FILED
JUN 28 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

293

IN RE THE MARRIAGE OF MARY ANN TEDESCO and CHARLES D. TEDESCO

Upon the Petition of)
MARY ANN TEDESCO,) Filed June 28, 1979
Petitioner-Appellee,)
And Concerning) 178
CHARLES D. TEDESCO,) 2-63034
Respondent-Appellant.)

Appeal from Polk District Court - Hon. Don L. Tidrick, Judge.

Husband appeals child support and lump sum payment provisions of dissolution decree. AFFIRMED WITH MODIFICATION.

Robert Conley of Des Moines, Iowa, for petitioner.

Rebecca Ann Belcher of Des Moines, Iowa, for respondent.

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

Respondent-husband, Charles Tedesco, appeals provisions of dissolution decree requiring him to pay petitioner-wife, Mary Ann Tedesco, $480 per month child support (payable as $240 every two weeks), and $1,000 as a lump sum payment. We affirm with modification.

Charles and Mary Ann Tedesco were married over twelve years and have four children, ages 11, 9, 7, and 5 at the time of trial. Custody of the four minor children was placed in petitioner and is not an issue in this appeal. The parties' few assets were divided as follows: petitioner was awarded the family home valued at approximately $45,000 (with an $11,700 encumbrance), subject to a $16,000 lien in favor of respondent, and title to a 1967 Mustang; respondent was given title to the 1975 Mercury station wagon, 1978 Chevrolet Blazer, and 1973 and 1968 Honda motorcycles. Petitioner and respondent are employed by the Des Moines School System and the Des Moines Police Department respectively. Additionally, each has been working at parttime jobs for some period of time. The record, however, shows that, even with their combined regular incomes and supplemental earnings, the parties frequently have been unable to meet their financial obligations either due to poor money management or a pattern of living beyond their means.

I. Subsequent to filing a timely notice of appeal in this matter, respondent made application for temporary and permanent stay of proceedings pending appeal and for a support order establishing the amount of child support to be paid during pendency. After a hearing before Supreme Court Justice Allbee, an Order was issued staying the proceedings[1] which set child support payments at $162 every two weeks during the pendency of the appeal,[2] contingent upon respondent's posting of a supersedeas bond in the amount of $2,130. Iowa R. App. P. 7. Declaring himself financially unable to post such bond, respondent applied for a Reconsideration of the Order and for a Protective Order Quashing Garnishment of respondent's wages during the appeal.[3] Because of our consideration of this case on its merits, there is no need to rule on respondent's application for reconsideration and protective order.

II. Our review of dissolution actions is de novo. Iowa R. App. P. 4, Behrle v. Behrle, 228 N.W.2d 25, 27 (Iowa 1975). Weight is given to the findings of the trial court,

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[1] March 13, 1979, Iowa Supreme Court.

[2] By agreement before the dissolution decree, respondent had been paying temporary child support of $162.50 every two weeks.

[3] May 31, 1979.

but this court is not bound by them. In re Marriage of Murray, 213 N.W.2d 657, 659 (Iowa 1973).

III. Applying the criteria set out by the court in In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974), we find that the trial court abused its discretion in ordering child support payments of $30 per child per week or $240 bi-weekly. We take note of the fact that, while respondent's monthly take-home pay from the Des Moines Police Department is approximately $566,[4] he has held two parttime security jobs for a significant period of time so that in 1978, prior to trial, his monthly take home pay averaged an additional $284.[5] However, we believe that the child support figure prayed for by respondent, $162.50 every two weeks,[6] is not sufficient to meet petitioner's needs in supporting and caring for the four minor children. Accordingly, we find that respondent should be required to pay as child support $25 per week per child payable in amounts of $200 every two weeks as of the date of the decree.[7]

III. Respondent also challenges trial court's award of $1,000 as a lump sum to petitioner. We find that amount to be equitable. The record shows that the money was available at time of trial and also that respondent has sufficient assets from the division of property with which to finance the payment of this amount. Respondent has 120 days from the date of this opinion in which to pay that amount to petitioner.

IV. Petitioner has applied for award of costs and attorney fees on appeal. Respondent is ordered to pay $500 of those fees. Costs of the appeal are to be shared by the parties.

Trial court's judgment is affirmed with modification.

AFFIRMED WITH MODIFICATION.

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[4] After deduction of taxes, retirement benefits and a $157 credit union payment each pay period.

[5] The record shows payments from General Growth Corp. of $905.50 for year to date, 9/29/78, and $667.55 from a second parttime job.

[6] This would amount to $325 per month or approximately $20 per week per minor child.

[7] December 21, 1978. His arrearages, if any, should be calculated on the basis of $200 bi-weekly from December 21, 1978.