

IN THE COURT OF APPEALS OF IOWA

FILED

FEB 23 1983

CLERK SUPREME COURT

357

IN RE THE MARRIAGE OF CAROLINE LOU SMITH and WILLIAM SIDNEY SMITH

Upon the Petition of)

CAROLINE LOU SMITH,)

Petitioner-Appellant,)

Filed February 23, 1983

And Concerning)

WILLIAM SIDNEY SMITH,)

Respondent-Appellee.)

2-479
2-68092

Appeal from Polk District Court - M. C. Herrick, Judge.

Petitioner-wife appeals from the economic provisions of the parties' dissolution decree. AFFIRMED WITH MODIFICATION.

Thomas D. Hanson of Blanchard, Cless, Hanson & Pundt, Des Moines, Iowa,
for petitioner-appellant.

Lawrence F. Scalise and Ann Fitzgibbons of Scalise, Scism, Gentry, Brick &
Brick, for respondent-appellee.

Heard en banc.

PER CURIAM

Petitioner-wife appeals from the economic provisions of the parties' dissolution decree. She claims that property division, alimony and child support provisions of the decree in her favor are inequitable. She also claims that respondent-husband should not have been allowed to join a counterclaim for dissolution of their marriage to her original petition for separate maintenance. We modify the alimony award and affirm the decree in all other respects.

William and Caroline Smith were married in 1966. Caroline, a certified teacher, has not worked since, but at the time of trial had nearly completed work toward a master's degree. William completed his law school education and is now a member of a professional corporation. He had an income of approximately \$66,000 in 1979 plus substantial fringe benefits. For the year ending January 31, 1981, the corporation had total assets in excess of \$150,000. In 1981 Caroline commenced an action for separate maintenance to which William was permitted to join a counterclaim for dissolution of marriage. He testified that there had been a breakdown of the marriage relationship while she testified to the contrary.

In the decree dissolving the parties' marriage, Caroline was awarded custody of the three children, now aged 13, 12, and 7, together with child support of \$1,000 per month to be proportionately reduced as each child becomes emancipated. She was also awarded alimony of \$500 per month for a fourteen month period, a 1978 Audi, all interest in three real estate ventures, her savings account of approximately \$3,400, stock worth approximately \$3,400, a life insurance policy, and half of a mutual fund. The parties' most substantial asset, a home in which they had an equity of approximately \$100,000, was ordered sold with the proceeds equally divided but Caroline was awarded occupancy so long as William's obligation to pay child support remains or until she earlier remarries, cohabits with a male on a permanent basis, or abandons occupancy of the residence. During the interim William was required to pay half of the house payments, real

estate taxes, insurance, and normal maintenance costs and was ordered to pay for all capital improvements. He was also required to maintain medical and dental insurance for the children and pay half of any uninsured medical or dental expenses. He was awarded various items of personal property, a motorcycle, and all of his interest in his professional corporation and the partnership owning the building where his law firm is located. Caroline then brought this appeal.

I. Caroline first claims that William should not have been allowed to join his counterclaim for dissolution to her petition for separate maintenance. She relies on two statutory provisions in making this claim—Iowa Code sections 598.3 and 598.28. Section 598.3 provides in part: "[a]n action for dissolution of marriage shall be by equitable proceedings, and no cause of action, save for alimony, shall be joined therewith. Such actions shall not be subject to counterclaim or cross petition by the respondent." Section 598.28 provides that "[a] petition shall be filed in separate maintenance and annulment actions as in actions for dissolution of marriage, and all applicable provisions of this chapter in relation thereto shall apply to separate maintenance and annulment actions." From these statutes, Caroline concludes that a counterclaim for dissolution of marriage may not be joined to a petition for separate maintenance.

While this interpretation and conclusion may not be wholly unreasonable in light of the statutory language, we conclude that the better interpretation is to allow such a counterclaim. If we adopted Caroline's reasoning, we would force William to bring a separate action for dissolution. This new action, however, would involve precisely the same economic issues as those raised by the petition for separate maintenance—i.e. property settlement, alimony and child support. The end result would be two separate legal actions involving the same set of facts and legal issues—a needless waste of judicial time and resources as well as the imposition of unnecessary extra costs and legal fees on the parties. We will not presume that the legislature, in enacting sections 598.3 and 598.28 in their present

form, intended those statutes to be construed in the manner suggested by Caroline, leading as it does to such an absurd result. See Hanover Insurance Co. v. Alamo Motel, 264 N.W.2d 774, 778 (Iowa 1978). The trial court was therefore correct in ruling that William's dissolution counterclaim could properly be joined to Caroline's petition for separate maintenance.

II. Caroline next claims that the trial court erred in finding that there had been a breakdown of the marriage relationship to the extent that the legitimate objects of matrimony had been destroyed and that there remained no reasonable likelihood that the marriage could be preserved. A dissolution decree may be entered when the court "is satisfied from the evidence presented" that there has been such a breakdown in the marriage relationship. Iowa Code § 598.17.

We believe that William sustained his burden of proof on this issue. The parties had been separated for approximately two years prior to the filing of this petition. William testified that they had become increasingly intolerant of each other's differing expectations. They had numerous and very heated arguments in front of the children. William testified that Caroline became very jealous of his friends and acquaintances for distracting his attention at all away from her and the children. He also said that she demanded to know where he was and what he was doing at all times even when he was at work. We certainly do not imply by this recital of the testimony that Caroline's conduct was solely responsible for the parties' marital problems. We do concur with the trial court, however, that these problems were so severe that they led to the breakdown of the parties' marital relationship such that it could not be preserved.

III. Caroline further contends that the economic provisions of the decree relating to property division, alimony and child support are inequitable. With regard to the property division, we consider the factors set forth in Iowa Code section 598.21(1). We agree with the trial court that an approximately equal division of property would be equitable in this case, especially considering the

length of the parties' marriage and the significant contributions of William in providing income and Caroline in maintaining the family home and raising the children. We also agree that the division of assets ordered by the trial court is a reasonable attempt to reach its stated goal. We specifically endorse the court's decree regarding the marital home. Caroline testified that she wanted the house primarily for purposes of raising the three children. The trial court allowed her to remain in the house until the first occurrence of the following contingencies: (1) the youngest child is emancipated; (2) Caroline remarries or cohabits with a male on a permanent basis; or (3) she abandons her occupancy of the home. The occurrence of any of these events would indicate either that the house was no longer needed for the purpose of raising the children or that Caroline was or would be able to find other accommodations.

We do believe, however, that the trial court erred in valuing William's interest in the professional corporation, a law firm, in which he was employed as an attorney. Apparently the court considered only the value of his interest in the building housing the firm and the value of his one-fifth interest in the corporation itself. The value of the latter was taken to be the amount (\$7,500) that William had to pay into the corporation to attain shareholder status. We believe that those figures do not fully reflect his interest; for example, the corporation's law practice has a great deal of ongoing business, the income which William will share. Intangible factors such as this impact on the value of an interest in a professional corporation and yet are not reflected in the value of the building or the corporate stock.

Because of this undervaluation, an adjustment must be made in the decree. We believe that adjustment would be most appropriately made by extending the duration of the alimony payments. This serves the additional purpose of giving Caroline more time to finish work on her Masters degree and find employment by which she can support herself and the children. We therefore modify the alimony

award so that William must pay \$500 per month for thirty months rather than the fourteen months ordered by the trial court.

In considering Caroline's request for an increase in the child support award, we examine the criteria listed in Iowa Code section 598.21(4). Our review of the record indicates no reason to disturb the child support ordered by the trial court.

Except for the modification of the alimony award indicated above, the trial court's decree is affirmed. Each party will pay his or her own attorney fees incurred in this appeal. Costs are assessed one-half to William and one-half to Caroline.

AFFIRMED WITH MODIFICATION.