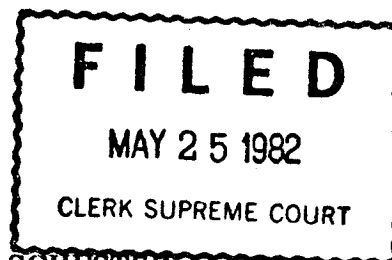


IN THE COURT OF APPEALS OF IOWA



IN RE THE MARRIAGE OF BARBARA ANN BLOECHL SCHUSTER
AND MICHAEL JOHN SCHUSTER

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Upon the Petition of)

BARBARA ANN BLOECHL SCHUSTER,)

Petitioner-Appellee,)

Filed May 25, 1982

And Concerning)

MICHAEL JOHN SCHUSTER,)

2-102
2-66825

Respondent-Appellant.)

Appeal from Clayton District Court - C. W. Antes, Judge.

Respondent husband appeals from the economic provisions of the decree dissolving the parties' marriage asserting: (1) the trial court's \$100,000 valuation of his law practice is incorrect and that the payments he was ordered to make to the petitioner based upon this valuation should be considered alimony rather than a property division, and (2) it is unclear whether respondent's child support payments are to remain the same until all three children reach age eighteen or be reduced pro-rata as each child reaches age eighteen. AFFIRMED AS MODIFIED.

R. L. Donohue, West Union, for respondent-appellant.

William C. Fuerste of Fuerste, Carew, Coyle, Juergens & Sudmeier,
Dubuque, for petitioner-appellee.

Considered by Donielson, P.J., and Snell, and Carter, JJ.

PER CURIAM

Respondent husband appeals from the economic provisions of the decree dissolving the parties' marriage asserting: (1) the trial court's \$100,000 valuation of his law practice is incorrect and that the payments he was ordered to make to the petitioner based upon this valuation should be considered alimony rather than a property division, and (2) it is unclear whether respondent's child support payments are to remain the same until all three children reach age eighteen or be reduced pro-rata as each child reaches age eighteen. We affirm as modified.

I.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. Our responsibility is to review the facts as well as the law and to determine rights anew from the credible evidence on properly presented and preserved issues. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977). While we give weight to the findings of the trial court, especially where credibility of witnesses is involved, we are not bound by them. In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974); Iowa R. App. P. 14(f)(7). As in all cases of this type, precedent is of little value and our decision must ultimately depend upon the particular facts of this case. In re Marriage of Kehrli, 241 N.W.2d 923, 926 (Iowa 1976).

II.

Petitioner Barbara Ann Bloechl Schuster and respondent Michael John Schuster were married in 1971, when Michael was working in a packing plant to save money for law school and Barbara was a registered nurse. Barbara continued to work until June 1974, when Michael finished law school and their first child, Kathryn, was born. Three months after Michael passed the Iowa bar examination, he and another attorney purchased a law practice from a newly-appointed district court judge. The \$70,000 purchase price included the physical assets other than the building, but no work in progress. At the time of trial, Michael still owed

\$36,996.21 on the law practice.

The trial court awarded custody of the parties' three children to Barbara. Michael was directed to pay child support of \$650 per month in 1981 and 1982, and \$750 per month thereafter "until each child attains the age of 18 years, dies or becomes emancipated or marries, whichever event occurs first."

The trial court awarded Michael most of the parties' property and directed him to pay Barbara \$21,985.12, one-half its value within thirty days. Also as part of the property division, Michael was directed to pay Barbara \$50,000, one-half the value of his law practice in equal installments over a ten-year period. The trial court's \$100,000 valuation of the practice was based on a calculation of \$30,000 for its physical assets and \$70,000 for two years' income.

The trial court's initial decree was subsequently corrected to award Barbara the parties' shares of stock and to reduce the value of Michael's law practice from \$100,000 to \$60,003.79 by subtracting the amount of debt he still owed at the time of trial, \$39,996.21. (There is a discrepancy in the record as to the amount of debt. We believe the correct amount is \$36,996.21.) Thus, Michael was to pay Barbara \$30,001.89 for the law practice presumably still in equal installments over a ten-year period.

III.

Michael asserts that the division of marital property made by the trial court was inequitable with regard to the valuation of his law practice. He does not, however, dispute the trial court's division of the parties' other property.

The proper valuation of an intangible asset such as a one-half interest in a law firm is an exceedingly difficult task. It is especially difficult in this case because the evidence is quite vague. We know the following facts: that Michael and another lawyer paid \$70,000 for the law practice in 1974; that Michael still owed \$36,996.21 to his former employer at the time of trial; that Michael now has

a new partner who owed him \$6,000.00 at the time of trial; and that the law practice grosses approximately \$100,000 per year.

The trial court found that "Respondent's valuation of the law practice is the sum of \$100,000, which the court computes \$30,000 for the physical assets, plus two years' income of \$35,000 each." While this method of valuation may appear somewhat arbitrary we believe that any effort on our part to disturb it would be equally arbitrary. We accept the trial court's valuation as finding adequate support in the evidence. We also agree that the \$30,001.89 payment was properly designated by the trial court to be a property settlement rather than alimony. As to the payment of this award we affirm the trial court's decree in all respects except that we direct that the installment payments shall be made semi-annually in twenty-one equal installments commencing on July 1, 1981. Interest on the unpaid balance shall remain as provided in the trial court's decree.

IV.

Respondent asserts that the trial court's order for child support set out below is ambiguous and needs clarification.

That the respondent shall pay to the Clerk of the District Court of Clayton County, Iowa, the sum of \$650 per month as child support for the children of the parties hereto; said sum shall continue at that rate during the calendar years 1981 and 1982. Effective January 1, 1983, the child support shall increase to \$750 per month, where it shall continue until each child attains the age of 18 years, dies or becomes emancipated or married, whichever event occurs first;

We find this order ambiguous as to the extent the total award should be reduced when each child satisfies the stated contingencies. We therefore modify the order so that respondent's child support obligation is reduced by \$100 per month when the first child satisfies the trial court's support contingencies and by \$150 per month when the second child does the same.

AFFIRMED AS MODIFIED.

Snell and Carter, JJ., concur; Donielson, P.J., dissents.

DONIELSON, J. (dissenting)

I respectfully dissent.

I believe the majority's decision to affirm the trial court's valuation of respondent's law practice has failed to properly evaluate respondent's true earning capacity and the excessive burden which the trial court's decree places on respondent. After respondent pays his child support obligation and the amount due on his property settlement obligation, there will not be a very substantial amount of money remaining for him to meet his own living expenses.

In 1979, respondent's gross income was \$37,968.00 and his net income was \$29,044.38. It is expected his income will remain at this level.

In 1983, his child support obligation will increase from \$7,800 per year to \$9,000 per year. With his remaining \$20,000 of income he must arrange to pay debts totalling to \$88,983.22 plus the interest on this amount. These debts include: a \$21,985.12 lump sum property award; \$30,001.89 for half the value of his law practice; and \$36,996.21 to his former employer. I question his ability to repay this large amount of debt.

I would have reduced the trial court's "arbitrary" valuation of respondent's law practice by one year's income, due to the personal nature of the services involved. This would have reduced the amount of petitioner's award attributable to the law practice to \$14,000. I believe this would be a more equitable result in light of petitioner's ability to earn a good salary as a registered nurse and the heavy, but justified, child support burden placed upon the respondent.