IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MILDREN DEANE O'BRIEN AND JAMES EDWIN O'BRIEN

Upon the Petition of	)
MILDRED DEANE O'BRIEN,	)
Petitioner-Appellant,	)
And Concerning	)
JAMES EDWIN O'BRIEN,	)
Respondent-Appellee.	)

FILED
APR 21 1981
Filed April 21, 1981
CLERK SUPREME COURT

1-50
2-64790

Appeal from Polk District Court - Harry Perkins, Judge.

Petitioner-wife appeals and respondent-husband cross-appeals from economic provisions of the parties' dissolution decree. AFFIRMED WITH MODIFICATION.

Robert H. Laden of Hyland, Laden & Pearson, Des Moines, Iowa, for petitioner-appellant.

Harlan M. Hockett of Flagg, Hockett, Benhart & Golden, Des Moines, Iowa, for respondent-appellee.

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

Petitioner-wife, Mildred Deane O'Brien, appeals and respondent-husband, James Edwin O'Brien, cross-appeals from economic provisions of the parties' dissolution decree. Petitioner asserts that trial court's property division was inequitable, primarily because trial court failed to consider respondent's vested retirement benefits. She further argues that she should not be required to vacate and sell the parties' home until the youngest child attains majority or graduates from high school, rather than in June, 1981, as ordered by trial court. Respondent asserts that the alimony award was excessive and that he should receive a credit for one-half the mortgage payments he is required to make during petitioner's occupancy of the home until June, 1981. He also requests the court to take judicial notice of a government study showing a statistical probability that petitioner will remarry. Both parties allege that the decree should be modified to require respondent to continue dental and medical insurance coverage on the minor children under the policy provided by respondent's employer. We affirm with modification.

The parties were married on February 16, 1957. Their marriage was dissolved by decree filed February 21, 1980. At that time petitioner was 38 years old and respondent was 41. The parties have three children, one of whom has reached the age of majority. The minor children are Pamela, born February 26, 1963, and James, born February 1, 1977. During their marriage petitioner was primarily a full-time mother and homemaker. She did work full-time as a keypunch operator between 1973 and 1976, but quit due to her pregnancy with James. Respondent was the Manager of Construction for a local corporation and earned approximately $41,000 in 1979.

Trial court awarded petitioner custody of the minor children, $50 per week child support for each of the minor children, payable until the child reaches age 18 or graduates from high school, and alimony of $100 per week, payable until the death of either party or petitioner's remarriage, whichever occurs first. Petitioner was also given the right to occupy the family residence until June 1, 1981, the household goods and furniture, and a 1978 Continental automobile. Respondent was awarded a pickup truck, a boat, his tools, and all rights to his retirement benefits. He was required to pay all outstanding debts and obligations of the parties and to make mortgage payments of approximately $280 per month on the family residence until June 1, 1981. Trial court further ordered that the home should be sold thereafter and the net proceeds divided equally. Trial court also ordered equal division of the net proceeds from the sale of a coin collection.

I. Scope of Review. Our review of dissolution proceedings is de novo. Iowa R. App. P. 4. We review the facts as well as the law and from the credible evidence determine rights anew on those issues properly presented. In re Marriage of Horstmann, 263 N.W.2d 885, 888 (Iowa 1978). While we give weight to trial court's findings of fact, especially with regard to credibility of witnesses, we are not bound by them. Iowa R. App. P. 14(f)(7).

II. Division of Property. The court in dissolution proceedings may make such division of property as is justified. § 598.21, The Code 1979. We are guided by the principles of Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), excluding fault In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972). There is no mechanical rule that each spouse must receive one-half of the marital assets, but such a division is often equitable. In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980). We believe that such a result is appropriate in this case. With these principles in mind, we will address the parties' contentions.

A. Petitioner claims that trial court should have considered respondent's $35,000 interest in a vested retirement plan as a marital asset. We first note that trial court's award of the benefits to respondent free of any claim of petitioner does not necessarily imply the court failed to consider these benefits as a marital asset. Assuming, however, that trial court did not consider the benefits as a marital asset, which we believe they are, we are not persuaded that petitioner's award should be enhanced. Respondent has no present ability to obtain those funds and will not be able to do so until he retires. Discounted to present value, these benefits are worth approximately $5,000. In light of petitioner's net award under the decree, trial court's division is fair and equitable.

B. Petitioner also asserts that trial court improperly ordered the parties' home to be sold June 1, 1981. We disagree. While allowing the custodial parent to remain in the family residence until minor children reach majority is appropriate in certain cases, see e.g. In re Marriage of Florke, 270 N.W.2d 643, 644 (Iowa 1978, we do not find that to be appropriate in this case. The four bedroom home is the parties' major asset. James is now only four years old. Delaying respondent's share of the equity for such a substantial period when the physical requirements of petitioner and the child do not require it is inequitable.

C. Respondent alleges that he should receive credit for one-half of the mortgage payment he must make until June 1, 1981. We also disagree with this assertion. Petitioner stated that her monthly expenses were approximately $1,000. The amounts

ordered in child support and regular alimony are inadequate to meet these needs. Thus requiring respondent to make the mortgage payments as provided in the decree was proper. We further conclude that trial court's award of $100 per week alimony should be affirmed.

D. Respondent asks the court to take judicial notice of an official government statistical study, which he did not introduce at trial, that petitioner is likely to remarry. We decline to do so. See In re Marriage of Tresnak, 297 N.W.2d 109, 112 (Iowa 1980). Even if we were to consider this probability, petitioner's entitlement to an equitable division of the marital assets is not affected.

III. Insurance Coverage. We agree with the parties' assertion that the decree should be modified to require respondent to continue dental and medical insurance coverage.

Except for the modification to require respondent to continue insurance coverage, we affirm trial court's decree. Costs are assessed against respondent.

AFFIRMED AS MODIFIED.