IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF LINDA SUE DeGREEF AND DANIEL S. DeGREEF

Upon the Petition of)
LINDA SUE DeGREEF,)
Petitioner-Appellant,)
And Concerning)
DANIEL S. DeGREEF,)
Respondent-Appellee.)

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2-64058

Appeal from Jasper District Court - Thomas S. Bown, Judge.

Petitioner-wife appeals and respondent-husband cross-appeals from economic provisions of the parties' dissolution decree. AFFIRMED.

John Diehl of Diehl, Clayton, Cleverley & Knopf, Newton, Iowa, for petitioner-appellant.

Don Salisbury of Salisbury, Fleck & Walker, Newton, Iowa, for respondent-appellee.

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

PER CURIAM

Petitioner-wife appeals and respondent-husband cross-appeals from economic provisions of the parties' dissolution decree. The wife argues that she should be awarded alimony, a greater portion of the marital assets, and more child support. The husband claims that he should be able to pay the $150,000 property settlement in installments instead of one lump sum. He also argues that the child support award is excessive and that he should not have to pay $3,000 of the wife's attorney fees as well as court costs. We affirm the trial court's decree in all respects.

Linda and Daniel DeGreef were married on March 11, 1972. The couple had three sons who are now six, five and three years old. Linda filed a petition for dissolution of the marriage on August 24, 1978. Later that year, on October 17, Daniel was ordered to pay $800 per month temporary support and temporary attorney fees in the amount of $200. The trial court issued its decree on September 4, 1979. Child custody, visitation and division of the household goods were awarded pursuant to stipulations entered into by the parties; those provisions are not at issue here. Daniel was awarded two tracts of farm land, totalling 286 acres, purchased during the marriage and located in Wright County. He was also awarded the farm machinery and was ordered to pay all the debts and encumbrances both on the land and on the machinery. Linda was awarded a cash property settlement of $150,000 to be paid on or before January 1, 1980. (Daniel made this payment before the required date while reserving his right to appeal that provision.) Daniel was ordered to pay child support in the amount of $250 per month per child, but after the cash property settlement was paid, that obligation was reduced to $100 per month per child. He was also awarded the dependency exemptions for the children for income tax purposes as long as his support payments are current. Finally, Daniel was ordered to pay costs and $3,000 additional attorney fees incurred by Linda. Both parties appealed.

I. The primary focus of this appeal is the $150,000 cash property settlement. Linda claims the award is inadequate in that it represents only about 30% of the parties' net worth. Daniel objects to the requirement that the entire sum be paid on or before January 1, 1980. According to the evidence presented at trial, the total value of the marital assets was $888,259.49; the bulk of that amount is represented by the farm land valued at $760,000. Liabilities total $382,674.31, leaving a net worth of $505,585.18.

Linda claims that her award should more closely approximate 50% of the parties'

net worth. We note, however, that an equal division of property is not an end in itself; rather, we are to determine what is justified under the circumstances. See section 598.21, The Code; In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975). In determining what is justified, we are guided by the familiar factors found in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), excluding fault.

We conclude that the trial court's result is justified in this case. Linda focuses almost entirely on the uneven distribution of net worth, but she would have us ignore the illiquid nature of most of that value, i.e., the farm land. The trial court evidently awarded all the land and machinery to Daniel so that he could maintain the farming operation. Daniel testified that he wanted to continue farming in part so that he could have something to pass on to his children in the future. Although Linda's $150,000 does not approach 50% of the net value, we must take note of the fact that Daniel is solely responsible for paying the $382,674.31 in total liabilities incurred during the marriage. He also indicated that he had to borrow the entire $150,000 to pay the property settlement which, of course, increases his debt balance. Finally, we note with interest that under Linda's proposed property division, she would net approximately $150,000—the same figure she now claims to be too low. We affirm the cash property settlement.

II. Linda next claims that the trial court erred in failing to require Daniel to pay alimony. The Schantz criteria, referred to above, apply here as well. It is appropriate to note here that although division of property and alimony have different purposes, "they are still closely related in the matter of determining the amount to be allowed." Cooper, 215 N.W.2d at 919. Taking into consideration the cash award of $150,000, we agree with the trial court that an award of alimony is not warranted here. Linda now has the $150,000 in a savings account earning interest of at least $1,687 per month. She also has a part-time job in which she netted $1200 in a six-month period and is also receiving $300 per month in child support under the decree. She thus appears to be able to meet her claimed monthly expenses of $1,053. We must also be mindful of Daniel's financial situation. He claims personal expenses of $892 per month. He is responsible for $382,674.31 in debts as well as $150,000 that he had to borrow to pay the cash settlement. He is also subject to the many risks inherent in any farming operation. Balancing Linda's financial needs, which appear to be satisfied, and Daniel's ability to

pay, which appears questionable, we think that the trial court correctly rejected Linda's request for alimony.

III. The next issue concerns the child support provision. Linda thinks it is insufficient; Daniel thinks it is excessive. We are guided here by the factors listed in In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974). We see no reason to change the decree in this respect. Regarding Linda's claim, we are persuaded by the financial circumstances outlined above that the support award should not be increased. Regarding Daniel's claim, we note that he testified at trial that he was willing to pay $100 per month per child for support—the amount he is now required to pay under the decree. We affirm the child support award.

IV. Daniel raises three other issues in his cross-appeal. First, he claims the trial court erred in requiring him to pay the $150,000 in one lump sum instead of in installments. We disagree. He has already made the payment, thereby indicating he was able to meet the obligation even if he had to borrow the money to do so. We also note that he is not required to pay any alimony, and the child support obligation is relatively modest. We affirm that provision.

Daniel next claims that the trial court erred in conditioning the award of dependency exemptions for income tax purposes on child support payments being current. He provides no authority for his argument; under Iowa R. App. P. 14(a)(3), therefore, we deem the issue waived.

Finally, Daniel claims that the trial court erred in ordering him to pay court costs and an additional $3,000 for Linda's attorney fees. After considering the factors relevant in determination of awards of attorney fees set out in In re Marriage of Jayne, 200 N.W.2d 532, 534 (Iowa 1972), we see no reason to disturb the award of attorney fees. As for the court costs, we note that an equity court has much discretion in this matter. Wymer v. Dagnillo, 162 N.W.2d 514, 519 (Iowa 1968). We find no abuse of that discretion here.

V. Linda also asks for attorney fees incurred on this appeal. Such an award depends upon the financial circumstances of each party. In re Marriage of Burham, N.W.2d 269, 278 (Iowa 1979). Each party shall be responsible for his own attorney fees incurred on appeal.

Costs are assessed equally to the parties.

AFFIRMED.

All judges concur except, Oxberger, C.J., who dissent.

OXBERGER, C.J. (dissenting)

I dissent from the majority view denying alimony to the petitioner.