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IN THE IOWA COURT OF APPEALS

IN RE THE MARRIAGE OF PATRICIA KAY BUSCH AND STEPHEN R. BUSCH

Upon the Petition of	)	
PATRICIA KAY BUSCH,	)	Filed May 26, 1981
Petitioner-Appellee,	)	
And Concerning	)	
STEPHEN R. BUSCH,	)	<u>1-62</u>
Respondent-Appellant.	)	<u>2-65071</u>

Appeal from Bremer District Court - M. L. Mason, Senior Judge.

Respondent husband appeals from economic provisions of the parties' dissolution decree. AFFIRMED AS MODIFIED.

Robert J. Dieter of Redfern, McKinley, Olsen & Mason, Cedar Falls, for respondent-appellant.

Gary J. Boveia, Waverly, for petitioner-appellee.

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

DONIELSON, J.

Respondent Stephen Busch appeals from the economic provisions of the parties' dissolution decree. He contends that the award of real estate to petitioner Patricia Busch was inequitable and that the trial court improperly considered fault in making the property division.

I.

The eight-year marriage of the parties was dissolved by a decree entered on May 7, 1980. Custody of the couple's minor child was given to the petitioner; respondent was ordered to pay \$200 per month in child support. The personal property was divided equally between the parties and the petitioner was awarded the family home subject to a mortgage. The respondent was ordered to pay approximately \$3800 in debts, \$500 in attorney fees for the petitioner, and court costs. At the time of the decree, both parties were approximately 28 years old. Following the birth of the couple's child in 1972, the petitioner remained in the home; she did not procure outside employment until February of 1980, when she began working as a secretary with a net weekly income of \$148. The respondent nets \$244 per week from his employment with a pump company.

II.

On appeal, the respondent raises two related contentions: 1) that the trial court erred in awarding all the real estate to the petitioner without providing for the respondent to share in the equity; and 2) that the property division is so disproportionate in favor of the petitioner as to suggest that the trial court considered fault as a factor in dividing the parties' assets.

Fault is not a criterion to be considered in making property divisions upon dissolution of marriage. In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972). On the basis of this record, however, we are unable to conclude that fault was a factor in the trial court's division of the assets and we note the trial court's specific statement that its decision would not be influenced by evidence of fault. Nonetheless, we agree with the respondent that he should have been awarded some share of the parties' equity in the real estate. The parties' only assets were the house, valued at \$45,000 with a \$28,500 unpaid mortgage, and certain personal property valued at approximately \$8000. Petitioner received half the personal property and all of the \$16,500 equity in the house, for a total of approximately \$20,000; respondent received the other half of the personal property, no equity in the real estate, and was ordered to pay approximately \$4420 in

debts, all for a net loss of approximately \$70. Although we acknowledge that there is no mechanical rule that each spouse must receive one half of the marital assets, In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980), we think that the result in the instant case is neither equitable nor justified by the criteria specified in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968) (modified to exclude fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972)). The parties are the same age and have attained the same level of education. Both are in good physical and mental health. Both parties contributed to the family's well-being, the respondent through outside employment and the petitioner through caring for the home and the child. While it is true that the respondent nets approximately \$100 per week more than the petitioner and the latter has custody of the parties' child, we do not think that these factors alone justify denying the respondent any share in the house. Consequently, we modify the decree to provide that the house be sold upon the occurrence of any of the following: 1) when the youngest child attains the age of 18; 2) when the petitioner dies or remarries; or 3) when (and if) the petitioner cohabits in the house with a member of the opposite sex. When the house is sold, petitioner shall pay to the respondent \$8250 plus 10% interest thereon in satisfaction of respondent's equitable interest in the house. Should the parties reach a mutual decision to sell the house before the time we have specified, the same provisions apply. In order to secure petitioner's obligation to the respondent, we hereby create a lien on the house in respondent's favor.

AFFIRMED AS MODIFIED.