FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF RUTH M. SHIPLEY and WILLIAM MAX SHIPLEY

RUTH M. SHIPLEY,)
Appellant,)
vs.)
WILLIAM MAX SHIPLEY,)
Appellee.)

Filed June 24, 1977

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2-58467

Appeal from the Pottawattamie District Court - Bennett Cullison, Judge.

Petitioner wife appeals from the provisions of a dissolution decree. - Modified and affirmed.

R. Laubenthal and Lawrence J. Beckman, of Smith, Peterson, Beckman, Willson & Peterson, of Council Bluffs, for Appellant.

Matt Walsh, of Council Bluffs, for Appellee.

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

PER CURIAM

Petitioner, Ruth M. Shipley, appeals the economic provisions of the dissolution decree. Our review is de novo. Rule 344, Rules of Civil Procedure. In matters of property settlements and alimony we are guided by the criteria set forth in Schantz vs. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except that the fault concept has been eliminated by In re Marriage of Williams, 199 N.W.2d 339, 345-46 (Iowa 1972). Further, precedents are of little value, and determinations of what is right depends upon the facts of each case. In re Marriage of Romig, 207 N.W.2d 780, 783 (Iowa 1973). While we give weight to the trial court's findings of fact, we are not bound by them. Rule 344(f)(7), R.C.P.

Respondent's weekly wage from Shipley Optical Dispensary, Inc., was $288.46, for a net take-home pay of $220. In August of 1973, some three months before the commencement of this action, respondent began receiving an additional weekly check of $173 for a net of $114. Accordingly, his yearly income from Shipley Optical was $23,995.92 (17,368 net after taxes). Shipley Optical also paid numerous personal expenses for the parties during their marriage so their average yearly income from 1969 through 1972 of $15,262.24 (13,066.65 net) is understated. However some of these personal expenses were charged back to respondent in the form of "draws" which were later written off through declaration of bonus. Further there is no assurance that respondent will be able to utilize this draw system in the future.

In the amended decree, the trial court awarded petitioner alimony in the amount of $400 per month to continue until respondent, William Max Shipley, paid a total of $12,500. Thereafter, monthly payments were to be reduced to $150 until respondent began receiving his social security benefits. At that time, petitioner would be entitled to social security under respondent's entitlement; alimony would cease after petitioner received her first check. In the event respondent attains age 65 and elects not to apply for benefits, respondent would pay to the clerk of court an amount equal to one-half of his social security benefits to which he would have been entitled upon reaching age 65.

We believe the trial court's award of $400 per month was insufficient under the facts. Accordingly, we find that the decree should be modified to the extent that alimony payments are increased to $700 per month commencing December, 1974 and to

continue until petitioner's remarriage or the death of either party. In the event respondent commences receiving social security benefits and has a reduced income, the trial court shall on application consider this as a change of circumstances and shall determine the alimony from that time according to the facts then existing.

Petitioner was awarded title to the parties' home together with the household furnishings; respondent was awarded title to their 80% interest in Shipley Optical. The trial court found that the value of the home and household goods therein was approximately equal in value to the equity the parties had in Shipley Optical. The exact value of the corporation as well as the value of the parties' 80% interest was in dispute. Respondent was awarded the life insurance policies but was required to maintain his wife as beneficiary as long as he was required to pay alimony; the other stock was divided equally. We find this division of assets equitable.

The trial court awarded petitioner a car and a lot at Lake Panorama; both of these items were actually owned by the corporation, Shipley Optical. Accordingly, respondent shall have the option of giving petitioner an automobile equal in value to the 1971 Cutlass and an amount equal to the fair market value of the lake lot in cash or the car and lot itself as ordered by the trial court. Said values shall be determined as of date of trial court's decree.

Petitioner's final assertion of error pertains to a setting aside of a temporary support order and the award of attorney fees. There is sufficient evidence in the record to demonstrate that the setting aside of the temporary support order was due to confusion on the hearing dates. The decision of the trial court to set aside the temporary order was discretionary and we find no abuse of that discretion.

The trial court awarded petitioner $850 for attorney fees at the trial court level. A statement of costs submitted by her attorney shows services and costs in the amount of $1777. Petitioner also asks for attorney fees for this appeal in the amount of $2,274.41. We feel the trial court was justified in his award of $850. While we do not set the amount of petitioner's attorney fees on this appeal, we find that respondent should contribute an additional $750 toward attorney fees incurred on this appeal.

Costs are taxed to respondent and the decree as modified herein is affirmed.