



IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JOANN E. SORENSON AND JOHN D. SORENSON

UPON THE PETITION OF
JOANN E. SORENSON,

Petitioner/Cross-Appellant,

AND CONCERNING
JOHN D. SORENSON,

Respondent-Appellant.

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Filed February 23, 1983

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2-66234

Appeal from Polk District Court, Norman D. Elliott, Judge.

Respondent-husband appeals and petitioner-wife cross-appeals from economic provisions of the parties' dissolution decree. AFFIRMED AS MODIFIED.

R. J. Wagener of Wagener & Day, Ankeny, for respondent-appellant.

Donald G. Beattie of Ed Skinner, P.C., Altoona, for petitioner/cross-appellant.

Considered en banc.

OXBERGER, C.J.

Respondent-husband appeals and petitioner-wife cross-appeals from economic provisions of the parties' dissolution decree. Both parties assert that the property division was inequitable. Respondent-husband asserts that both the alimony and attorney's fees award were inequitable. Petitioner-wife asserts that the support awards should have included a cost-of-living adjustment clause. Her request for attorney fees on appeal was ordered submitted with the appeal.

The parties were married in 1960 and were, respectively, 41 and 44 at the time of trial. John has an engineering degree and was earning \$26,400 per year as an engineer at the time of trial with some additional outside income from carpentry work. He had, however, lost his job at the time a later hearing was held and was eligible for unemployment benefits of up to \$150 per week. JoAnn has a high school degree and worked as a secretary during the first three years of the marriage while John completed his education. She was, however, primarily a housewife and mother during the remainder of the marriage. At the time of trial she was employed as a secretary at a salary of \$9,700 per year.

JoAnn was awarded custody of the three children, now aged 19, 17, and 13. She was awarded \$300 per month child support to be reduced to \$200 per month when the middle child reaches the age of eighteen, graduates from high school, marries, or becomes self-supporting. Child support was to terminate when the youngest child becomes similarly emancipated. John was granted the right to claim the two older children as dependents for tax purposes while JoAnn was granted the right to claim the youngest. John was required to maintain present health and accident insurance for the benefit of the children so long as the child support obligation remained and was ordered to maintain and name the children irrevocably as beneficiaries under a life insurance policy.

JoAnn was awarded \$500 per month alimony, to be reduced to \$250 per month effective January 1, 1989, terminating upon the wife's death or remarriage. Other property, including the equity in the parties' home, was equally divided, but there was no specification of the time within which the parties' home should be sold. JoAnn was awarded attorney's fees of \$1,300. John was ordered to pay debts totaling approximately \$2,600. JoAnn was awarded no part of John's inherited undivided half-interest in 99 acres of farm real estate subject to a life estate in his 67-year-old mother.

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 the 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. Property Division

Our de novo review convinces us that modification of the trial court's disposition of the residence is in order. Following the factors outlined in Iowa Code section 598.21(1)(1981) and In re Marriage of Conley, 284 N.W.2d 220, 223, (Iowa 1979), which need not be repeated here, we find that an equitable division of the property requires that JoAnn's use of the house be limited in time, so that John might eventually enjoy the benefits of the equity he has in it. We therefore modify the decree and order that JoAnn be permitted to use the house until she and the children cease to reside there or until the youngest of their children reaches the age of 18, whichever comes first. At that time, JoAnn shall remit to John one-half the equity in the homestead at the time of the decree, plus interest at the rate of ten percent per annum from the date of the decree. In the meantime, JoAnn will have the obligation of meeting mortgage payments on the house.

III. Alimony

"When determining the appropriateness of alimony, the trial court must consider: (1) the earning capacity of each party, and (2) present standards of living and ability to pay balanced against relative need of the other." In re Marriage of Hitchcock, 309 N.W.2d 432, 436-37 (Iowa 1981). "Alimony is an allowance to the...[former spouse] in lieu of the...[other spouse's] legal obligation to support [him or] her." Id. at 437. We apply the criteria codified in Iowa Code section 598.21(3)(1981).

Applying these principles to the facts in the record, we conclude that an equitable solution of the difficult alimony problem requires that the alimony award be reduced to \$350 per month, that it be continued through 1987, and that John's obligation to support JoAnn be terminated at that time. In the meantime, either party is of course entitled to show that a change of circumstances would justify an appropriate modification of this provision.

IV. Child Support

"Parents are equally obligated to support their children" Gerk v. Gerk, 259 Iowa 293, 296-99, 144 N.W.2d 104, 107-108 (1966).

On the criteria contained in Iowa Code section 598.21(4)(1981), as well as those developed in our case law, we conclude that the award of child support in the amount of \$300 per month, to be reduced to \$200 per month when the middle child reaches the age of 18, graduates from high school, marries, or becomes self-supporting, and terminating when the youngest child becomes similarly emancipated is reasonable and equitable. We see no reason to modify this portion of the decree.

The recent history of high inflation rates and a rapid deterioration in the purchasing power of the dollar makes it highly desirable for alimony and support payments to be adjusted according to some reasonable cost-of-living measure. Because John was unemployed, we are constrained by the guidelines set forth in In

re Marriage of Stamp, 300 N.W.2d 275, (Iowa 1981) to deny JoAnn's request for automatic cost-of-living adjustments.

V. miscellaneous Provisions

In the trial court's decree, John was required to maintain his present health and accident insurance, or an equivalent, for the benefit of the children for as long as his obligation for child support exists. However, JoAnn was not required to maintain her dental insurance for the benefit of the children. Equity demands that JoAnn be required to maintain her dental insurance for the benefit of the children until the youngest reaches the age of 18.

Similarly, John was required to name his children irrevocably as beneficiaries of certain life insurance policies. We believe that it is inappropriate for the court to order John to maintain such policies for the benefit of his children beyond the time when his obligation to support them ceases. It is of course commendable if a parent chooses to name his emancipated children as beneficiaries of his life insurance policies, but parents are under no legal obligation to do so. Therefore, the trial court's decree is modified to provide that John maintain those life insurance policies in force with his children as beneficiaries until his obligation to provide child support ends.

VI. Attorney Fees

Attorney's fees are not recoverable as a matter of right, but depend upon one party's financial needs and the other party's ability to pay. In re Marriage of Burham, 283 N.W.2d 269, 278 (Iowa 1979). Likewise, on appeal our primary consideration in making an award of attorney's fees is the parties' resources.

Taking into account the financial resources of each of the parties, the division of property, and the support obligations imposed upon John, we find that each of the parties herein should pay his or her own attorney's fees, both at trial and in connection with this appeal.

AFFIRMED AS MODIFIED.