more than it did.

Finally, Dorothea asks for attorney fees incurred in this appeal. Such an award depends upon the relative financial circumstances of the parties. In re Marriage of Burham, 283 N.W.2d 269, 278 (Iowa 1979). Dorothea is awarded $600 in attorney fees.

By order of the supreme court dated October 8, 1980, Dorothea was ordered to pay all costs in connection with the amendment to the appendix and the exhibit appendix. All other costs of this appeal are assessed equally against the parties.

AFFIRMED AS MODIFIED.