FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MARTHA SUE LONG AND JAMES EDWIN LONG

UPON THE PETITION OF)

MARTHA SUE LONG,)

Petitioner-Appellee,)

AND CONCERNING)

JAMES EDWIN LONG,)

Respondent-Appellant.)

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Appeal from Benton District Court, L. Vern Robinson, Judge.

Respondent-husband appeals from economic provisions of the parties' dissolution decree, asserting that the property division was inequitable and that the child support award was inequitable in both amount and duration. AFFIRMED.

Jon M. Kinnamon of Kinnamon, Kinnamon, Russo & Meyer, Cedar Rapids, for respondent-appellant.

Morris L. Eckhart of Milroy & Eckhart, Vinton for petitioner-appellee.

Considered by Oxberger, C.J., and Donielson and Snell, JJ.

PER CURIAM

Respondent-husband appeals from economic provisions of the parties' dissolution decree, asserting that the property division was inequitable and that the child support award was inequitable in both amount and duration. We affirm.

The parties, Martha Sue Long and James Edwin Long, were married on January 17, 1960. Three children were born of the marriage, James Dean, Ronald, and John. On October 3, 1980, Martha filed a petition for dissolution. The petition was granted and custody of the two minor children was awarded to Martha. James was ordered to pay the sum of $35 per week as temporary support of Martha and the minor children, which he has failed to pay.

Both Martha and James have high school educations, and both have worked for a considerable period of time during the marriage. James is presently employed as a truck driver, and on his financial affidavit he listed his gross income as $6368.01 for a five-month period, approximately $1,274 per month. Martha is presently employed as a secretary-clerk, and on her financial affidavit she listed her gross income as $665 per month. The eldest son, James Dean, has reached the age of majority and has completed his education. All three children reside with their mother.

The parties' assets subject to disposition included the jointly owned homestead, which the parties valued, in their stipulation, at $31,500 with an encumbrance of approximately $22,526; Martha's one-fourth remainder interest in a farm inherited from her father, subject to a life estate vested in her mother; and various items of personal property, including a wardrobe, kitchen cupboard, freezer, bed, and china. The two major liabilities consisted of a loan by Chrysler Credit Corporation in the amount of $5000 and a personal loan by Ida Geater, Martha's mother, in the amount of $4025.

The trial court ordered James to pay child support in the amount of $150 per month for each minor child. Martha was awarded the homestead, subject to the mortgage and a judgment lien in favor of James in the amount of $4695.01, an amount which represented approximately one-half of the unencumbered value of the homestead. Martha was also awarded the personal property in dispute, but the court awarded James a lien in the amount of $325 to cover his interest in the personalty. Martha's one-fourth remainder interest in the farm was found to be inherited by her absolutely, free of any claim by James. On appeal, James challenges these provisions of the decree.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. We review the facts as well as the law and determine anew those rights properly presented and preserved. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977). We give weight to the findings of the trial court, particularly when considering the credibility of witnesses, but we are not bound by them. In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974); Iowa R. App. P. 14(f)(7).

I. Child Support. Both parents are legally obligated to support their children, each according to his ability and circumstances. In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974). The factors to be considered in determining the proper amount of child support are listed in Iowa Code § 598.21(4).

Considering these factors, we conclude that the award of $150 per month for the support of each minor child was not excessive. The relative financial position of the parties is an important consideration. Iowa Code § 598.21(4)(b). The record indicates that James earns almost twice as much as Martha, yet his rent payments are less than the mortgage payments Martha must make. Although James' expenses while on the road are somewhat high, his live-in girl friend absorbs the cost of groceries as well as one-half the utility bills. In determining the financial ability of a parent to pay child support, the court may consider that the parent shares living expenses with another person. In re Marriage of Stutsman, 311 N.W.2d 73, 76 (Iowa 1981).

Other factors relevant to our conclusion are that testimony indicates that the standard of living of the children was higher prior to the dissolution, the youngest child needs braces which will cost about $1500, and the financial resources of the children are limited since they are only paid once a year for part-time work and the money is saved for future education or used to pay household expenses. See Iowa Code § 598.21(4)(a), (c), (f).

We also find that the trial court's order continuing child support "until each child reaches the age of eighteen. . . or . . . complete their high school graduation" was correct. Iowa law provides that support payments "may include support for a child who is between the ages of eighteen and twenty-two years who is regularly attending an approved school in pursuance of a course of study leading to a high school diploma. . ." Iowa Code § 598.1(2).

II. Property Division. The test for a proper division of property is one that is "an equitable and just award under the circumstances." In re Marriage of Locke, 246 N.W.2d 246, 251 (Iowa 1976). The factors to be considered in effectuating an equitable distribution are listed in Iowa Code § 598.21(1). One of these factors is the desirability of awarding the right to live in the family home to the party with custody. Iowa Code § 598.21(1)(g). The homestead thus was properly awarded to Martha, subject to a judgment lien in favor of James. The value of the personal property in dispute was divided equally between the parties; Martha was awarded the property subject to a lien in the amount of one-half its value.

Lastly, Martha was awarded absolutely her one-fourth remainder interest in the farm inherited from her father. This award was in compliance with Iowa Code § 598.21(2), which provides that property "inherited by either party. . . prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to

divide the property is inequitable." We do not believe that such inequity has been demonstrated in this case. We accordingly affirm the decision of the trial court.

AFFIRMED.