

FILED

AUG 30 1983

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA**IN RE THE MARRIAGE OF SANDRA M. BOUSQUET AND DONOVAN G. BOUSQUET**

Upon the Petition of)

SANDRA M. BOUSQUET,)

Petitioner-Appellee,)

Filed August 30, 1983

And Concerning)

DONOVAN G. BOUSQUET,)3-39
2-68281

Respondent-Appellant.)

Appeal from Woodbury District Court - Richard F. Branco, Judge.

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

Robert G. Scoville of Ryan & Scoville, South Sioux City, Nebraska, for respondent-appellant.

J. Patrick Ryan of Margolin, Ryan, Gildemeister & Willia, Sioux City, for petitioner-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel and Hayden, JJ.

DONIELSON, J.

Respondent husband appeals from the economic provisions of the parties' dissolution decree. He claims the provisions regarding property division, alimony, and child support are inequitable and that the court should have considered the parties' antenuptial agreement. Our review is de novo. Iowa R. App. P. 4. We affirm with modification.

Sandra and Donovan Bousquet were married in 1972, each having been previously married. They are the parents of one child, a daughter born in 1975. Pursuant to a stipulation by the parties, the trial court placed her in Sandra's custody; that decision is not appealed here. Before their marriage the parties signed an antenuptial agreement which purported to provide that in the event of a dissolution Sandra would receive \$1,000 for each year of the marriage but would receive no alimony and no further share of Donovan's substantial assets. The agreement recited that its purpose was to preserve Donovan's assets for the eventual benefit of his children from an earlier marriage.

Donovan's primary asset is 90% of the stock in a corporation which operates a motel. The other 10% of the stock is owned by Donovan's children from the earlier marriage. This business has encountered hard times in recent years, and Donovan asserts that the corporation's assets are exceeded by its liabilities. Donovan also owns all the stock in another corporation, but he described this corporation as dormant and devoid of assets. At trial time, Donovan drew a gross salary of \$150 per week from the motel corporation. However, he asserts by way of affidavit that this income ceased after trial when mounting debts forced the sale of the motel and discontinuation of all corporate activities. His affidavit further asserts that he has no income and that he is personally liable for some \$77,000 of the \$93,000 corporate debt which remains after exhaustion of all proceeds from sale of the motel.

Donovan is obligated to pay \$560 per month in child support for his two children from a previous marriage. He claims he is over \$14,000 in arrears on this obligation. Sandra was employed until shortly before trial. She is experienced in the management of restaurants and hotels, and she believes she can find another job easily. She has no significant property.

The trial court held the parties' antenuptial agreement to be invalid. The court ordered Donovan to pay Sandra child support of \$300 per month and alimony of \$200 per month. The alimony award is to last for three years or until Sandra's earlier remarriage or death. The court awarded Donovan all of his stock in both corporations; as noted above, Donovan contends this stock is worthless. The parties' other property was negligible; the court awarded Sandra most of the household goods and a 1979 Cadillac previously owned by Donovan's corporation while ordering him to pay off the debt against the car amounting to nearly \$8000. Donovan was awarded an old car and personal effects. He brought this appeal.

I.

Donovan's primary complaint is that the economic provisions of the decree as a whole are inequitable, specifically with regard to the property division, alimony and child support. In considering the fairness of such provisions, we view them as an integrated whole. In re Marriage of Castle, 312 N.W.2d 147, 149 (Iowa Ct. App. 1981). We examine the facts of this case in light of the factors listed in Iowa Code §§ 598.21(1) (property division), 598.21(3) (alimony), and 598.21(4) (child support).

We agree with Donovan that the terms of the decree are inequitable and require some modification. The trial court fixed Donovan's alimony obligation at \$200 per month for three years or until Sandra's remarriage, whichever first occurs. This award cannot be justified. Contrary to the court's findings, we do not believe Donovan enjoys a high standard of living; in fact, the record indicates

that his current financial position is very precarious. In addition, Sandra is highly skilled in motel and restaurant management and has never had any trouble finding employment. Under these circumstances, we believe alimony of \$200 per month should last for one year instead of three years as decreed below. This obligation will cease if Sandra remarries or dies during that one year.

Nor can we concur in the court's child support award of \$300 per month. The court apparently thought such an award justified by Donovan's income from his 90% interest in the motel corporation. We have already referred to his significant financial problems. Given his limited resources and the child's needs, we believe a support obligation of \$175 per month is more equitable. The other conditions set forth by the trial court regarding the child's post-secondary education are affirmed.

Finally, we can discern no reason for awarding Sandra the 1979 Cadillac worth \$11,000 while ordering Donovan to pay off the nearly \$8000 lien against it. Given the parties' relative financial circumstances, it is unfair to award to Sandra an asset formerly held by the motel corporation while requiring Donovan to pay off the lien, increasing his already substantial debt load. We order Sandra to be solely responsible for paying off the debt on the Cadillac.

II.

Donovan also claims that the trial court should have given weight to the parties' antenuptial agreement. That agreement appeared to prohibit alimony to Sandra; instead, she was to receive \$1,000 for every year they were married in the event of their divorce. We agree with the trial court that such a provision prohibiting alimony is void as against public policy. In re Marriage of Gudenkauf, 204 N.W.2d 586, 587 (Iowa 1973). We find no error in this regard.

Except for the modifications specified in Division I, the provisions of the decree are affirmed. The cause is remanded with directions to enter a decree and

judgment in conformity with this opinion. Costs are divided equally between the parties; each are responsible for his or her own attorney fees on this appeal.

AFFIRMED AS MODIFIED AND REMANDED WITH INSTRUCTIONS.

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

OXBERGER, C.J. (dissenting)

I dissent. I would affirm the trial court.