FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-514 / 93-1931

IN RE THE MARRIAGE OF JEFFREY JOSEPH SCHWIESO AND NANCY KAY SCHWIESO

Upon the Petition of
JEFFREY JOSEPH SCHWIESO,

Petitioner-Appellant,

And Concerning
NANCY KAY SCHWIESO,

Respondent-Appellee.

Appeal from the Iowa District Court for Carroll County, Louie F. Beisser, Judge.

Jeffrey Schwieso appeals from certain economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Robert Kohorst and William T. Early of Kohorst Law Firm, Harlan, for appellant.

J.C. Salvo and Richard C. Schenck of Salvo, Deren, Schenck & Lauterbach, P.C., Harlan, for appellee.

Considered by Donielson, C.J., and Hayden and Habhab, JJ.

HABHAB, J.

Jeffrey and Nancy Schwieso were married in 1988. This was a second marriage for both parties. They have one minor child, Justeen, born October 12, 1988.

Jeffrey was thirty-seven years old at the time of the dissolution hearing. He has seasonal employment as a heavy equipment operator for a construction company. Jeffrey generally worked about seven months each year and received unemployment compensation during the winter months when he could not work. In 1992, his total income was $18,176. He estimated he would receive $16,439 in 1993. He pays $213 each month in support for a child of his first marriage. Deducting this child support payment, he has net monthly income of $903 per month.

Nancy was thirty-six years old at the time of the hearing. During the marriage she received an associate degree in human services at the Des Moines Area Community College. She then began work as a chemical dependency counselor at the Manning Family Recovery Center, where she had annual income of $14,560, and net monthly income of about $850. This job was eliminated on August 1, 1993, because of budget concerns.

At the time of the hearing Nancy was receiving unemployment compensation. Nancy testified she was looking for work and possibly would have to relocate in order to find employment. Nancy has physical care of her two children from her first marriage, and she receives support of $300 per month for these children.

The parties stipulated and agreed to joint legal custody of Justeen, with Nancy having primary physical care. They also agreed that Jeffrey would pay child support of $213 per month. The parties were unable to agree on the issues of division of property, health insurance for Justeen, and attorney fees.

The district court entered its dissolution decree on September 23, 1993. The court approved the parties' stipulation. It ordered the parties to sell their assets at an auction and apply the proceeds to their debts. If any balance was remaining, it was to be divided equally. Jeffrey was ordered to carry a health insurance plan for Justeen if he was eligible for such a plan through his employer at no cost to him. Jeffrey was ordered to pay $250 for Nancy's attorney fees.

Both parties filed post-trial motions pursuant to Iowa Rule of Civil Procedure 179(b). The court modified the decree to provide that Jeffrey should obtain health insurance for Justeen. Each party is to pay one-half of medical expenses not covered by insurance. The court determined the earlier property division did not adequately provide for the needs of Justeen. The court awarded Nancy her vehicle and household goods, including all appliances. She was ordered to pay debts of $3,700. Jeffrey was awarded his pickup, fishing boat, and tools. He was ordered to pay debts of $4,433. Jeffrey appealed.

I. Our review of this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992).

II. Jeffrey claims the district court should not have required him to provide health insurance for Justeen. He states the parties had stipulated that health costs should be divided equally unless one of them was able to obtain health insurance through his or her employment.

The record does not substantiate Jeffrey's position insofar as insurance coverage for Justeen is concerned. When the stipulation was dictated into the record

by Mr. Salvo the following statement was made as it related to those issues which the parties were unable to agree to and which had to be decided by the court:

> The other issues before the Court have to do with the -- the marital debts, division of the personal property, and the question of acquiring some insurance for this child, paying for noncovered medical bills.

Nancy's attorney appears to have agreed to this statement when he states:

> It is our understanding, in addition thereunder, Your Honor, that with regard to insurance that the party [sic] will order that any party who has insurance provided through their work shall also include the coverage on -- for the child on that insurance."

The court before taking testimony repeated on at least two occasions that three of the issues remaining for its decision were those as stated by Mr. Salvo.

We modify the decree only to the extent that if neither party can obtain health insurance for Justeen through their place of employment then Jeffrey is to obtain such insurance as directed by the trial court, but each party should pay fifty percent of the monthly premium. Each party shall pay one-half of those medical expenses not covered by insurance.

Jeffrey also argues he was paying child support above that required by the child support guidelines, and thus, he should not be required to pay an additional amount for Justeen's health insurance. He states his child support obligation under the guidelines would be $203 per month, and he agreed to pay $213 per month.

Our calculations show Jeffrey should be paying child support of $209 per month under the child support guidelines. His agreement to pay an extra $4 per month should not excuse him from paying at least one-half of Justeen's health insurance. Iowa Code section 598.21(4)(a) (1993) and the child support guidelines provide that a parent may be responsible for health insurance in addition to monthly support. We affirm the district court on this issue.

III. Jeffrey contends the distribution of assets was inequitable to him. He asks us to reinstate the district court's original decision, which ordered the parties to sell their assets at an auction and apply the proceeds to their debts. Jeffrey recognizes this would likely lead to a shortfall.

The partners in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). The Iowa courts do not require an equal division or percentage distribution. *Id.* The determining factor is what is fair and equitable in each particular circumstance. *Id.*

We agree with the district court that Nancy needs certain items in order to maintain a home for the parties' child. We agree she should be awarded a majority of the household goods and the parties' appliances. We find the division of property was equitable and affirm the trial court in this respect.

Turning next to the division of debts, we see no equitable reason why Jeffrey should have to shoulder a disproportionate share of the debts. We therefore modify the decree by providing that of the $2,700 debt owed to the National Bank of Iowa, Nancy is to pay $365 and Jeffrey is to pay the remainder. Except for this slight modification the trial court's distribution of debt is affirmed.

IV. Nancy seeks attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. *In re Marriage of Hunt*, 476 N.W.2d 99, 103 (Iowa App. 1991). We determine each party should pay his or her own attorney fees for this appeal.

Except for those specific instances of modification, we affirm the district court. Costs of this appeal are assessed 75% to Jeffrey Schwieso and 25% to Nancy Schwieso.

AFFIRMED AS MODIFIED.