

FILED

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IN THE COURT OF APPEALS OF IOWA

CLERK SUPREME COURT

IN RE THE MARRIAGE OF CANETANA HODGES AND LORKEN HODGES

UPON THE PETITION OF)

CANETANA HODGES,)

Appellee,)

Filed February 28, 1978

AND CONCERNING)

LORKEN HODGES,)

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2-60350

Appellant.)

Appeal from Linn District Court - Ansel J. Chapman, Judge.

Respondent appeals provisions of dissolution decree regarding, *inter alia*, child support, property division and attorney fees. AFFIRMED WITH MODIFICATIONS.

Brian Gruhn and Lloyd Humphreys, of Humphreys & Associates, of Cedar Rapids, counsel for appellant.

Allan L. Harms, of Eells, Blackstock, Affeldt & Harms, of Cedar Rapids, counsel for appellee.

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

DONIELSON, J.

Respondent-Lorken Hodges appeals certain aspects of a dissolution decree entered January 13, 1977, alleging that the trial court erred in its provisions regarding property division and the payment of child support, attorney fees, family obligations and trade accounts. Respondent and petitioner-Canetana Hodges were married in 1960 and have two minor children, Mary Jo and Danny, ages 16 and 15 respectively, at the time the petition for dissolution was filed. Since 1967, Canetana has worked as a nursing assistant, currently earning approximately \$7,200 per year. Lorken works as a truck driver and does spray painting part-time in order to supplement his income, especially since the truck driving job is a seasonal one. Lorken earns approximately \$8,000 per year and, at the time of trial, was receiving \$107 per week in unemployment compensation. Further, as of the date the decree was entered, Lorken was \$260 in arrears in the payment of temporary child support.

In 1968, Canetana received as a gift from her mother the interest in a home which was later purchased by the city for \$11,000. Of that sum, \$5,000 were used to make a down payment on the present residence of the parties, the purchase price of which was \$14,000. An additional \$1,000 were used to purchase furniture and the remaining \$5,000 were used to buy an automobile which was given to Lorken, although he no longer has that vehicle. As of the time of trial, the parties' home had a fair market value of \$15,000 and was secured by a mortgage with an outstanding balance of \$7,000.

Against this financial background, the trial court granted Canetana the entire interest in the homestead property, subject to the mortgage, in view of the origin of the funds, the disposition of Lorken's vehicle, and the fact that no alimony was to be awarded. Custody of Mary Jo was awarded to Lorken, but no custody provision was made regarding Danny since the juvenile court has assumed custody of him. Although the court ordered Lorken to pay \$100 per month as child support for Danny, no obligation was placed upon Canetana to pay any child support. Each parent has equal duties and obligations to support the children and since each of the parents have custody of one child, we find that as long as present conditions remain substantially the same, we delete that portion of the decree requiring Lorken to pay \$100 per month child support for Danny. Lorken was also ordered to pay, *inter alia*, all trade accounts and family obligations incurred by the parties prior to February 13, 1976, the date the

petition was filed, and \$350 in attorney fees. Canetana was awarded the furniture and Lorken was given two vehicles, all subject to existing encumbrances. Lorken was also given his painting equipment and the life insurance policies on his life.

Our review in this matter is *de novo*. Rule 4, Rules of Appellate Procedure. Although we give weight to the trial court's findings of fact, we are not bound by them. Rule 14(f)(7), R. App. P. Initially, we decide that the trial court had jurisdiction to award child support with regard to Danny and, after reviewing the applicable principles regarding child support set forth in *In re Marriage of Zoellner*, 219 N.W.2d 517, 525 (Iowa 1974), we find no reason to disturb the child support provisions as ordered by the trial court. Further, in light of the criteria set forth in *Schantz v. Schantz*, 163 N.W.2d 398, 405 (Iowa 1968) and the fact that no alimony was awarded, we conclude that an equitable division of the property was achieved.

Finally, Lorken contends on appeal that the trial court discriminated on the basis of sex by ordering him to pay family obligations, trade accounts, and attorney fees. Although respondent did not raise this specific issue below, we have reviewed the record and find no evidence of sex discrimination. We conclude that the trial court was amply justified in ordering Lorken to pay these various obligations. Finding no reason to modify the disposition made below, we affirm the judgment of the district court. Each party is to pay his or her own attorney fees incurred in bringing this appeal.

AFFIRMED WITH MODIFICATIONS.