



IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF LINDA ROSE ANDERSON AND THOMAS EUGENE ANDERSON

Upon the Petitioner of	)	
LINDA ROSE ANDERSON,	)	
Petitioner-Appellee,	)	Filed November 19, 1979
And Concerning	)	
THOMAS EUGENE ANDERSON,	)	285
Respondent-Appellant.	)	<u>2-62978</u>

Appeal from Jasper District Court- M. C. Herrick, Judge.

Respondent appeals child support and property division provisions of dissolution decree. Affirmed.

John Diehl of Diehl, Clayton, Cleverley & Knopf, Newton, for respondent-appellant.

Ennis McCall of Brierly, McCall, Girdner & Chalupa, Newton, for petitioner-appellee.

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

DONIELSON, J.

Respondent, Thomas E. Anderson, appeals economic provisions of dissolution decree. For reversal, he contends: The \$200 per month in child support he was ordered to pay was not justified under the circumstances; the trial court erroneously adopted petitioner's property valuations of several items of personal property; and the property division was inequitable. We affirm.

Our review is de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court, particularly when the credibility of witnesses is involved, but are not bound by them. Iowa R. App. P. 14(f)(7).

I.

Petitioner and respondent were married in 1971 and have one daughter, who was six years old at the time of the trial. Since early in their marriage, both have worked at the Maytag Company. As of December 8, 1978, respondent had earned \$14,287.28 and petitioner \$15,604.44. The family home awarded to petitioner was appraised at \$45,000 with the equity valued at approximately \$16,500. The rental property awarded to respondent was appraised at \$13,500 with the equity valued at approximately \$7,300. The trial court adopted all of petitioner's valuations of the items of personal property, which, except for one item awarded to petitioner, were higher than respondent's valuations. Using the valuations adopted by the trial court, petitioner received approximately \$20,895 in net assets and respondent received approximately \$16,400. The decree awarded custody of the parties' child to petitioner and ordered respondent to pay \$200 per month in child support, stating that this amount provided for more than one-half of the support of the child and respondent was entitled to claim the child as a dependent for income tax purposes.

The purpose of section 598.21, The Code 1979, in providing for the awarding of child support is 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). Precedents are of little value in determining the extent of that duty as each case is peculiarly dependent on its facts. Id. at 525. Both parents are under the same legal duty to support their children. In re Marriage of Wahl, 246 N.W.2d 268, 272. This obligation, however, is not necessarily to be borne equally, but should be apportioned according to the reasonable ability of each to contribute. In re Marriage of Fleener, 247 N.W.2d 219,

221 (Iowa 1976); Wahl, 246 N.W.2d at 272. In the evaluation of the correctness of a particular child support allowance, the Supreme Court of Iowa has set forth the following criteria:

Factors to be considered are parties' age, health, present earning capacity, future prospects, amount of resources owned by each or both parties, contributions of each to the joint accumulations, the children involved, duration of the marriage, indebtedness of each or both, and any other relevant factors which might assist the trial court in reaching a just and equitable decision.

Id.

Respondent points to the disparity between his income for 1977 of \$13,900.22 and petitioner's income for 1977 of \$14,543.37 as the chief reason why the trial court's support award was not justified. With all other factors being nearly equal, respondent argues, the large support award was not equitable, particularly since the trial court stated that \$200 per month obligation constitutes more than half of the support necessary for the child. We disagree and find that the award is justified under the circumstances.

The reason for petitioner's higher earnings in 1977 and 1978 was the substantially greater amount of overtime pay she received than did respondent. This source of additional income will not be as available now that petitioner has custody of the child and must care for her by herself. Nor do we believe it to be in the best interests of the child to require her mother to continue to work overtime to support her. See In re Marriage of Campbell, 204 N.W.2d 638, 639 (Iowa 1973). This income disparity so heavily relied on by respondent as justifying a reduction in the support award will likely be eliminated.

We also find unpersuasive respondent's argument concerning the trial court's language in the decree stating that his support award contributed more than half of the child's support. This language was intended by the trial court to insure compliance with requirements of the Internal Revenue Code, I.R.C. § 152(e), so that respondent could claim a dependency exemption for his child. Since no itemized list of expenses for the child was put into evidence, the trial court's statement is not necessarily determinative of the issue.

We conclude after a consideration of the facts of this case that the trial court's child support award of \$200 per month is correct and justified. The award provides

adequate support for the child, but is neither harsh nor burdensome.

II.

Respondent also contends the trial court's valuation of several items of personal property was erroneous. In its decree, the trial court adopted all of petitioner's valuations, which respondent claims overvalued the items awarded to him and undervalued an item awarded to petitioner. Respondent contends this exacerbated the already inequitable property division. We find respondent's argument unpersuasive. The valuations found by the trial court were within the permissible range of the evidence and we are not inclined to disturb them. In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973).

We also reject respondent's contention that the property division was not justified since he received only 44 percent of the property and petitioner received the remaining 56 percent. Equal division of property, even when justified, need not be achieved with mathematical precision, and exactly equal division should not be exacted by a plan that requires harm to the parties. In re Marriage of Andersen, 243 N.W.2d 562, 564 (Iowa 1976). Applying the factors set forth in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except for fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972), to the facts of this case, it is clear that an approximately equal division is justified since each party contributed substantially, financially and otherwise, to the marriage. There is even evidence that petitioner made a greater contribution since she not only earned more due to her overtime pay, she also performed the services of a housewife and mother. Not only did the trial court's division property reflect the parties' contributions, it also achieved a reasonable result. The award of the home to petitioner was in the best interests of the child. See In re Marriage of Moorhead, 224 N.W.2d 242, 245 (Iowa 1974). With the award of that major asset, the trial court was limited in the division of the other assets. We hold the award was a proper disposition and justified under the circumstances.

III.

Petitioner seeks allowance of attorney fees for this appeal. Attorney fees are not recoverable as a matter of right. In re Marriage of Peterson, 227 N.W.2d 139, 142 (Iowa 1975). We hold each party shall pay their own attorney fees.

AFFIRMED.