FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF RICHARD PAUL DERMODY
AND DEBRA R. DERMODY

Upon the Petition of)
RICHARD PAUL DERMODY,)
Petitioner-Appellant,)
And Concerning)
DEBRA R. DERMODY,) 8-389
87-1822
Respondent-Appellee.)

Appeal from the Iowa District Court for Iowa County (No. 7640), Thomas W. Horan, Judge.

The husband appeals from the economic provisions of a dissolution decree. **AFFIRMED.**

Stephen B. Jackson of Hines, Pence, Jackson, Day & Powers, Cedar Rapids, for petitioner-appellant.

Karen A. Volz of Ackley, Kopecky & Kingery, Cedar Rapids, for respondent-appellee.

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

OXBERGER, C.J.

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Appellant, Richard Dermody, appeals from the economic provisions of a dissolution decree. Appellant contends on appeal that the trial court lacked jurisdiction to divide the marital property as the parties had previously filed for bankruptcy. Further, the appellant contends that the child support order is excessive. Our scope of review is de novo in this equity proceeding. We affirm.

Richard and Debra Dermody were married in 1979 and are the parents of two minor children. Richard has worked as a truck driver and farmer. Debra was a full-time homemaker during the marriage. Debra is now a full-time student pursuing her degree in accounting. Her estimated date of completion of her four-year accounting degree is June 1990. Debra currently is supported by federal grants and loans, A.D.C. benefits, and food stamps. A dissolution decree filed in October 1987 incorporated a stipulation by the parties giving Debra primary physical care of the children. Richard was awarded all farm machinery, farm equipment, and livestock in his possession. In addition, he was awarded a 1977 Monte Carlo, a 1979 Chevrolet Pickup, and a 1987 Jeep. Along with this award, Richard was ordered to pay any and all indebtedness associated with such property. The trial court also ordered Richard to pay $60 per week child support for each child. Richard was further ordered to maintain medical insurance to cover the children.

Appellant's first contention is that the trial court lacked jurisdiction to divide the marital property as the bankruptcy court has exclusive jurisdiction over the property which is the subject of a bankruptcy proceeding. 28 U.S.C. § 1334(d) states in pertinent part:

> The district court in which a case under Title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of such case, and of the property of the estate.

A bankruptcy court may suspend its jurisdiction pursuant to 11 U.S.C. § 362(d). Courts have found the provisions for lifting the stay pursuant to section 362(d) to apply in circumstances such as these "for the limited purpose of allowing the state court to exercise its exclusive domestic relations authority, including decisions concerning fair allocation of the marital estate." In re White, 851 F.2d 170, 174 (6th Cir. 1988). See also In re MacDonald, 755 F.2d 715, 717 (9th Cir. 1985); In re Johnson, 51 B.R. 439 (Bankr. B. D. Pa. 1985); Schulze v. Schulze, 15 B.R. 106 (Bankr. S. D. Ohio 1981); In re Graham, 14 B.R. 246, 248 (Bankr. W. D. Ky. 1981).

The record indicates that appellant secured an order lifting the automatic stay so that the state court might proceed in the division of marital assets pursuant to this dissolution proceeding. As such, we find no jurisdictional problems for the state court in the dissolution proceeding.

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Appellant also contends that the property division is inequitable and should be modified. Debra was awarded all furniture and household goods currently in her possession, a sum of $1431 from the parties' 1986 federal tax return, all personal effects of hers and the children, and all savings and checking accounts currently in her name. Richard was awarded a 1977 Monte Carlo, a 1979 Chevrolet Pickup, a 1987 Jeep, all farm equipment, machinery, and livestock currently in his possession, all checking and savings accounts currently in his name, all household items currently in his possession, all personal effects in his possession, and the state income tax refund in the sum of $569. Each party was awarded the indebtedness which follows the property each has been awarded. In addition, appellant was ordered to pay a debt to Merchants National Bank in the amount of $6,500.

Appellant specifically claims that it is inequitable for the court to award to him the farm machinery and equipment along with any indebtedness on such equipment. The record does not support with any certainty that the property will be repossessed. If it is not, the award of the farm equipment along with the indebtedness seems an appropriate and equitable award. It is unclear whether Richard intends to continue to farm. Certainly, given the facts that Richard considers the property to be his and that he has been the one actively involved in farming, the

award makes sense. We find upon our de novo review of the record and pursuant to the provisions of Iowa Code section 598 21 that this division is equitable.

Second, the appellant contends that the child support obligation which was set at $60 per week per child was excessive. Appellant was also required to provide medical insurance for the children. When determining whether a child support obligation is reasonable, we utilize Iowa Code section 598.21(4). At the time of trial, Richard earned $25,760.63 as a truck driver for Meno Farms. He earned an additional $11,299 in farming. Richard has since voluntarily quit his job at Meno Farms and now works at Strohman's doing essentially the same type of work for $325 per week. Richard has indicated some uncertainty as to whether or not he will continue his farming operation. Debra is currently a full-time student who anticipates completion of her accounting degree in June 1990. She is currently drawing A.D.C. benefits and food stamps. She earns approximately $50 per month cleaning a law office. Both parties are in good health and neither is under any sort of disability.

Appellant has demonstrated his earning capacity in the past. Although he is not currently earning the same amount, we find this discrepancy to be due to conscious and voluntary actions on the part of the appellant. A voluntary reduction in earning capacity will not excuse a

child support obligation. See Reed v. Reed, 260 Iowa 1166, 152 N.W.2d 190 (Iowa 1967); In re Marriage of Vetternack, 334 N.W.2d 761 (Iowa 1983). Accordingly, we find the support obligation which has been set at $60 per child per week to be appropriate.

Debra requests attorney fees on appeal. We find her financial situation to support such action. Richard shall pay $750 toward Debra's attorney fees. Costs are taxed to appellant.

AFFIRMED.