IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF DONNA L. KEMP and WILLIAM E. KEMP

Upon the Petition of	)	
DONNA L. KEMP,	)	Filed January 28, 1977
Appellant,	)	
And Concerning	)	
WILLIAM E. KEMP,	)	9 / 2-57819
Appellee.	)	

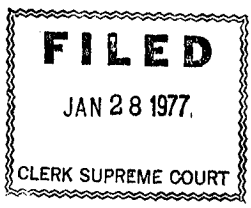
Appeal from Linn District Court - Ansel L. Chapman, Judge.

Petitioner appeals from provisions of dissolution of marriage decree. - Modified, Affirmed and Remanded.

R. M. Fassler, of Cedar Rapids, for appellant.

John K. VonLackum, of Cedar Rapids, for appellee.

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



OXBERGER, J.

Donna was 42 and William was 44 at the time of trial (August 27, 1974). Their marriage of eighteen years produced two daughters, ages 10 and 14. The financial ability and circumstances of each parent were significantly different. William had stable employment with an annual income of approximately $16,000. Donna had not worked outside the home since 1962. She was enrolled in a two-year computer programing course at Kirkwood Community College. Although Donna submitted customary household expenses of $450 to $500 each month, she and the children were subsisting on an AFDC grant of $220 per month. William said his personal expenses were $195 per month. On October 29, 1974 the trial court granted the dissolution and ordered child support of $100 per month per child and alimony of $50 per month. We increase the child support to $175 per month per child, and the alimony to $100 per month, payable under the same terms and conditions as provided in the original decree.

The issues on this appeal are confined to the adequacy of the child support and alimony awards. The court said in *Novak:* "It is our duty to examine the whole record and adjudicate rights anew ... while we give weight to the findings of the trial court, we will not abdicate our function as trier de novo on appeal." In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974).

In *Zoellner* the supreme court reviewed the factors to be considered in awarding child support. In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974). The court increased the child support to $200 per month per child to allow the wife to reduce her workweek by one day and increase her time at home with her young children. The husband was earning $16,000 gross annually. The court did not provide alimony since the wife was earning an annual gross of $6,636 for a three-day workweek. Applying the

Zoellner standards to this case, William has the larger income available for the support of the children and should shoulder a larger proportion of their expenses.

The second issue presented is the adequacy of the alimony award of $50 per month. Payment of alimony is not an absolute right. In *Campbell* the court approved an award of $350 per month alimony and $300 per month child support for two children. In re Marriage of Campbell, 204 N.W.2d 638 (Iowa 1973). The husband earned $13,700 gross annually plus $1200 for expenses and the use of a car valued at $1800 annually. He also was a partner in a business that showed a net loss but actually had $9000 cash flow annually of which one half was attributable to him. The wife was given $15,000 in productive assets. William's income and capacity to pay alimony is comparable to that of the *Campbell* husband. Donna's needs are apparent from the record.

William's assertion that the family expenses are well met by the AFDC grant of "cash, food stamps, medical cards, tuition grants" strikes a particularly unpersuasive note to this court's ear. His family may not be relegated to the status of welfare claimants merely because of the fortuitous circumstance of the marriage breakdown. The increased obligation this court imposes upon William for child support and alimony is well within the mandate of Section 598.21 of The Code, which authorizes an order for the maintenance of the family which is justified at the time of the decree. This amount is decreed in view of the needs of the family and the unemployed status of Donna. Of course, subsequent changes in the circumstances of the parties may be the basis for modification in the payment so ordered.

William will hereby be required to contribute child support of $4200 and alimony of $1200 annually for a total of $5400.

Even assuming 25% of his gross income is deducted for income and social security taxes ($16,000 gross minus $4000 taxes equals $12,000 net), William is still left with $6600 available for his own personal expenses while Donna has available for herself and the two daughters the $5400 amount decreed by this court. Yansky v. Yansky, 172 N.W.2d 114, 118 (Iowa 1969).

William has not cross-petitioned regarding the property division made by the trial court which was approximately 50-50. However, he seeks to explain the alimony award by reference to the approximately $15,000 received by Donna from her aunt. Donna had stated in the trial court that most of these funds had been sent to her father to assist him in paying an income tax deficiency. We agree with the trial court's finding: "It is difficult to say whether or not this is a loan or gift (to Donna's father) or whether or not it will ever be repaid to petitioner." Since Donna does not have the funds from the inheritance nor a reasonable likelihood of receiving them in the future, they could not be considered as part of the property settlement. In re Marriage of Beeh, 214 N.W.2d 170, 175 (Iowa 1974).

Donna requests an allowance for attorney fees for this appeal. Such fees are not recoverable as a matter of right. Any such allowance depends upon the wife's financial needs and the ability of the husband to satisfy them. In re Marriage of Peterson, 227 N.W.2d 139, 142 (Iowa 1975); Raabe v. Raabe, 191 N.W.2d 551, 554 (Iowa 1971).

Donna's counsel has submitted a statement of services rendered and time spent. We direct that William pay $750 to be applied toward Donna's attorney fees incurred on this appeal. The amount shall be assessed against him as a part of costs; it shall be paid within three months after the issuance of pro-

cedendo. Costs of this appeal are taxed against William.

The matter is remanded to the district court for entry of decree as modified by this opinion. Except as modified, the decree is affirmed.

The matter is therefore affirmed and remanded with directions to modify.

MODIFIED, AFFIRMED AND REMANDED