SEP 23 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF SONDRA L. WALL AND GARY G. WALL

Upon the Petition of)
SONDRA L. WALL,) Filed September 23, 1980
Petitioner-Appellee,)
And Concerning)
GARY G. WALL,) 0-176
2-64107
Respondent-Appellant.)

Appeal from Marshall District Court - David R. Hansen, Judge.

Respondent-husband appeals property division, child support and alimony provisions of dissolution of marriage decree. - AFFIRMED AS MODIFIED.

James R. Moore, of Mote, Wilson & Welp, Marshalltown, for respondent-appellant.

Charles F. Fairall & Marie A. Condon, of Fairall, Fairall, Reeves & Kaplan, Marshalltown, for petitioner-appellee.

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

Appellant, Gary Wall, appeals the provisions of a dissolution of marriage decree regarding property division, child support, and alimony. Appellee, Sondra Wall, seeks an award for attorney fees incurred by this appeal. We modify certain of the decree's provisions and affirm as modified.

Gary and Sondra were married on December 26, 1959. Their three children - Kristin, Kimberly, and Kent - were ages 13, 15 and 18 respectively as of the time of trial. Gary is employed by a beer wholesaler in Marshalltown, and Sondra works as an assistant manager in the food service department of the Marshalltown Community Schools and works part-time at a local Burger Chef.

On August 10, 1979, the trial court dissolved the marriage and awarded Sondra custody of the two minor children, Kristin and Kimberly. The trial court ordered Gary to pay Sondra monthly child support of $450 and monthly alimony of $75. Under the property provisions of the decree, the trial court awarded Gary personalty and realty totaling $17,700 in value. Sondra was awarded personalty and realty totaling $25,050 in value. The decree provided for the sale of the Walls' rental property so as to satisfy the mortgage on the residential and rental properties, and it provided that the Walls evenly split the remainder of the proceeds of sale after the mortgage is satisfied and after expenses incidental to sale are paid.

Our review is de novo. Iowa R. App. P. 4. We are not bound by the trial court's findings of fact, but we give weight to them, especially regarding the credibility of witnesses. Iowa R. App. P. 14(f)(7). In reviewing the property and alimony provisions of a dissolution decree, we consider the factors enunciated in 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). In reviewing the child support provisions of a dissolution decree, we consider factors enunciated in In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974).

I. As part of the property division the trial court awarded Gary the 1925 Model T. Gary argues that the trial court intended to award him the parts and tools belonging to the Model T and Sondra agrees. The trial court merely failed to expressly specify the award. Therefore, in order to resolve all ambiguity we hereby award Gary the parts and

tools belonging to the Model T.

II. Gary argues that the trial court's $450 monthly child support and $75 monthly alimony awards are unfair to him in light of Sondra's need and the parties' relative earning capacities. In light of the criteria articulated in Schantz and Zoellener as applied to the circumstances of this case, we disagree. We think the trial court correctly concluded that Sondra's monthly living expenses listed in her pre-trial compliance statement are reasonable and that the trial court's alimony and child support awards to Sondra are necessary for supporting herself, Kristin, and Kimberly. Gary's monthly take-home pay will be sufficient to cover his own expenses after payment of alimony and child support.

Gary points out that the trial court failed to specify which party would pay the $300 monthly mortgage on the residential and rental properties prior to the satisfaction of the mortgage by proceeds from the sale of the rental property. In her pretrial compliance report Sondra states that she has been collecting rental proceeds and using them to make the monthly mortgage payment. Moreover, Sondra lists the $300 monthly mortgage payments as one of her monthly living expenses that the trial court concluded, and we agreed, were reasonable. In light of Sondra's current practice of paying the monthly mortgage, her expressed intention to continue paying the monthly mortgage, and in light of the fact that her alimony and child support awards were fashioned in contemplation of her paying the monthly mortgage, we hereby order Sondra to pay the $300 monthly mortgage on the Walls' residential and rental property until the mortgage is satisfied.

Since Sondra's need will significantly decrease once she has satisfied the $300 monthly mortgage, a corresponding decrease in child support would be appropriate. Accordingly, we order a reduction in Gary's child support payments to $350 per month, effective as of the time Sondra satisifies the mortgage. We order that when Sondra is required to support only one child by the terms of the trial court decree, Gary shall pay child support in the amount of $250 per month. Alimony fixed by the trial court in the amount of $75 per month is affirmed.

III. Gary argues that the trial court's division of property was unfair. Gary's property award has a value of $17,700, including 30% of the appraised fair market value

of the Walls' $30,000 home and $9700 in personalty. Sondra's property award has a value of $25,050, including 70% of the appraised fair market value of their $30,000 home and $3050 in personalty. The division gives Gary $3675 less than the $21,375 value he would have received had the trial court split the property exactly in half between Gary and Sondra. 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 test for an acceptable division of assets is to ask what would constitute an equitable and just award under the circumstances. Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976). After considering the circumstances of the case at bar in light of the criteria enumerated in Schantz, we conclude that the trial court justifiedly made an unequal property division, because Gary's earning potential is substantially greater than Sondra's. Gary disputes the trial court's conclusion that his income potential is three times that of Sondra. However, even if we focus on the parties' monthly net incomes, as Gary would have us do, the conclusion is still inescapable that Gary's earning potential is at least twice that of Sondra. Hence, we reject Gary's argument that the property division was unjust.

Sondra has applied for attorney fees incurred by this appeal. In evaluating a request for attorney fees incurred on appeal we consider the needs of the party making the request, the ability of the party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Stom, 226 N.W.2d 797, 800 (Iowa 1975). Applying these factors to the case at bar, we order Gary to pay $400 of Sondra's attorney fees on appeal.

Costs are assessed to appellant.

AFFIRMED AS MODIFIED.