IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF TERI SUE SCHENCK AND ALAN EARL SCHENCK

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Upon the Petition of	)	
TERI SUE SCHENCK,	)	
Petitioner-Appellant,	)	Filed April 27, 1982
And Concerning	)	
ALAN EARL SCHENCK,	)	2-99 / 2-66740
Respondent-Appellee.	)	

Appeal from Page District Court - Leo Connolly, Judge.

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

Larry J. Eisenhauer of Handley, Berry & Eisenhauer, Ankeny, Iowa, for petitioner-appellant.

Patterson, Lorentzen, Duffield, Timmons, Irish & Becker, Des Moines, Iowa, for respondent-appellee.

Submitted to Donielson, P.J., Snell and Carter, JJ.

Petitioner-wife appeals from the economic provisions of a dissolution decree arguing that the court failed to award her alimony and an equitable property settlement because of respondent-husband's lack of accurate financial disclosure, that the child support awarded was inadequate, that the court's division of property did not reflect petitioner's contribution to the marriage, and that attorney's fees should have been awarded. Respondent-husband also appeals and asserts that petitioner's acceptance of benefits after trial precludes her from claiming any alimony or additional property, that the property division was inequitable, and that the child support award was excessive. Both parties request attorney's fees for this appeal.

Petitioner Teri Sue Schenck and respondent Alan Earl Schenck were married August 16, 1969; both were university students. Respondent completed his education while petitioner worked as a bank teller, and they then lived in Illinois and Texas where respondent worked as an engineer. Two daughters were born to the couple, in 1973 and 1977, and in December of 1979, the family moved to Clarinda, Iowa, where respondent became manager of his father's implement business. At time of trial, respondent was earning a salary of $15,600 a year, while petitioner was earning $6,644.00 per year as a bank teller.

The trial court gave custody of the couple's two children to petitioner and ordered respondent to pay a total of $400 each month in child support. The house, not wanted by petitioner, was awarded to respondent along with the responsibility for the mortgage and other debts associated with the house. In addition to the house equity, respondent received assets of $7,694 and debts of $7,610. Petitioner received assets valued on the parties' stipulation and agreement at $17,300 and a cash sum of $2,500 "in recognition of her contribution in homemaking and child care services, and her contribution to respondent's education and training, and to assist her in becoming self-supporting."

I. Alimony. Petitioner argues that respondent did not fully and fairly disclose his financial condition which led to the court's not awarding any alimony. In addition, she maintains that the court did not properly consider respondent's future earning capacity, and that, if it were considered, would result in an award of alimony to her. Respondent contends that the $2,500 is really lump sum alimony, that the record does not support the conclusion that petitioner is entitled to any alimony, and that, in any case, petitioner has given up her right to challenge either alimony or property division since she already accepted the $2,500 and signed a release and satisfaction.

While there may be merit in respondent's contention as to the signed release, particularly in regard to the property division, (see In re Marriage of Abild, 243 N.W.2d 541, 542 (Iowa 1976)), we do not find it necessary to decide that issue. The record before the trial court and before this court on de novo review, Iowa R. App. P. 4, simply does not support a finding that petitioner is entitled to an alimony award. No evidence was received to indicate that respondent failed to disclose any financial resources; in fact, the parties prepared and signed a joint financial statement. Nor can either court speculate as to what respondent's future income may be. The evidence in the record indicates only that respondent is earning $300 a week currently. There was no testimony to show that he would earn more in the future; if anything, the record shows concern as to the stability of the implement business employing him and indications that he holds his job only so long as the business can afford him and he does a good job. Given the assets and child support petitioner received, the employment she has, and the income level, debts, and child support responsibilities of respondent, the record does not support, nor is there money available for, any alimony award.

II. Property Division. Several factors may be considered in making a divison of property, but the goal always is to reach a fair and equitable result under the facts of an individual case. In re Marriage of Vrban, 293 N.W.2d 198, 204 (Iowa 1980). In the present case, petitioner did not want the house; respondent received it along with its attendant debt responsibilities. Petitioner did receive assets worth more than $17,000 plus $2,500 representing her contribution to the marital estate beyond the value of those other assets. Respondent received assets of more than $16,000, as well as debts of more than $7,000. Such a division reflects respondent's higher earning capacity and provides petitioner with some ability to provide for needs, including seeking further education should she so desire. The result is equitable under the facts of this case.

III. Child Support. Petitioner contends the child support is too low, and her argument is based again upon respondent's future earning capacity and alleged failure to disclose his true financial picture. Respondent maintains that the $400 a month he is ordered to pay is too high; he seeks a reduction to $300 a month.

In making a determination of the amount of child support, the court considers several factors, including the needs of the children and the ability of the other spouse to pay. In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974). In considering these factors, we find that, while the $400 a month may be high in relation to respondent's income, that amount is needed to adequately provide for the children because of petitioner's lower earning power. The award is therefore justified.

IV. Attorney's Fees. Petitioner sought attorney's fees at trial; on appeal, she renews this request and both parties ask for fees for this appeal. Attorney's fees are not available as a matter of right, but may be awarded under proper circumstances. In re Marriage of Horstmann, 263 N.W.2d 885, 892 (Iowa 1977). We see no reason to disturb trial court's determination that each party should pay individual attorney's fees for the trial, and believe each should bear the individual fees for this appeal. The costs of the appeal are to be assessed equally.

The decree of the trial court is affirmed.

AFFIRMED.