



IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF CARL SMITH JR. AND HELEN L. SMITH

UPON THE PETITION OF	)	297
CARL SMITH JR.,	)	
Petitioner-Appellee,	)	Filed December 18, 1985
AND CONCERNING	)	5-528
HELEN L. SMITH,	)	85-18
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Polk County, Luther T. Glanton, Judge.

Respondent-wife appeals from the economic provisions of the decree dissolving the parties' marriage. **AFFIRMED AS MODIFIED.**

Frank Murray Smith, Des Moines, for respondent-appellant.
John James Piazza, Des Moines, for petitioner-appellee.

Considered by Oxberger, C.J., Snell, and Schlegel, JJ.

Appeal is made to this court from the economic provisions made by the trial court in this dissolution action. We affirm as modified.

The parties were married for eleven and one-half years when the marriage was dissolved. There were no children. The major asset of the parties, the homestead, was ordered sold, and after debts of the parties paid, the proceeds were to be divided equally. From that amount, petitioner Carl Smith was to pay respondent Helen \$1558 for her share of equity in a car awarded to Carl. After the court's decree, the parties stipulated that the house would be sold to a buyer for \$49,000. After the \$19,000 mortgage was paid, Helen was to receive \$11,431. Carl was to pay the debts with the remaining moneys received, and retain the proceeds left after that. Helen was awarded \$175 per month in alimony for two years and Carl is to pay Helen's health and life insurance during this period also. Finally, Carl was to pay \$500 towards Helen's attorneys fees.

Helen has appealed, saying she should have been awarded \$500 per month in alimony and that it and the health insurance provisions should continue to be paid beyond two years. She also asks for a contribution from Carl to her attorneys fees incurred on appeal.

Helen is forty-nine years old, has a high school education and has not worked out of the home since her first marriage in 1954. She suffered a massive heart attack in January 1983, and her physician and cardiologist testified that she must severely limit her activity. Her health is such, according to her doctor, that she cannot tolerate riding in a car to work and would not be capable of maintaining a desk job. She does not receive social security because she has not worked for the required period of time to be eligible for such benefits. She has no income other than interest she could obtain from the cash award

obtained in the property settlement. She estimates her expenses at \$746 per month.

Carl is fifty-five years old and has ninth grade education. He says his health problems include an ulcer and a previously injured ankle. Carl has held a job as a mechanic at various places, and has managed the service station for the past eleven years. His net income is \$1166 per month. Helen claims that with "side jobs" and including his income tax refund his net income is closer to \$1574 per month. Carl says he has not taken on side jobs for the year and one-half preceding the divorce. Further, he says alimony should not be higher since pursuant to the stipulation he is obligated to pay all of the couple's bills.

While it is true that Carl accepted the obligations of the couple in the stipulation, he was also given a larger portion of the profits from sale of the house to pay those bills. The house is to be sold for \$49,000, and the mortgage is \$19,000. According to the financial statements, the bills which Carl will pay total \$8200. Even after paying Helen her share of \$11,431 and paying the bills, he will still be left with approximately \$10,569. Considering expenses incurred in the sale of the house, Carl will still receive a healthy portion of the profits, and the bills will be paid. As Helen points out, without those debts included in Carl's monthly payments, once his expenses are met he is left with \$601 per month. On the other hand, after nearly twelve years of marriage, Helen has no means of supporting herself, and it appears she will not be able to obtain a job.

We find the alimony award to be inadequate considering the factors set out at section 598.21(1) of the Code, and modify it so that Carl will pay \$250 per month in alimony and health insurance for Helen paid until she remarries, cohabitates with an unrelated adult male, or either Carl or Helen dies.

In considering a request for contribution to payment of appellate attorneys fees, we consider the needs of the requesting party, the ability of the other party to pay, and the results on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981). Carl alleges that the stipulation of the parties which includes an agreement that Helen shall not make a claim for attorneys fees against Carl renders her request for appellate fee contribution moot. The agreement does not touch upon appellate attorneys fees and does not remove this court's jurisdiction to make such an award. See id. We hold Carl shall pay \$300 towards Helen's attorneys fees incurred on appeal.

AFFIRMED AS MODIFIED.