FILED
JAN 30 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF FRANCES C. CLARK AND GENE L. CLARK

Upon the Petition of)
FRANCES C. CLARK,)
Petitioner-Appellant,)
And Concerning) Filed January 30, 1981
GENE L. CLARK,) 0-409
Respondent-Appellee.) 2-64638

Appeal from Linn District Court - Clinton E. Shaeffer, Judge.

Petitioner wife appeals from economic provisions of the parties' dissolution decree. AFFIRMED AS MODIFIED.

James F. Redmond, Des Moines, for petitioner-appellant.

Robert F. Wilson, Cedar Rapids, for respondent-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

Petitioner, Frances Clark, appeals from economic provisions of the parties' dissolution decree. We modify and affirm.

After a marriage of 18 years, Frances filed for dissolution of marriage from her husband, Gene. There were two minor children of the marriage at the time of dissolution, a daughter nearly 17 years old and a son of 15 years. Custody was awarded to Frances and is not at issue here. Gene was ordered to pay $80 per week child support until daughter either completes college (not to exceed four academic years), is emancipated, marries or dies at which time the amount shall be reduced to $50 for the son's support. No alimony was awarded to either party, and the property was distributed to approximate amounts of $3,600 to Frances and $6,200 to Gene. Gene was ordered to pay $4,500 in outstanding bills accumulated during the marriage. Frances was given the right to occupy the family home until either her remarriage, removal from the property or when the younger child reaches the age of 18. At termination of occupancy, the property shall be sold and proceeds divided equally. Frances was required to pay mortgage payments, taxes, insurance and upkeep expenses during her occupancy. Certain personal property, automobile, household furniture and tools were awarded to each party. Each was to pay their own attorney fees.

Frances appeals these economic provisions asserting 1) the trial court undervalued tools awarded to Gary, 2) division of the proceeds of the house was inequitable, 3) alimony and attorney fees should have been awarded to her and 4) right of occupancy and child support should be extended. Our review is de novo. Iowa R. App. P. 4.

I. Alimony Alimony is not awarded as a matter of right. In re Marriage of Fleener, 247 N.W.2d 219 (Iowa 1976). An award of alimony is to be determined in light of the circumstances and factors. Id. See also Schantz v. Schantz, 163 N.W.2d 398 (Iowa 1969); § 598.21, The Code 1979, as amended by 1980 Session, 68th G.A., ch. 1175 § 3.

Frances earns approximately $6,000 per year at part-time employment. Gene makes $16,000 a year as a seasonal truck driver and draws unemployment benefits for approximately four months a year. Frances asserts her own extraordinary sacrifice throughout the marriage justifies an award of alimony. She further asserts Gene's income and earning capacity supports such an award. While we find that Frances was

resourceful and diligent in providing for her family's needs throughout the marriage, we agree with the trial court that alimony is not appropriated under the circumstances.

II. Property Settlement Frances asserts the trial court was unfair to allow Gene a share in the future increase of equity in the house. We agree. Frances is responsible for the ongoing expenses in the property. Gene's share of the equity shall be fixed at the $14,000 figure determined at the time of dissolution plus interest at the rate of 12 per cent per annum on that amount from the filing date of this opinion. Furthermore, the ordered sale of the home shall not occur until the end of the school year following the son's eighteenth birthday.

Frances argues the trial court undervalued the tools awarded to Gene and her share of the house proceeds should be increased to compensate for the additional value. The trial court considered the valuations of the tools set forth in pre-trial stipulations and disregarded Frances' attempt to revoke those valuations. During the trial Frances offered testimony of the replacement value of new tools based upon catalogs and retailer's information. Notwithstanding the hearsay argument on this point, the value of an asset is not necessarily equal to the cost of new replacements. Gene testified that he purchased many of the tools at auctions and garage-type sales. The fair market value would be that which a willing buyer would pay to a willing seller for used tools. We will not disturb the trial court's finding on that value.

III. Child Support The trial court provided child support for the older daughter to continue throughout four years of higher education, if pursued; but ordered termination of the son's support when he reaches 18, becomes emancipated or dies. The son testified he desired to go on to college. We find the child support provision should allow for his college expenses as so ordered for the daughter and modify the decree in that regard.

IV. Attorney Fees Attorney fees are not allowed as a matter of right, but depend upon financial circumstances and earnings of both parties. In re Marriage of Burham, 283 N.W.2d 269 (Iowa 1979). Considering Frances' financial need and Gene's income, Frances shall be awarded $600 to pay attorney fees incurred during dissolution proceedings.

We modify the decree as herein stated and affirm.

AFFIRMED AS MODIFIED.

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