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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF SARANNE SCHNELL AND WAYNE F. SCHNELL

SARANNE SCHNELL,
Petitioner-Appellee,
vs.
WAYNE F. SCHNELL,
Respondent-Appellant.

Filed February 23, 1983

2-495
2-68418

Appeal from Linn District Court - Thomas M. Horan, Judge.

Respondent-husband appeals from economic provisions of the parties' dissolution decree, asserting that both the child support award and the property settlement were inequitable and that he should have been allowed to claim the children as dependents for income tax purposes. AFFIRMED IN PART; MODIFIED IN PART; AND REMANDED IN PART.

Gerald J. Kucera of Keyes, Bennett & Kucera, Cedar Rapids, Iowa, for respondent-appellant.

Henry E. Nathanson, Cedar Rapids, Iowa, for petitioner-appellee.

Considered en banc.

PER CURIAM

Respondent-husband, Wayne Schnell, appeals from the economic provisions of the parties' dissolution decree, asserting that both the child support award and the property settlement were inequitable and that he should have been allowed to claim the children as dependents for income tax purposes. We affirm in part, modify in part, and remand in part.

The parties were married in 1957. The husband is a construction worker subject to seasonal layoffs with a 1981 income of approximately $16,000. The wife is employed at Rockwell Collins with an income of approximately $20,000. She was awarded custody of the parties' three children, now aged eighteen, sixteen, and seven, together with child support of $40 per week per child terminable as each child reaches the age of eighteen, graduates from high school, marries, dies, or becomes self-supporting. No provision was made concerning which party would be able to claim the children as dependents for income tax purposes. The wife was awarded the parties' home, valued at $22,500, subject to a mortgage of approximately $7,600 and a lien in the husband's favor of $4,000 with 6% interest payable as soon as the youngest child reaches the age of eighteen or graduates from high school, whichever occurs later, or earlier marries, dies, or becomes self-supporting. She was also awarded various items of personal property approximately in value the amount of debts she was ordered to pay. The husband was awarded a cabin valued at $2,388 and various items of personal property valued at approximately $1,100. He was also ordered to pay various debts to which the trial court assigned a value of approximately $2,800. No alimony was awarded. Respondent appeals.

I. Scope of Review. Since this is an action in equity, our review is **de novo.** Iowa R. App. P. 4. We give weight to the findings of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7); In re Marriage of Bevers, 326 N.W.2d 896, 897 (Iowa 1982).

II. Property Settlement. Respondent claims that the trial court made an inequitable division of the parties' property. He claims that taking into account the $1,700 he owes in back child support the property division is grossly inequitable and that his lien in the homestead should be greater than $4,000.

We note at the outset that the parties entered into a stipulation regarding the property division on about October 22, 1981. The trial court adhered to the provisions of the stipulation in making the property division. Respondent now complains.

There is no evidence that respondent signed the stipulation against his will. There is no reason for this court to believe that the stipulation was anything other than one which the parties bargained for and to which they freely assented. In fact, any benefits of the trial court's deviation from the stipulation innurred to respondent. We believe the trial court properly recognized the parties' own ordering of the property division in making its award. See Iowa Code § 598.21(k) (1981).

Our **de novo** review, however, does show that the respondent is entitled to receive interest at a rate of 10% per annum on the lien granted him in the homestead rather than the rate of 6%. Additionally, our **de novo** review convinces us that not only should the lien "become due and payable as soon as the youngest child of the parties reaches the age of 18 or graduates from high school" but that it should also become due and owing upon the remarriage of petitioner.

III. Child Support. Respondent argues that child support in the amount of $40 per week per child is excessive and inequitable. On the record before us we are unable to determine the legitimacy of respondent's claim.

The trial court, in establishing temporary spousal and child support, ordered that the respondent pay $50 per week for support on April 24, 1981.[1] On August 25,

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[1] Respondent was also ordered to pay household expenses such as utilities and figures these obligations in computing his total obligations.

1981, respondent was found to be in contempt of the April order of support and was permitted to purge himself if he continued to make the ordered payments plus $100 per week toward the arrearage. In September 1981 respondent sought to modify the support allowance alleging that the court ordered obligations totalled $590 per month and that his net income was only $868 per month. On September 23, 1981, respondent's total obligations were reduced to $80 per week plus the payments to the arrearages. Respondent then filed an application to modify temporary support on December 1, 1981, stating that he was unemployed and unable to secure work. On December 18, 1981, respondent's application was granted and respondent was ordered to pay $50 per week.

The court in its final decree found:

> The respondent was employed as a construction worker for Dave Schmitt Construction Co. during the 1981 tax years and earned approximately $16,000. Respondent was recently laid off from his place of employment, but has stated that he expects to start work with Dave Schmitt Construction Co. again in the spring of 1982. Respondent is in good health and under no disability.

The trial court then ordered the payment of $40 per week per child for a total of $120 per week in child support. This is a considerable increase over the $50 per week ordered previously. We are unable to find any reason or reasons substantiating a $70 per week increase in the record. We do not intimate that the amount is improper but only that the trial court should explain further its reasoning. We thus remand this case to the trial court to expand its findings and to determine the respondent's support obligation, taking into account his present and future employment prospects if he remains unemployed, and trial court should additionally consider the apparently seasonal nature in respondent's employment.

With regards to which party should be granted the tax exemptions for the minor children, we believe this matter is best left for the trial court on remand. If a lower support amount from respondent is ordered by the court, the petitioner may have a valid claim to the deductions. Accordingly, we affirm in part, reverse in part, and remand in part.

AFFIRMED IN PART; MODIFIED IN PART; AND REMANDED IN PART.