FILED
NOV 26 1980
CLERK SUPREME COURT



IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF RAYMOND WILLIAM UHLHORN & RITA DELORES UHLHORN

Upon the Petition of )
RAYMOND WILLIAM UHLHORN, )
Petitioner-Appellant, ) Filed November 26, 1980
and Concerning )
RITA DELORES UHLHORN, ) 0-326
Respondent-Appellee. ) 2-64338

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Appeal from Pottawattamie District Court - Glen M. McGee, Judge.

Petitioner appeals division of property and awards of alimony and child support. Respondent cross-appeals failure of trial court to award attorney fees. - AFFIRMED.

Charles L. Smith, Council Bluffs, for petitioner-appellant.

Peter J. Peters, Council Bluffs, for respondent-appellee.

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

PER CURIAM

Petitioner husband appeals and respondent wife cross-appeals from various economic provisions of the parties' dissolution decree. Petitioner argues that the division of property and the awards of alimony and child support are inequitable. Respondent claims that the trial court erred in failing to award her any attorney fees other than a temporary award of $250 made before trial. Our review is de novo. Iowa R. App. P. 4. We affirm.

Ray and Rita Uhlhorn were married in 1958. They had two children--Bryan, born in 1964, and Elizabeth, born in 1967. Ray is a physical therapist now working at a hospital in Boston, Massachusetts, where he is earning a gross annual salary of $37,000; net monthly income is approximately $1700. He left employment at an Omaha hospital where he earned an annual salary of $42,500 plus a $3000 bonus in 1979. Rita is a part-time teacher at Iowa Western Community College where she earns a net monthly income of nearly $500. She apparently wants to obtain a full-time job to be better able to support herself and the children.

Ray filed his petition for dissolution on January 10, 1979. During the period of separation, Ray was paying Rita a total of $1600 per month for temporary support and alimony and other family expenses. Trial was held on September 14, 1979, and the decree was entered on October 10. Rita was awarded custody of the children. Ray was ordered to pay $400 per month per child for support until each child reaches the age of eighteen unless the conditions set forth in section 598.1(2), The Code (relating to attendance at certain post-secondary educational institutions) are satisfied in which event support continues until age twenty-two. He was also ordered to pay $400 per month in alimony; after eighteen such payments, the award is to be reduced to $200 per month. Rita is to pay various debts totalling $12,000 plus the outstanding mortgage on the home incurred by the parties during marriage. Ray is to repay a loan in the amount of $1386.39 taken by him against his life insurance policy. He was also ordered to pay one-half of the monthly payments on the two cars owned by the parties, with each party receiving one car. The residence was awarded to Rita subject to a lien in Ray's favor in the amount of $30,000 with 5 1/2% interest payable July 6, 1989. Other provisions relating to division of property were set forth which are not at issue here. This appeal and cross-appeal followed.

I. Ray claims that the awards of alimony and child support are excessive and do not reflect his economic situation and ability to pay. He also claims the property division was unfair. Rita claims on cross-appeal that the trial court erred in imposing a lien on the house in Ray's favor. The relevant factors in determining the propriety of an alimony award or a division of property are set forth in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968). Regarding child support, we consider the factors found in In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974).

We can see no reason to disturb the judgment of the trial court. Rita has a current net income of $493.53 per month. Her total monthly expenses exceed $1300 (this includes those expenses incurred in raising the two children). In addition, the decree imposes upon her the obligation to pay off certain family debts, the total of which amounts to about $665 per month. Thus, Rita must pay out more than $1900 per month while earning a net monthly income of less than $500. Ray, on the other hand, has a gross income exceeding $37,000. He claims monthly expenses of $1256 which includes $465 monthly rental for an apartment. In addition, his alimony payments will be cut in half after the eighteen monthly payments of $400 each. We think Ray is in a much better position to bear the major share of the financial burden than is Rita and therefore affirm the alimony and child support awards.

Ray also complains that the division of property is inequitable. We disagree. Ray's own calculations show that the decree awarded Rita 53% of the parties' net assets with Ray getting the other 47%. He admits that this is "virtually an equal division" of the marital assets. This result reflects the apparent judgment of the trial court that the parties made relatively equal contributions to the marriage. We concur in that judgment.

Rita complains that the trial court erred in imposing the $30,000 lien on the house in Ray's favor. We note, however, that it is not payable until 1989 when Rita will presumably be on a firmer financial footing. Given the relatively generous alimony and child support awards and Ray's significant contributions towards the accumulation of the marital property, we think it is only fair that Ray be awarded a significant interest in the house. We affirm the decree's division of property.

II. Rita argues on cross-appeal that she should have been awarded more attorney fees incurred before and during trial. Ray was already ordered to pay $250 towards that

expense. The trial court has considerable discretion in making such awards which depend on one party's financial needs and the other party's ability to satisfy them. Locke v. Locke, 263 N.W.2d 694, 696 (Iowa 1978). We are not prepared to say that the trial court abused its discretion in not making a further award of attorney fees in this case. The decree appears to adequately provide for Rita's needs at considerable expense to Ray. We do not think that he should be forced to bear the entire financial burden of this litigation. We affirm the trial court in this respect.

III. Finally, Rita asks for attorney fees incurred on this appeal. As is the case with trial attorney fees, appellate attorney fees are not recoverable as a matter of right and depend upon the financial circumstances of each party. In re Marriage of Burham, 283 N.W.2d 269, 278 (Iowa 1979). Without stating how much Rita's attorney may charge for appellate fees, we direct Ray to pay $750 toward that obligation. Costs are taxed to Ray.

AFFIRMED.