FILED
MAY 20 1977
CLERK SUPREME COURT

108

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF DONNA R. SCHWARTZ

Upon the Petition of)
DONNA R. SCHWARTZ,) Filed May 20, 1977
Appellee,)
and concerning)
J. H. SCHWARTZ,) 108
Appellant.) 2-58221

Appeal from Cass District Court - Bennett Cullison, Judge.

Husband appeals economic provisions of dissolution decree. The property issue is dismissed because the husband transferred his property. The child support award is reduced. - Modified and affirmed.

Peter J. Peters, of Peters, Campbell & Pearson, of Council Bluffs, for Appellant.

Roland K. Landsness, of Jones, Cambridge, Carl, Feilmeyer and Landsness, of Atlantic, for Appellee.

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

Jerome's prayer for relief prays the court grant him "relief in the form of additional assets, a reduction in liabilities assessed to him for payment and a decreased award of child support." A't B. 12. We dismiss the property settlement appeal and reduce the child support amount to $150 per month.

After filing this appeal from the economic provisions of the dissolution decree, Jerome transferred the family farm (valued by Donna's appraiser at $58,000) with its mortgage encumbrance ($24,000) to his brother Vernon without receiving consideration. He also filed for voluntary bankruptcy, discharging almost all unsecured debts assessed to him by the trial court. In the bankruptcy proceeding, Jerome did not list among his assets the World Art promissory note for $9000 awarded to him by the trial court.

A threshold question in this appeal is whether or not Jerome's actions constituted an acceptance of the trial court decree which waives his right to appeal.

Recently the court held in a dissolution case "where there is no cross appeal" an appellant could accept "part of an award of cash, alimony, or support while claiming entitlement to a larger award on appeal." In re Marriage of Abild, 243 N.W.2d 541, 543 (Iowa 1976). We do not think Jerome's actions since the filing of this appeal may be characterized as consistent with a mere "acceptance of part of the award in such circumstances" as to allow him to pursue on appeal a claim "the award should have been larger." 243 N.W.2d at 543.

Abild by the language of its holding should be strictly reserved for allowing the acceptance by an appellant of "part of an award of cash, alimony or support" during the pendency of an appeal without an attendant risk of waiver of that appeal.

243 N.W.2d at 543. Jerome's actions in the transfer of a major family asset and the voluntary filing for bankruptcy do not constitute an *Abild* acceptance. Accordingly, we grant Donna's motion to dismiss the appeal as it relates to the property settlement.

Jerome also included in his appeal a prayer for reduction of the child support of $200 per month for their son Scott, age two and one half. The award of child support is governed by the In re Marriage of Zoellner, 219 N.W.2d 517, 524 (Iowa 1974) considerations. Jerome and Donna each bear a responsibility for their son proportionate to their capacities to pay. In re Marriage of Carney, 206 N.W.2d 107, 112 (Iowa 1973). Donna's net monthly income at trial was $370 with needs of $540 without any childcare amount included. Jerome's net monthly income was listed at $1025 with needs, including $260 child support from an earlier marriage, of approximately $1000. On this record consideration of the previous child support obligation necessitates some reduction in the amount Jerome must pay. We decree the child support amount should be fixed at $150 per month for Scott.

Dismissed in part, and modified in part.