IN THE COURT OF APPEALS OF IOWA

No. 1-41 / 90-1136

IN RE THE MARRIAGE OF JULIE K. COFFEY AND RICHARD L. COFFEY

Upon the Petition of

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JULIE K. COFFEY,

Petitioner-Appellee/Cross-Appellant,

And Concerning

RICHARD L. COFFEY,

Respondent-Appellant/Cross-Appellee.

FILED
AUG 27 1991
CLERK SUPREME COURT

Appeal from the Iowa District Court for Dickinson County, James L. McDonald, Judge.

Both parties appeal from the economic provisions of a dissolution decree. **AFFIRMED AS MODIFIED.**

Patrick M. Carr of Zenor and Carr, Spencer, for appellant.

Michael J. Chozen of Narey, Clarity & Chozen, Spirit Lake, for appellee.

Considered by Oxberger, C.J., and Donielson and Hayden, JJ.

OXBERGER, C.J.

Richard and Julie Coffey were married on July 7, 1984. Their child, Gina, was born on February 24, 1986. The district court entered its decree dissolving the parties' marriage on June 25, 1990. The decree provided that Julie would receive the parties' homestead and be given primary physical care of Gina. Richard's child support obligation was set at $300, per month, and he was awarded visitation. Although the court divided the parties' other debts and assets, there remains no direct dispute on appeal about them. The court awarded no alimony and ordered each party to pay their own attorney fees.

After the parties were married they purchased the homestead in question from Julie's father. He sold the house to them for a contract price of $20,000. The house by its highest estimate is worth $36,000 and appraised for taxes at approximately $30,400. Julie used her savings and her father's wedding gift to make the $4,000 down payment. By trial time the contract balance due on the home was $15,300. Richard contributed approximately $1250 toward the equity in the house during the time the $230 monthly house payments were being made. The district court awarded the house and also the debt owing on it to Julie.

During their marriage Richard contributed about eighty five percent of the family's income while Julie performed the child care duties. Richard worked as a machinist

earning approximately $1250 per month; Julie worked as a waitress and babysitter netting between $200-300 per month, depending upon fluctuations in tips. Although Julie held a college degree and teaching certificate, the certificate had lapsed.

On appeal, Richard argues that his child support obligation should be reduced from $300 to $233 per month to conform with the child support guidelines. Julie asserts the court conformed with the guidelines because her income was actually lower than Richard calculates. Richard also contends that he should be awarded more equity in the house. Julie counters by pointing to checks cashed by Richard amounting to $5,371.56 in bars, a strip joint, and at golf courses. Julie blames Richard for her inability to take the necessary courses to complete her teaching degree and believes his lifestyle makes him an unsuitable person for overnight visitation. For her cross-appeal, she thinks Richard's visitation rights should be curtailed. She wants Richard to pay her attorney fees.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

CHILD SUPPORT

The issue regarding child support in this case is whether the trial court properly considered Julie's fluctuating seasonal income in determining her net income to be applied under the Iowa Uniform Child Support Guidelines. The trial court found, and it is not in dispute, that Richard's monthly net income was approximately $1,250.

The court further found that Julie's monthly net income at the time of trial was $892. The court noted that Julie's income, however, fluctuated with the seasons due to her employment as a waitress in a resort area. Federal and state income tax returns indicate that from 1986 through 1989 Julie's gross earnings from babysitting and waitressing have been in the range of $200 to $300 per month.

This court finds the trial court's consideration of Julie's fluctuating income a valid factor in determining her monthly net income amount for computing Richard's child support obligations under the Uniform Child Support Guidelines. We find the trial court correctly applied the Uniform Child Support Guidelines by requiring Richard to pay child support in the amount of $300 per month.

In so holding, this court recognizes the potential earning capacity of Julie in light of her college degree. The present level of child support payments is based upon

income from babysitting and waitressing. Julie indicated it was her desire to remain a waitress and babysitter until such time as the child begins school. This was the parties choice during the marriage. When Julie seeks employment utilizing her full earning capacity, an application for modification will be appropriate.

PROPERTY DIVISION

Respondent contends the trial court erred in not awarding a greater portion of the equity in the parties home. We agree.

In reviewing a property division, we are guided by the factors set forth in Iowa Code section 598.21(1). The partners in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. In re Marriage of Havran, 406 N.W.2d 450, 452 (Iowa App. 1987).

An equitable property division of the appreciated value of property should be a function of the tangible contributions of each party and not the mere existence of the marital relationship. In re Marriage of Lattig, 318 N.W.2d 811, 815 (Iowa App. 1982).

The home was purchased in November of 1987 from Julie's parents for $20,000. Julie used her personal savings brought to the marriage and a wedding gift from her parents to provide the $4,000 down payment. The couple lived

together in the home until October of 1989. During this time, Julie provided the primary homemaking and child care services for the family and worked part-time.

The evidence indicates, and it is not disputed, that Richard's employment income provided the primary financial support for the family during the time the couple lived in the home. Julie does not deny that Richard's earnings were necessary for the parties to keep and maintain the home in the form of taxes, payment on principle and interest, insurance, and costs of home improvements. Both Richard and Julie mutually agreed upon the tangible form of their contributions to the marriage: one primarily financial, the other service.

Iowa Code section 598.21(c) directs the court to assign appropriate economic value to each party's contribution in homemaking and child care services. The determination as to what constitutes an equitable property division cannot be reduced to precise mathematical formulas. In re Marriage of McNamer, 452 N.W.2d 812, 814 (Iowa App. 1990).

In light, however, of the mutual and tangible contributions of Richard and Julie, the award of the entire interest in the equity of the parties home to Julie is disproportionate. We modify the trial court's decree and award the first $4,000 of equity in the house to Julie, the remaining equity to be equally divided between Julie and Richard. Julie may occupy the homestead until her minor

child, Gina, enters the second grade level of elementary education. At this time or before should she decide to sell the house, Julie shall have the option to purchase Richard's equity in the house or sell the property and distribute that portion of the proceeds to Richard as herein provided. Allowing Julie to occupy the homestead until the child enters the second grade will provide Julie sufficient time to establish herself in work, should she decide to purchase Richard's equity.

The amount of Richard's equity shall be one-half the equity in the home of the parties, to the extent it exceeds the mortage debt at the time of trial plus $4000. The record indicates the house at the time of trial was valued by the county assessor at $30,400. We accept this valuation. The sum of the unpaid principal plus Julie's down payment of $4,000 was $19,300. The remaining equity in the house is therefore $11,100. Richard's portion in the equity is one half of $11,100 or $5,550.

We have considered all other issues presented by the parties and, except as modified, affirm the trial court's decree.

Each party will pay his or her own attorney's fees. Costs are taxed to the appellant.

AFFIRMED AS MODIFIED.