FILED
DEC 27 1979
SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

DOTTA J. SEALOCK,)

Petitioner-Appellee,) Filed December 27, 1979

vs.)

WARREN D. SEALOCK,) 273
62615

Respondent-Appellant.)

Appeal from Tama District Court - Robert Osmundson, Judge.

Respondent-husband appeals visitation, property division, alimony and attorney fee provisions of dissolution decree and petitioner-wife cross appeals child support and property division allocations of same decree. - Affirmed with modification.

John A. Templer, Jr. of Thoma, Schoenthal, Davis, Hockenberg & Wine, Des Moines, and Mark D. Havlik, Tama, for respondent-appellant.

Barry Kaplan and Charles Fairall of Fairall, Fairall, Reeves & Kaplan, Marshalltown, for petitioner-appellee.

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

PER CURIAM

Respondent-husband, Warren D. Sealock, appeals and petitioner-wife, Dotta J. Sealock, cross appeals provisions of decree dissolving their 11-year marriage. Affirmed with modification.

In its decree entered August 25, 1978, the trial court dissolved the parties' marriage and entered provisions regarding child custody and visitation, child support, division of assets, payment of alimony, and payment of attorney fees. Both parties challenge certain aspects of those provisions in this appeal. Our review of their contentions is de novo, Iowa R. App. P. 4, and we apply the criteria of Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972), and those of In re Marriage of Winter, 223 N.W.2d 165, 166 (Iowa 1974).

I. Child Visitation and Support.

The parties, prior to trial, entered into a stipulation regarding child custody and visitation. The trial court decree, however, substantially changed the visitation provisions from those agreed upon by the parties and did so even though no evidence on visitation was received. Warren asserts the trial court erred by failing to incorporate the parties' stipulated agreement on visitation.

The trial court is not bound by stipulations of the parties, Anthony v. Anthony, 204 N.W.2d 829, 833 (Iowa 1973), and in determining visitation rights it must look to the best interests of the children, id., Donovan v. Donovan, 212 N.W.2d 451, 453 (Iowa 1973). Here, no evidence on the visitation issue was received. Although the trial court had discretion to reject the parties' stipulation, it did not state any reasons for doing so. In our de novo review, we find no reason to reject the parties' stipulation. Therefore, we modify the visitation provisions of the dissolution decree by granting Warren visitation rights under the terms of the parties' stipulated agreement.

Dotta cross appeals the trial court's child support award, which we discuss below.

II. Economic Provisions

Both parties challenge economic provisions of the dissolution decree. Warren alleges the trial court failed to consider potential tax liabilities when it valued the parties' assets, improperly awarded Dotta a $325,000 property settlement, failed to dispose of 160 acres of farmland and made an excessive award of $400 per month

alimony to Dotta in light of the property settlement and his ability to pay alimony. Dotta asserts the trial court undervalued the parties' real estate and improperly deducted expenses of sale from the valuation.

Initially, we note that if the trial court valuation is within the reasonable bounds of the evidence, it will not be disturbed on appeal. In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973). Further, exact values need not be determined since the purpose of ascertaining value is to assist the court in making equitable property awards and allowances. In re Marriage of Moffatt, 279 N.W.2d 15, 19 (Iowa 1979). In our review of the division of assets we apply the Schantz criteria to determine if it was just and equitable and although the allocation of property and alimony have different purposes, we look to both in determining the amounts to be allowed. In re Cooper's Marriage, 225 N.W.2d 915, 919 (Iowa 1975).

Warren challenges the trial court's finding that the couples' personal property was valued at $145,000, exclusive of the farm corporation. The trial court used its best judgment to estimate the extent of Warren's secreting of funds through Cathy Reynolds. The secreting began when Warren told Dotta to leave the family home. He then withdrew $27,000 from the family savings and placed part of the money in Ms. Reynold's account. Warren and Ms. Reynolds' testimony concerning this matter is incredulous.

Warren claims the farm corporation should be considered a negative asset. We are not persuaded that after three years of $21,000 annual profit as a partnership that the three incorporators of the family corporation have now failed to make any profit. The decisions as to what funds are channeled into the corporation or how profits are distributed in the hands of the three incorporators. We find no evidence to indicate the profit picture for Warren should be any less than it was during the partnership.

Both parties challenge the property division of the trial court and, in our de novo review, we believe equal distribution of assets is proper. During the marriage, Dotta's efforts were as great as those of Warren. She mothered two children. She kept a garden, canned fruits and vegetables, fed livestock, provided transportation for the men, mowed, checked grain, and performed other farming and non-farming chores. Dotta's pretrial compliance report proposed she be awarded 160 acres of the farm, subject to a portion of the outstanding mortgage. She sought no alimony and requested

child support of $200 per month per child. Under the Schantz criteria, such an award would fairly and equitably distribute the couple's assets.

Therefore, we modify the trial court decree by increasing Warren's child support obligation to $200 per child per month from $125 per child per month and by awarding Dotta the 160 acre tract both parties admit was not disposed of below. (That is, the 160 acre tract legally described as the northwest quarter of section 16, Township 85 North, Range 14, West of 5th P.M., Tama County, Iowa.) This latter award is in lieu of the $325,000 property settlement and $400 monthly alimony awarded Dotta at trial. Dotta shall take the tract subject to her payment to Warren of an amount equal to one-third of the mortgage outstanding to the Metropolitan Life Insurance Company. We affirm the award of the remaining farmland to Warren as encumbered by the Metropolitan mortgage.

Thus, we order Warren shall be liable for payment of the full amount of the mortgage. Dotta shall pay to Warren $4000 in principle per year and one-third of the annual mortgage interest until such time her liability to Warren, equal to one-third share of the mortgage, has been discharged. Dotta shall grant Warren a quit claim deed for her interest in the 240 acres awarded him and Warren shall grant Dotta a quit claim deed for his interest in the 160 acres awarded her. Provisions holding the grantor harmless for mortgage liability beyond that provided herein shall be incorporated in the quit claim deeds.

We are mindful of Warren's assertion that capital gains tax should be estimated and deducted from any award. However, his expert witness, Floyd E. Taylor, testified no capital gains tax liability would arise if property were co-owned and partitioned with debt pro-rated. Our disposition of the farmland does essentially that and we find it unnecessary to adjust the award due to possible tax liability.

III. Attorney Fees.

Warren asserts the trial court erred by ordering him to pay $15,000 toward Dotta's attorney fees and costs of litigation. Trial courts are permitted considerable discretion in allowing attorney fees in dissolution actions. In re Marriage of Lochmiller, 229 N.W.2d 228, 229 (Iowa 1975), and the standards for determining reasonable fees are set out in In re Marriage of Jennerjohn, 203 N.W.2d 237, 245 (Iowa 1972). From our review of the record, we cannot conclude the trial court abused its discretion.

Dotta seeks an award for attorney fees incurred on appeal. Attorney fees are not recoverable as a matter of right in a dissolution proceeding and such allowance depends on one spouse's financial needs and the other spouse's ability to satisfy them. Locke v. Locke, 263 N.W.2d 694, 696 (Iowa 1978). Because of the substantial property settlement awarded Dotta and Warren's limited access to liquid assets, we decline to award Dotta appellate attorney fees.

The appendix was made unnecessarily extensive due to petitioner's demands. Petitioner is assessed two thirds of the costs of printing the appendix. Other costs shall be taxed to the respondent.

The trial court decree is affirmed as modified and the matter remanded for entry of provisions consistent with this opinion.

AFFIRMED AS MODIFIED.

Carter, J., concurring in part and dissenting in part.

CARTER J. (concurring in part and dissenting in part)

I concur in divisions I and III. As to the issues presented in division II, I would not disturb the determination of the trial court.