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67

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF EVELYN J. REASON AND KIMBER L. REASON

UPON THE PETITION OF)
EVELYN J. REASON,)
Appellee,) Filed October 7, 1977
And Concerning)
KIMBER L. REASON,) 216
Appellant.) 2-58466

Appeal from Dallas District Court - M. C. Herrick, Judge

Appeal from economic provisions of dissolution decree. Affirmed as Modified and Remanded.

Arthur C. Hedberg, Jr., of Hawkins, Hedberg & Ward, of Des Moines, counsel for appellant.

Peter A. Keller, of McDonald & Keller, of Dallas Center, counsel for appellee.

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

68

DONIELSON, J.

Petitioner, Evelyn Reason, and respondent, Kimber Reason, were married in Carson, Iowa, on November 21, 1965, and separated in June, 1974. At the time the dissolution decree was entered on April 30, 1975, the parties had two children, ages four and four months. Respondent appeals from the property settlement provisions of the decree.

Our review in this matter is de novo. Rule 4, Rules of Appellate Procedure. With regard to property settlements, we are guided by the criteria enumerated in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968) and are aware that the fault concept has been eliminated by In re Marriage of Williams, 199 N.W.2d 339, 345-346 (Iowa 1972). We also note that precedents are of little value, and a determination of the most equitable distribution depends upon the facts of each case. In re Marriage of Romig, 207 N.W.2d 780, 783 (Iowa 1973). Similarly, while we give weight to the trial court's findings of fact, we are not bound by them. Rule 14(f)(7), R. App. P.; In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974).

The trial court granted petitioner sole title to the household goods, furniture and furnishings and also granted her sole title to the 40-acre farm and four-bedroom residence, with the right to sell or rent them at her absolute discretion. Although the trial court made no finding, the farm and residence were valued by petitioner at $50,000, $26,000 of which represents the parties' equity interest. Petitioner was also given the auto, free of liabilities, $200 per month in child support, and one-half of the parties' savings accounts, tax refunds, and certificates of deposit. Respondent was awarded the farm machinery, the remaining one-half of the savings accounts, tax refunds and certificates of deposit, and three vehicles subject to liabilities thereon. Although not addressed by the trial court, we presume that respondent maintained ownership of the $6,000 life insurance policy on his life, the cash value of which is not indicated in the record. Consequently, of the $40,000 worth of property divided by the decree, approximately $33,000 worth was awarded to petitioner and $7,000 to respondent.

Respondent was also ordered to assume all outstanding obligations of the parties, keep medical insurance on the children paid up, and pay for petitioner's attorney's fees plus costs. No alimony was awarded, however.

On appeal, respondent asserts that the settlement was unjust and inequitable because the entire farm and residence were given to petitioner. The record indicates that Evelyn had worked during the first five years of the marriage. The $20,000 down payment on the farm and residence in Redfield were purchased with the $28,000 proceeds obtained from the sale of the previous home in Carson. The remaining $8,000 was used to buy savings certificates. The Carson home, in turn, was purchased with savings, funds obtained from the sale of a trailer home, and respondent's salary.

Shortly after the couple moved to Carson, respondent began working at American Beef in Oakland, where his net salary totalled $250 per week. Although it appears that no medical evidence was presented, the testimony indicates that Kimber suffered a back injury while on the job and could no longer perform that type of work. He finally obtained suitable employment at Mercy Hospital in Des Moines, at which time the couple moved to Redfield. In 1974, respondent's gross salary was $9,800 and net salary equalled $7547. However, he indicated that the salary figures for 1974 included a substantial amount of overtime work, which could not be expected to continue in subsequent years.

In assessing his financial picture, respondent indicated that the medical insurance on the children totalled $31.95 per month and payment of $114.14 was due monthly on a loan with an outstanding balance of $1,500. Kimber estimated that after taking into account these expenses and his diminished salary and earning capacity, only $190 per month would remain for his living expenses.

Upon this state of facts, we find that the trial court erred in granting petitioner sole title to the farm and residence. With the exception of these two items, we believe that the court below equitably divided the property between the parties. However, in light of Kimber's contribution, net income, earning capacity, physical problem, and financial obligations resulting from this decree, we find that the settlement must be modified.

We direct that title to the farm and residence be retained in both parties as tenants in common, with Evelyn having the right of possession of the residence until the youngest child reaches 18 or until Evelyn remarries or until she no longer maintains the residence as a home for the minor children. Upon the happening of any of the foregoing contingencies, the property should be sold and the net proceeds divided equally between Evelyn and Kimber. See In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977).

We further direct that while Evelyn is in possession of the residence, the farm be rented at current market value, with Kimber having the first option to rent the 33 acre farm. In re Marriage of Kehrli, 241 N.W.2d 923, 925-926 (Iowa 1976). The rental income so obtained is first to be applied to mortgage payments, residence taxes and insurance and house insurance. If the rental income is not sufficient to satisfy all of these debts, Evelyn and Kimber are each to assume one-half of the remaining debt obligations annually while Evelyn is in possession of the residence. If, however, some of the rental income remains in a given year after payment of all such debts, that remainder is to be divided equally between Evelyn and Kimber as a property settlement. See generally, In re Marriage of Wahl, 246 N.W.2d 268, 271 (Iowa 1976). Further, based upon Kimber's present earnings, we direct him to pay Evelyn $10.00 per week in alimony.[1]

For the reasons stated herein, the judgment of the district court is affirmed as modified and remanded. Costs of this appeal are to be divided equally between the parties and each party is to pay his or her own attorney's fees.

AFFIRMED AS MODIFIED AND REMANDED.

[1] Although alimony was not awarded by the trial court, it was requested in the petition for dissolution. We now decide that in view of our modification of the economic provisions of the decree, an award of alimony is justified. See Zinger v. Zinger, 243 N.W.2d 639, 640-642 (Iowa 1976).