

IN THE COURT OF APPEALS OF IOWA

No. 9-238 / 88-1515

FILED

OCT 24 1989

CLERK SUPREME COURT

IN RE MARRIAGE OF SHEILA M. ANDERSON AND MARVIN O. ANDERSON

Upon the Petition of

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SHEILA M. ANDERSON,

Appellant,

And Concerning

MARVIN O. ANDERSON,

Appellee.

Appeal from the Iowa District Court for Jackson County,
Margaret S. Briles, Judge.

The wife appeals from a dissolution decree, challenging
economic provisions. **AFFIRMED AS MODIFIED.**

Bradley Norton of Norton & Norton, P.C., Lowden, for
petitioner-appellant.

Mark R. Lawson of Peckosh & Lawson, Maquoketa, for
respondent-appellee.

Considered by Donielson, P.J., and Schlegel and Habhab,

JJ.

DONIELSON, P.J.

The parties, Sheila and Marvin Anderson, were married in 1978. They have three children born in 1979, 1981, and 1985. The dissolution decree placed the children in joint legal custody and in Sheila's physical care. These custody provisions are not challenged in this appeal.

Marvin, thirty-two years old at the time of trial, is a journeyman mechanic for United Parcel Service (U.P.S.). He earns \$16 per hour and usually gets a few hours of overtime per week. His gross annual income from this job is approximately \$35,000.

Sheila, twenty-nine years old at the time of trial, has no post-high-school education and little employment experience. She desires to enter a two-year program of study to become a veterinarian's assistant.

The parties' primary asset was a 144-acre tract of farmland. Of this land, 114 acres had been purchased and 30 acres had been inherited by Marvin. The district court valued this land at \$105,000, and the land is subject to debts of about \$84,000. The primary house on this land is presently occupied by Sheila and the children; since the parties' separation Marvin has lived in a trailer also located on the tract of farmland.

The dissolution decree awarded the farmland to Marvin, subject to its debt and also subject to Sheila's right to occupy the primary house for as long as any of the children are entitled to child support. The decree awarded each

party various vehicles and personal effects. In addition, the decree awarded Sheila 27% of whatever money Marvin receives from his employment pension plan upon retirement.

The decree directed Marvin to pay Sheila child support totaling \$90 per week for the three children. The decree provided if Marvin fails to pay the indebtedness or taxes on the real estate, forcing Sheila to vacate the marital residence, his child support obligation will increase to \$180 per week.

The decree directed Marvin to contribute \$500 toward Sheila's attorney's fees. No alimony was awarded.

Sheila has appealed from the dissolution decree. She contends the child support award is inadequate. She also challenges the division of property in several respects. She contends the district court erred in valuing the land and in failing to determine a value for Marvin's pension fund rights. She contends some of the real estate and also some of the personal property should be ordered sold to reduce the parties' debt load. Finally, she argues the trial court erred in not awarding her some of the real property.

Sheila claims the trial court erred in awarding only \$90 per week in child support for the parties' three children. Our scope of review in equity cases is de novo. Iowa R. App. P. 4. It is well established parents have a legal obligation to support their children. In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976). The

obligation to support should be apportioned according to the ability of each parent to contribute. In re Marriage of Bornstein, 359 N.W.2d 500, 504 (Iowa App. 1984). The factors to consider are: the financial resources of the child; the financial resources of both parents; the standard of living the child would have enjoyed had there not been a dissolution; the cost of day care; the physical and emotional health needs of the child; and the child's educational needs. Iowa Code § 598.21(4) (1987).

The parties had agreed in their pretrial conference report Marvin would pay Sheila \$200 per week in child support. At the beginning of the trial court proceedings, the trial court judge indicated she would accept the parties' calculation of \$200, unless evidence was presented at trial which would make such an award unfeasible. The trial court judge specifically informed the parties that if she couldn't accept the \$200 figure, she would so inform the parties and allow them an opportunity to make a record with regard to the issue. A review of the record reveals the trial court never gave the parties any indication she would not accept the \$200 estimate for child support. Sheila claims the record supports an award of \$200 per week, and it was unfair and prejudicial for the court not to alert the parties it was rejecting the agreed-upon amount of \$200.

We need not address the binding or non-binding effects of such pretrial reports, nor the fairness aspects of the

trial court judge's behavior in this case. Upon our de novo review, we find child support in the amount of \$200 per week should have been awarded to Sheila. The children are young (three, seven, and nine at the time of trial), and this child support is their only visible means of support. Sheila has no employment, nor does she have any skills which would enable her to attain anymore than a minimum-wage level of employment. It is indicated in the record Sheila may be going to school soon to obtain job skills. It is unrealistic to think she will be able to do that and work to provide support for her children as well.

While Sheila and the children will be allowed to reside in the family home, and will have no house or rent payments, they still have the basic living expenses of food, clothing, transportation, utilities, etc. The inadequacy of the trial court's \$90 a week award is compounded by the fact Sheila receives no alimony, and her assets are not of a nature which can be easily liquidated and converted to cash.

The court is not unaware of the financial burdens borne by Marvin. The trial court obligated him to pay all of the parties' outstanding debts. However, in assigning Marvin all of the parties' debt, the trial court also awarded him the parties' major asset--the 144 acres of farmland. Marvin already has a full-time job with U.P.S., and this land represents an investment for him. The land was estimated by the parties to be worth \$105,000, and it is

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encumbered with approximately \$84,000 worth of debt. This leaves Marvin with approximately \$20,000 in equity in the land.¹ Sheila received no similar investment assets of such value. Marvin cannot claim an inability to pay more child support because of the mortgage payments, real estate taxes, and insurance obligations which accompany land ownership. His obligation to pay reasonable child support cannot be circumvented by his desire to keep land which has sentimental and familial significance to him.

Marvin has a yearly income of approximately \$41,200 (U.P.S. and farm rental income), and a child support obligation of \$90 per week (\$360 per month) amounts to only a small portion of his income. The apparent lack of income by Sheila, and the financial needs of three young children, warrant the award of more child support in this case, and Marvin has the financial resources to provide it. The child support award is increased to \$200 per week.

1. The court is aware Marvin inherited thirty acres of this land and this tract of land is the least encumbered of the three pieces of land owned by the parties. While inherited property is ordinarily set aside for the party who inherited it, and is not subject to a property division, Iowa Code § 598.21(2) (1987), it may be considered in the division of property when necessary to avoid injustice or inequity. In re Marriage of Muelhaupt, 439 N.W.2d 656, 659 (Iowa 1989); Iowa Code § 598.21(2) (1987). Aside from whether this thirty-acre tract should be considered in a property division, we note Marvin's ownership of this land is a factor for our consideration in determining what level of child support he is obligated to provide.

Sheila claims the trial court erred in not requiring the parties to sell a portion of the property to reduce their debt and improve their cash flow. We have examined this argument, and in light of our increased award of child support, we find no reason to order such a sale. Should Marvin find any difficulty in both meeting his child support obligations and in maintaining the land, he may find it necessary to sell some of the property. The circumstances of this case, however, do not require the court to order the sale of any of the parties' property. See In re Marriage of Novak, 220 N.W.2d 592, 598 (Iowa 1974) (The fact that the husband's financial obligations might cause him to sell some of his property, does not necessarily mean the trial court's property distribution was inequitable.).

Sheila contends the trial court's valuation of the real property was not supported by the evidence presented. The trial court's findings do refer to a lack of adequate evidence with regard to valuation, but this statement was made in reference to items of disputed value listed on the parties' joint statement, i.e., the household goods and the farm equipment. The trial court set forth specific values for the real property, and it is apparent these amounts were derived from the parties' joint statement of assets and liabilities, their financial affidavits, and their testimony. Sufficient evidence existed for the trial court's valuations of the real property.

Sheila claims the trial court erred in awarding all of the real property to Marvin. Much of Sheila's argument in this regard deals with whether inherited property should be considered in making a property award. She does not address why it was inequitable to award Marvin the other 114 acres which were not inherited. In light of the fact that Marvin is assuming all of the parties' debt with regard to the 114 acres (its value is approximately \$90,000; it is encumbered by nearly \$83,000 of debt) and Sheila and the children are allowed to continue to reside in the family home, we cannot find this award was inequitable. Marvin was appropriately awarded the thirty inherited acres pursuant to Iowa Code section 598.21(2) (1987).

Finally, Sheila asserts there was no factual basis for the trial court's determination Sheila was entitled to 27% of Marvin's pension fund at the time of his retirement. A review of the record reveals neither of the parties presented any evidence with regard to the value of Marvin's pension with U.P.S.²

Pension benefits should be considered in framing the financial clauses of dissolution decrees. In re Marriage

2. A review of the proceedings in this case reveals the parties requested the record be left open so they could submit later evidence with regard to Marvin's pension. Despite the opportunity to do so, the only information subsequently provided to the trial court was a jointly-filed stipulation dated September 9, 1988, which specified Marvin's pension would remain unvested until 1990.

of Curfman, No. 88-1120, slip op. at 3 (Iowa App. July 26, 1989). Valuation of pensions is so complicated it requires the services of an actuary. In re Marriage of Woodward, 426 N.W.2d 669, 670 (Iowa App. 1988). Current valuation can be bypassed by providing payment out of future benefits if and when received. Curfman, slip op. at 4. Where it is difficult to place a present value on pension benefits due to uncertainties regarding vesting or maturity, each spouse may be awarded an appropriate percentage to be paid only if and when the pension is payable. Id. at 4-5. This allocates equally between spouses the risks that the person may never be paid. Id. at 5.

The record reveals no basis for the trial court's decision to award Sheila 27% of all of Marvin's pension. This award is unfair in that it allows Sheila to collect 27% of Marvin's pension, even if most of the benefits are accumulated long after the marriage was dissolved. We modify the decree to provide when and if Marvin commences to receive his U.P.S. pension, he shall pay to Sheila an amount equal to 50% of a fraction of his pension; the numerator of the fraction being nine, the number of years of the marriage during which Marvin worked for U.P.S., and the denominator of the fraction being the total number of years during which the pension benefits were accumulated prior to being paid. See Curfman, slip op. at 5; In re Marriage of Mott, 444 N.W.2d 507, 511 (Iowa App. 1989).

AFFIRMED AS MODIFIED.