FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF TIMOTHY JON BUSS AND LYNN MARIE BUSS

TIMOTHY JON BUSS,

Petitioner-Appellant,

v.

LYNN MARIE BUSS,

Respondent-Appellee.

Filed November 19, 1979

270
2-62346

Appeal from Cerro Gordo District Court - L. E. Plummer, Judge.

Petitioner-husband appeals property settlement provisions of dissolution decree. AFFIRMED WITH MODIFICATION.

R. L. Stephenson of Beck, Pappajohn, Shriver & Stephenson, Mason City, for petitioner-appellant.

David M. Nelsen of Nelsen & Folkers, Mason City, for respondent-appellee.

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

JOHNSON, J.

Petitioner-husband, Timothy Jon Buss, appeals property settlement provisions of dissolution decree terminating his marriage to respondent-wife, Lynn Marie Buss. We affirm with modification.

Petitioner and respondent were married five and one-half years at the date of dissolution. No children were born of the marriage. Petitioner, age 26, was employed as a salesman-partner with Arnold Motor Supply of Mason City, Iowa. Respondent, also age 26, was employed at Chuck Busch Realty, Inc. of Mason City as a secretary-bookkeeper. She also had a real estate license and sold real estate part-time for Busch Realty. Both parties were in good health and had completed two years of junior college at the time of trial. Petitioner's 1977 gross income was $13,229.86 (approximately $1,104 per month), respondent's was $9,227.36 (approximately $770 per month).

Trial court decreed petitioner receive the following personal property: a 1972 Cadillac automobile, a 1975 boat and trailer, a 1974 Toronado automobile, a 1963 Corvette automobile, $1300 personal property previously agreed upon, all personalty brought into the marriage by petitioner, and all other property belonging to and owned by the parties which was not specifically awarded to respondent. Respondent was awarded: title to the parties' home, a diamond ring, $1500 personal property previously agreed upon, and all personal property brought into the marriage by respondent. Both parties were ordered to pay all debts relating to or encumbering the property received by them. All other debts and tax liabilities were to be paid by them equally, except tax liabilities, which were to be paid by each in accordance with his or her attributable income.

I. **Scope of Review.** Our review of dissolution proceedings is **de novo.** Iowa R. App. P. 4; Zinger v. Zinger, 243 N.W.2d 629, 640 (Iowa 1976).

II. **Distribution of Property.** Trial court's division of the property resulted in an award of approximately $16,820-$18,820 to respondent, while petitioner received $12,220-$16,800, depending upon which of the disputed valuations is assigned to particular items of property. Trial court's decree merely indicated the relative values assigned by each party, but made no specific finding as to the court's valuation. In its ruling on post-trial motions, trial court, however, stated:

> . . . taking the high values given, the value of the properties awarded petitioner totalled about $19,600, plus $5,000 . . . payable by respondent to petitioner, . . . less alleged debts . . . of $12,000, leaves petitioner an award of

approximately $12,000.

. . . .

. . . the award to respondent of the residence, a total of $49,000, less the encumbrance thereon and the payment to petitioner of $5,000, would leave a net award of $16,500.

Accepting these values, we conclude each party received the following.

Petitioner		Respondent	
Household Goods	$ 1,300	Household Goods	$ 1,500
1974 Toronado	3,400	House	$49,000
1972 Cadillac	2,500	Diamond Ring	800
Boat & Trailer	6,000		
1963 Corvette	5,000		
Business Equity of Petitioner	800		
Cash	-		
Invisible Assets	3,500		
Total Assets:	$22,500		$51,300
Encumbrances: Cadillac, Boat, Trailer & Corvette	12,000	Mortgage	28,000
Net Assets:	$10,500		$23,300
$5,000 Lien	5,000	Less $5,000 Lien	5,000
Net Award:	$15,500		$18,300

However, we find insufficient support in the record for trial court's attributing $3,500 invisible asset to petitioner. Applying the criteria set forth in 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), we find trial court's property division inequitable. Both parties are equal in age, education, relative earning capacity, need, and contribution to the marriage. Division of the property, therefore, also should be equal. We consequently order respondent to pay petitioner the original $5,000, plus an additional $1,400 within 180 days after issuance of procendendo in this case. Said sum shall be a lien upon the residential property awarded respondent until payment thereof.

We further find the $1,380 debt owing to Sears is for a $350 davenport purchased in 1974, a $245 dryer purchased in 1976, and a $900 bedroom suite purchased in 1976. Petitioner shall pay $900 of the remaining debt and respondent shall pay $480. Petitioner also is liable for 69%, and respondent 31%, of the parties' 1977 income tax liability.

All other provisions of trial court's decree are affirmed.

III. Attorney fees and costs. Aside from the $300 in temporary attorney fees already granted respondent, each party shall pay his or her own attorney fees on this appeal. Costs shall be assessed to each party equally.

Trial court's decree is affirmed as modified.

AFFIRMED WITH MODIFICATION.

All judges concur except Oxberger, C.J., who dissents.

OXBERGER, C.J. (dissenting)

I would affirm the trial court.