

FILED

APR 27 1982

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MARCIA K. KOEPKE AND DANIEL L. KOEPKE

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**UPON THE PETITION OF
MARCIA L. KOEPKE,**

) Filed April 27, 1982

Petitioner-Appellee,

)

**AND CONCERNING
DANIEL L. KOEPKE,**

)

2-84
2-66447

)

Respondent-Appellant.

)

Appeal from Polk District Court, James P. Denato, Judge.

Respondent-husband appeals from the economic and visitation provisions of the parties' dissolution decree, contending (1) the alimony award and the property settlement were inequitable and (2) the wife's visitation rights were too liberal under the circumstances. **AFFIRMED WITH MODIFICATION.**

Dennis J. Kirkwood, Des Moines, for respondent-appellant.

Joseph Z. Marks of Marks, Marks & Marks, Des Moines, for petitioner-appellee.

Considered by Donielson, P.J., and Snell and Carter, JJ.

PER CURIAM

Respondent-husband appeals from the economic and visitation provisions of the parties' dissolution decree, contending (1) the alimony award and the property settlement were inequitable and (2) the wife's visitation rights were too liberal under the circumstances. We find the property settlement and alimony awards are equitable under the facts of this case and are affirmed. The weekly visitation provision, however, is reduced to biweekly visitation under the same terms as specified by the trial court.

Appellant-husband, Daniel L. Koepke, was thirty-eight at the time of trial. Daniel suffered two strokes, which have left him disabled and unemployed. Daniel receives \$618 per month as a basic social security disability grant and an additional \$117 per month for his minor daughter, Danielle. Daniel has a college degree and is fluent in six or more languages. A social worker, engaged to conduct a home study investigation, characterizes Daniel as "a very impressive man with a great deal of courage and strength," "a traditional man who does have firm conviction," and "self-confident, self-reliant and determined."

Petitioner-appellee-wife, Marcia L. Koepke, was thirty-three at the time of trial. The social worker described Marcia as "a slender, vivacious, outgoing woman of intelligence, perception and sensitivity... [who] loves her child and seems genuinely concerned for her." Marcia suffers from manic depression. She is currently employed part-time, working for minimum wage, at the American Heart Association. Marcia has two children from a prior marriage, Erin McCarthy, age sixteen, and Courtney McCarthy, age twelve. The custody of those children was taken from Marcia in 1980. The children were placed in the custody of their paternal grandmother.

Daniel and Marcia have had one child, Danielle, age eight. Custody of Danielle was placed with Daniel, subject to visitation by Marcia at the home of the maternal grandparents from noon Saturday to 5:30 p.m. Sunday every weekend. Daniel was granted exclusive use of the home but "as her share of said homestead" Marcia was given a lien against the real estate in the amount of \$5625 with nine percent interest per annum payable when the child turns eighteen or the home is sold. Daniel was ordered to pay alimony of \$100 per month for five years, commencing six months from the date of the decree if Marcia is fully unemployed. He was also ordered to maintain a life insurance policy with the child as beneficiary so long as the policy is provided through his disability entitlement.

I. Scope of Review.

Our review of this case is de novo. Iowa R. App. P. 4. We are not bound by the trial court's findings of fact, but we give weight to the findings, especially regarding the credibility of witnesses. Iowa R. App. P. 14(f)(7). In reviewing each individual economic provision of dissolution decree, we consider all the provisions together as an integrated whole. See In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976). In reviewing the property provision of a dissolution decree, we consider the factors articulated in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972), and the factors enumerated in section 598.21, The Code 1981.

II. Alimony

Daniel contends the trial court abused its discretion by ordering him to make \$100 per month support payments for five years if Marcia remains unemployed. He claims any alimony to Marcia is inequitable given each party's earning capacity and relative expenses. After applying the criteria set forth in Schantz v. Schantz,

163 N.W.2d 398, 45 (Iowa 1968), excluding fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972), we conclude the evidence does not support Daniel's claim alimony is inequitable under the facts in this case. Granted, Daniel is not facing a financially secure future, but neither is Marcia. In this case, the alimony serves a necessary function of helping Marcia support herself. Additionally, the award is contingent upon Marcia's continued unemployment. We conclude the trial court's provision for alimony is reasonable and equitable in this case.

III. Property Settlement.

Daniel contends the trial court erred by rejecting the parties' pretrial stipulation regarding disposition of the family residence. He claims the stipulation was intended to settle all issues except custody, and therefore, the court was bound to adopt and enforce the stipulation. We disagree. The binding force of a stipulation depends upon court approval. Brin v. Brin, 240 Iowa 659, 664, 37 N.W.2d 261, 265 (Iowa 1949). The court exercised its discretion in rejecting the stipulation. We find no abuse of discretion in this case. The property settlement, including the lien granted to Marcia, is reasonable and constitutes an equitable adjustment of each party's property interests. See Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976). Accordingly, the trial court's property settlement is affirmed.

IV. Visitation.

The trial court granted Marcia weekly visitation, in Danielle's maternal grandparents' home, from noon on Saturday until 5:30 p.m. on Sunday. Daniel contends the visitation is excessive. We agree. The weekly visitation is unduly disruptive. Marcia's visitation privileges should be reduced to every other weekend. See In re Marriage of Guyer, 238 N.W.2d 794, 797 (Iowa 1976).

In all other respects, the trial court's decree is affirmed.

AFFIRMED WITH MODIFICATION.