FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF JERRY D. GOSSELINK AND PANTIPA GOSSELINK

Upon the Petition of)
JERRY D. GOSSELINK,)
Petitioner-Appellee,)
And Concerning)
PANTIPA GOSSELINK,)
Respondent-Appellant.)

Filed October 25, 1983

3-278
2-69172

Appeal from Polk District Court - Richard A. Strickler, Judge

Respondent wife appeals from the decree dissolving the parties' marriage, asserting that (1) the property division is inequitable, and (2) the child support award is inadequate. AFFIRMED.

Joseph B. Joyce, of Adler, Brennan, Joyce & Steger, Des Moines, Iowa, for petitioner-appellee.

Robert A. Burnett, Jr., Des Moines, Iowa, for respondent-appellant.

Considered by Oxberger, C.J., Donielson, Snell, Schlegel, Hayden, and Sackett, JJ.

SACKETT, J.

Respondent wife appeals from a dissolution decree claiming that the property division was inequitable and that the court did not award sufficient child support. We affirm and modify.

Petitioner husband moved to dismiss the appeal claiming that because the notice of appeal was defective this court lacks jurisdiction to hear the case. We must first dispose of the jurisdictional issue.

I.

The husband, Jerry D. Gosselink, alleges that his wife's notice of appeal was defective. The notice of appeal indicated that Pantipa Gosselink was appealing from the findings of fact and conclusions of law entered August 24, 1982, rather than from the final judgment. On July 13, 1982, the trial judge caused to be filed with the Polk County Clerk the findings and conclusions of law which directed that the petititioner's counsel prepare a decree approved as to form by counsel for the respondent and submit same to the court. Counsel was further instructed as to sixteen items, including property division, child support and attorney fees, to be included in the decree. On August 24, 1982, a decree was filed which included the following language: ". . . this Decree adopts, in full, the said prior Findings and Conclusions of the Court as though set out herein." On September 2, 1982, Pantipa filed a notice of appeal indicating that she was appealing from "the Findings of Fact and Conclusions of Law of the District Court for Polk County entered on or about August 24, 1982. . . ." Jerry challenged the sufficiency of the notice, alleging that the notice was defective and that the court therefore lacked jurisdiction to entertain the appeal. Iowa Rule of Appellate Procedure 6(a) provides that a notice of appeal "shall specify the parties taking the appeal and the decree, judgment, order of part thereof appealed from."

The issues raised by Pantipa on appeal are those issues which were resolved by the trial judge in the July 13, 1983, findings of fact and conclusions of law.

Those findings and conclusions were incorporated by reference in the August 24, 1982, decree.

In Hawkeye Security Insurance Company v. Ford Motor Company, 199 N.W. 2d 373, 378 (Iowa 1972), the Iowa Supreme Court said in discussing a notice of appeal:

> In considering the sufficiency of the content of the notice we now hold that if the intent of the appellant to appeal from a judgment may be inferred from the text of the notice and if the appellee has not been misled by the defect the appeal will be entertained.

This more liberal rule of construction is consistent with a repeated preference for disposition of cases on the merits and not on mere technicalities. Blink v. Mc Nabb, 287 N.W. 2d 596, 599 (Iowa 1980).

A similar situation arose in In re Marriage of Schissel, 292 N.W. 2d 421, 423 (Iowa 1980). In that case the petitioner argued that the respondent's notice of cross-appeal was not sufficiently specific. The notice complained of did not specify, as is required by Iowa Rule of Appellate Procedure 6(a), "the parties taking the appeal and the decree, judgment, order or part thereof appealed from." The notice merely stated that "[r]espondent, John A. Schissel, hereby cross-appeals to the Supreme Court of Iowa, from the final Judgment and Decree of Dissolution entered herein on February 9, 1979, and all Rulings and Orders inhering therein." Because the notice was in substantial compliance with the rules and because the petitioner suffered no prejudice as the result of any notice deficiencies, the supreme court found the notice to be sufficient under the Hawkeye rationale.

Jerry does not contend that he was prejudiced by the claimed lack of compliance with rule 6(a). The notice did specify the date of the judgment appealed from and certainly referred to the portions of the decree that Pantipa was appealing from; namely, the findings of fact and conclusions of law incorporated therein by reference. From the fact that Pantipa filed the notice we can infer her intent to appeal. See Blink v. Mc Nabb, 287 N.W. 2d at 599. Jerry

was not misled. The substantial requirement test is satisfied. We have jurisdiction to hear the appeal.

II.

Pantipa contends in her appeal that the property division was not equitable. She complains that the trial court failed to award her one-half the marital property and to consider Jerry's vested pension rights as a marital asset. While we may not arrive at the same property values as did the trial court, we find the property award was fair to Pantipa and affirm the trial court's decision regarding the property award.

The trial court awarded to Pantipa the personal residence of the parties subject to existing encumbrances. The home had a stipulated value of $110,000 and was subject to a mortage of $58,500 and a special assessment of $3,700. The equity in the home would therefore be $47,800. In addition to the home, Pantipa was awarded $3,000 (which represented one-half of a Merrill Lynch Ready Assets fund), stock in the art gallery and space planning business worth $13,000, a horse valued at $1,200 and $15,500 worth of furniture. Jerry was also ordered to pay Pantipa $30,000 over three years with interest at 10%. By our computations this would result in a net property award to Pantipa of $110,500.

Jerry was awarded $3,000 (which represents the other half of the Merrill Lynch fund) and his stock in Weitz Management Company. The marketability of the stock in Weitz is hampered by transfer restrictions requiring the stock to be offered first to the company. The company is allowed, under the restrictions, to pay for the stock over a ten-year period. A stock broker testifying for Jerry considered these factors and valued the stock at 25% below book value. The book value less 25% is $132,876, less two encumbrances totalling $28,689, leaving a net value of $104,187.

In addition, Jerry has a vested profit sharing plan valued at $24,500. Pantipa argues that the profit sharing fund is a marital asset. We agree. In re Marriage of

Bevers, 326 N.W. 2d 896 (Iowa 1982). Jerry, however, was awarded $104, 187 in stock, $24,500 in pension rights, and was required to pay Pantipa $30,000. Including the profit sharing fund would give Jerry $98,687 in value; less than the value of the marital property awarded to Pantipa. The trial court's property award is affirmed.

III.

Pantipa on appeal contends that the trial court failed to award sufficient child support and failed to make provisions for the parties' daughter's riding expenses. Jerry's current base salary is $44,000 a year. In the fiscal year preceding the divorce, Jerry received an $11,000 bonus. Jerry was surprised to receive the bonus. Jerry's financial statement indicated he also realized annually $1,886 in stock dividends and $960 from a Merrill Lynch account.

Pantipa owns an art gallery and space planning business located in West Des Moines known as Gallery West, Limited. She has had the business for about two years. The business had a net worth of approximately $13,000 at the end of its 1980 fiscal year. Pantipa indicated that she takes about $500 a month from her business.

Jerry was ordered to pay $75 per week per child, to carry medical, hospitalization and dental insurance on the children and to maintain $88,000 in life insurance policies naming the two children as beneficiaries. The record is silent as to Jerry's cost for these insurance benefits.

The parties have both encouraged their eleven-year-old daughter, Nisa, in horseback riding. The daughter and her horse have traveled to various shows. Pantipa contends that the expenses of maintaining their daughter in this sport, excluding the costs of the horse, will exceed $10,000 per year. Pantipa contends that Jerry should contribute to the horseback riding expense.

Each party to a marriage has some legal duty to support their children. In re Marriage of Wahl, 246 N.W. 2d 268,272 (Iowa 1972). The obligation to support is

not necessarily to be borne equally but should be apportioned according to each parent's ability to contribute. In re Marriage of Fleener, 247 N.W. 2d 219,221 (Iowa 1979). There is little question here that Jerry has superior earning ability. He does have an adequate fixed salary. He expresses concern about the continuation of his bonus.

We find no authority, nor has Pantipa given us any, which indicates that an absent parent is required to support a child's hobby when the projected cost of the hobby is over one-third of the amount that Jerry takes home from his $44,000 a year salary. We have reviewed the criteria set forth in In re Marriage of Zoellner, 219 N.W. 2d 517 (Iowa 1974), and consider the trial court's award of child support to be adequate.

The trial court decision is affirmed. Each party shall pay their own attorney fees.

AFFIRMED.