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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JACQUELYN FOWLER AND JACK RAY FOWLER

Upon the Petition of)
JACQUELYN FOWLER,)
Petitioner-Appellant,) Filed February 24, 1981
And Concerning)
JACK RAY FOWLER,) 0-428
Respondent-Appellee.) 2-63709

Appeal from Webster District Court - R. K. Richardson, Judge.

Petitioner wife appeals from the economic provisions of the parties' dissolution decree, asserting that the child support award and property division were both inequitable. AFFIRMED.

Dan T. McGrevey, Fort Dodge, for petitioner-appellant.

Thomas J. Bice of Johnson, Burnquist, Erb, Latham & Gibb, Fort Dodge, for respondent-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

Petitioner Jacquelyn Fowler appeals from the economic provisions of the parties' dissolution decree, asserting that the child support award and property division were both inequitable and that she should be awarded attorney fees on this appeal. We affirm the decree and deny petitioner's request for attorney fees.

I.

Petitioner and respondent Jack Fowler had been married for one year and ten months when they separated in October of 1978. No children were born during the marriage, but in the spring of 1978 respondent adopted the petitioner's six-year-old son from a previous marriage. The dissolution decree, entered on May 15, 1979, awarded custody of this child to the petitioner and required respondent to pay $100 per month for the child's support. Petitioner was also awarded a lump sum of $1500, $500 in attorney fees, and furniture subject to mortgages against it. The parties were given their personal belongings and made responsible for debts they had incurred as individuals.

At the time of the marriage in 1976, the petitioner owned some furniture and a car (later traded in on another car that has now been repossessed). She also had a court order for $200 per month support for her minor child from the child's natural father. Petitioner worked outside the home for approximately the first year of the marriage and at one point earned around $1000 per month. Her current net income is $533 per month. Respondent owns his own printing business and nets $920 per month. His monthly expenses include $180 per month in child support for one of his nine children by previous marriages. He also testified that he "helps out" another one of his children, who is a senior in high school.

II.

Petitioner first contends that the respondent should be required to pay more than $100 per month toward the support of her son, who is now respondent's son by adoption. We disagree.

Section 598.21, The Code 1979, which provides statutory authority for child support awards upon dissolution of marriage, is designed to enforce the "legal as well as moral duty of support between parent and child." In re Marriage of Zoellner, 219 N.W.2d 517, 524 (Iowa 1974). Both parents are under the same legal duty to support their children. In re Marriage of Wahl, 246 N.W.2d 268, 272 (Iowa 1976). Presumably this obligation applies with equal force when an adopted child is involved, since the term "child" as

used in the statutes of this state refers to a son or daughter by birth or by adoption. See § 600.2, The Code 1979. The obligation to support, however, is not necessarily to be borne equally, but should be apportioned according to the reasonable ability of each parent to contribute. In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976); Wahl, 246 N.W.2d at 272. While precedent is of little value in determining the extent of the child support obligation and each case is dependent upon its own particular facts, Zoellner, 219 N.W.2d at 525, the Iowa Supreme Court has set forth various criteria to be considered in the determination. Id. Careful examination of these factors leads us to conclude that a support award of $100 per month is justified in the instant case.

To begin with, we note that the respondent does not dispute that he has an obligation to support his adopted son. However, he contends, and we agree, that an increase in the amount of his support obligation is unwarranted in light of certain Zoellner criteria. Respondent is 52 years old and petitioner 28; although he makes $920 per month, he has nine other children and contributes to the support of at least two of them. Without elaborating on the details of the situation, our review of the record reveals that respondent has substantial monthly expenses and that he can little afford an increase in his child support obligation. We therefore find $100 per month to be an appropriate amount of support to require from the respondent.

III.

Petitioner next contends that the property division was inequitable and asks that she be given a cash property settlement of $3000 and attorney fees of $2703 for this appeal. We decline both requests.

In dissolution proceedings, the court may make such property divisions as are justified. § 598.21, The Code 1979. Justified property divisions are those considered equitable under the particular circumstances of the case. In re Locke, 246 N.W.2d 246, 251 (Iowa 1976); In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975). The supreme court has rejected a mechanical rule that would award each spouse one-half of the marital assets, but the court has recognized that an equal division of marital property is often equitable. In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980). The assessment of the trial court as to what constitutes an equitable division is to be given some weight. Iowa R. App. P. 14(f)(7). In determining the equity of a property division, we are guided by the factors enunciated in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968) (modified to exclude fault, In re Marriage of Williams, 199 N.W.2d 339, 345.

(Iowa 1972)). Furthermore, properties brought into the marriage or inherited may be considered in arriving at a proper division of the parties' assets. In re Marriage of Conley, 284 N.W.2d 220, 222 (Iowa 1979); Locke, 246 N.W.2d at 252-53.

Applying the Schantz criteria to the record in this case, we conclude that the property division herein was equitable. This was a relatively short marriage, and neither party entered it with much tangible property. Nor did the petitioner contribute substantially to the parties' acquisition of assets during the marriage. She is considerably younger than the respondent and can expect to be gainfully employed longer. Finally, no children were born of the marriage. For these reasons, we affirm the property division made by the trial court.

With regard to petitioner's request for attorney fees on this appeal, we note that attorney fees are not recoverable as a matter of right. In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977). In evaluating a request for attorney fees incurred on appeal, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Erickson, 228 N.W.2d 57, 59 (Iowa 1975); In re Marriage of Stom, 226 N.W.2d 797, 800 (Iowa 1975). While we do not question petitioner's good faith in bringing this appeal, see Geisinger v. Geisinger, 202 N.W.2d 44, 47 (Iowa 1972), we do not find that the circumstances justify an award of appellate attorney fees to her.

AFFIRMED.

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

OXBERGER, C.J. (dissenting)

I dissent from the majority's affirmance of the child support award. The fact that the child has been adopted by the respondent rather than being his natural child should have no bearing on the parental support obligation. The child support provision is designed to enforce the parental duty to support. The needs of the child and the support capabilities of the custodial and non-custodial parents are the factors to consider. The respondent nets nearly $12,000 a year or $1,000 per month. Petitioner nets $533 per month. The expenses for petitioner and child are $800 per month. Considering these factors the support award as affirmed by the majority is insufficient.