FILED
FEB 23 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF KRISTINE M. FRAHM AND JAMES A. FRAHM

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Upon the Petition of)

KRISTINE M. FRAHM,) Filed February 23, 1983

Petitioner/Appellant/Cross-Appellee,)

And Concerning)

JAMES A. FRAHM,) 2-425
2-68110

Respondent/Appellee/Cross-Appellant.)

Appeal from Polk District Court - Ray A. Fenton, Judge.

Petitioner wife appeals and respondent husband cross-appeals from the decree dissolving the parties' marriage. AFFIRMED AS MODIFIED.

Roland D. Peddicord and Doyle D. Sanders of Peddicord, Simpson & Sutphin, Des Moines, for petitioner-appellant.

Philip F. Miller of Haugan & Miller, Des Moines, for respondent-appellee.

Heard en banc.

DONIELSON, J.

Petitioner wife appeals and respondent husband cross-appeals from the decree dissolving the parties' marriage. On appeal, petitioner wife asserts (1) that the alimony and child support awards were inadequate, and (2) that the property division was inequitable. Petitioner wife also requests attorney fees on appeal.

On cross-appeal, respondent husband asserts (1) that petitioner wife should not have been awarded alimony; (2) that the property division was inequitable; (3) that he should not have been required to pay any part of petitioner wife's expert witness fees, and that the attorney fee award to petitioner wife was excessive. Respondent husband also requests attorney fees and costs on appeal. We affirm the decree as modified.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. While we are not bound by the findings of the trial court, we do give them weight especially where the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7); In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974); In re Marriage of Bowen, 219 N.W.2d 683, 687 (Iowa 1974).

I.

Petitioner Kristine M. Frahm and respondent James A. Frahm were married in 1975. They have one child, Katie, who was born in 1980. Katie suffers from a congenital heart defect which may require surgery in the future.

James is a doctor in private practice in the Des Moines area. His salary is approximately $60,000 per year. Kristine is a teacher and, before the parties' marriage, taught school in Urbandale. After the parties' engagement, Kristine quit teaching so that she could spend more time with James and because the parties felt that her additional income would place them in a higher tax bracket. In 1977, however, Kristine worked for James in his medical practice as a receptionist and office manager. Her income while working two years for James

was approximately $7,000. Both James and Kristine are in good health.

In its dissolution decree the trial court awarded Kristine custody of Katie, the parties' home subject to the $54,500 mortgage, and most of the parties' personal property. She was also directed to pay half of Katie's medical and dental expenses which were not covered by insurance. James was awarded his professional medical corporation and the remainder of the parties' personal property. He was directed to pay the following: (1) $900 per month alimony for four years; (2) $100 per week child support, to be increased to $150 per week when the alimony obligation terminates; (3) all of the parties' debts except the mortgage on the home; and (4) $5,000 toward Kristine's attorney fees and $150 toward the fee for the expert witness used by Kristine during trial. Kristine has appealed and James has cross-appealed from the decree.

II.

Initially, both parties claim that the property division is inequitable. Our analysis is governed by § 598.21 which codified many aspects of our prior case law. See Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968) (modified to exclude fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1976)). The ultimate question is, as it has always been, whether the distribution of property was equitable. We reject any rule based on a percentage division of the total assets and must determine what is equitable under the specific facts of this case. In re Marriage of Callenius, 309 N.W.2d 511, 514 (Iowa 1981). When asked to review an individual economic provision of a dissolution decree, we consider all the provisions together as an integrated whole. In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976).

Applying these principles, we believe that the property division must be modified to constitute an equitable and just distribution of the parties' assets. We recognize that the marriage was of relatively short duration; the parties were

separated after approximately four years of the marriage. James was 39 and Kristine 30 years old at the time of the decree. Kristine quit her job after the parties were engaged and worked only a short time in James' medical office for which she received a moderate salary. James had been practicing medicine for some time before the marriage. He was awarded sole ownership of the professional medical corporation but remained solely liable for the debts associated with the corporation. James brought more assets into the marriage, totalling approximately $76,500. Kristine had debts of nearly $2,500 and assets of approximately $5,000 when she entered the marriage. James also made the down payment on the family home which was valued at $95,000, the average of the appraisals of both parties. The equity in the home which was awarded to Kristine was thus $41,000.

Subsection 598.21(h) allows us to consider the "amount and duration of an order granting support payments to either party pursuant to subsection 2 and whether the property division should be in lieu of such payments." Here, Kristine was awarded $900 per month alimony for four years in addition to the home and personal property she was awarded under the decree. The only debt she bears is the mortgage on the home plus the remainder of her attorney fees since James was assigned to pay all of the parties' debts in addition to $5,000 towards Kristine's attorney fees. However, the monthly payments for the mortgage and real estate taxes are $632. When utilities, food, clothing and other personal expenses are added to this $632 figure, we fail to see how Kristine and Katie can live comfortably on the $1400 monthly support award, even if she secures a reasonable teaching position. We believe James has the ability to meet the additional needs of Kristine and his daughter. Accordingly, we modify the decree to provide that James shall be responsible for one-half of the mortgage payments, to be paid directly to the mortgagee on the date upon which such mortgage

payments are due. His responsibility to make such payments shall continue until the house is paid for or until Kristine's death, so long as Kristine lives with Katie in the house, does not cohabitate with another person in the house, and does not remarry.

We find that one other aspect of the property division requires modification. The court found that the parties' walnut bedroom suit was part of the property James brought into the marriage. The credible evidence in the record suggests that the parties actually picked out the furniture together and it was delivered after the marriage. We believe this item of personal property should be awarded to Kristine. With the exception of these modifications, the property division provisions of the decree are affirmed.

III.

Kristine's second contention is that the alimony award is inequitable. James cross-appeals contending that no alimony should have been awarded. The factors to be considered in determining whether spousal support should be granted are set forth in § 598.21(3). Those pertinent to the instant case include the following:

> a. The length of the marriage.
> b. The age and physical and emotional health of the parties.
> c. The distribution of property made pursuant to subsection 1.
> d. The educational level of each party at the time of marriage and at the time the action is commenced.
> e. The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.

See also In re Marriage of Hitchcock, 309 N.W.2d 432, 436 (Iowa 1981); In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980); In re Marriage of Petersen, 227 N.W.2d 139, 142 (Iowa 1975).

Applying these criteria, we believe the court properly awarded alimony to

Kristine. As we have noted, the marriage was of relatively short duration. Likewise Kristine has not been away from the teaching profession for much more than eight years. She was only 30 years old at the time of the decree and had some postgraduate education. Her decision to not pursue her masters degree was not a function of the marriage as was her decision to quit her job teaching in the Urbandale Community School District. She decided not to pursue her graduate degree before she began teaching and before the marriage. In light of the above property division, we believe that alimony of $900 per month for four years is adequate to allow Kristine to get back into the teaching job market.

IV.

Kristine also contends that the child support award was inadequate and that she should not be required to pay one-half of Katies medical and dental expenses not covered by health and accident insurance. Having reviewed the criteria governing child support awards set forth in section 598.21(4), we find the child support award to be equitable and justified. The obligation to provide support depends upon the particular circumstances and is awarded in accordance with the parent's ability to pay. In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974). As a general rule, however, parents are equally obligated to support their children. Id. James must make reasonable child support payments and it is he who is solely obligated under the decree to maintain health and accident insurance covering Katie. It appears to us from the record that both parties are able to discharge their obligation of support toward Katie without hardship.

V.

Finally, James asserts, on cross-appeal, that he should not have been required to pay $150 toward payment of Kristine's expert witness, and that the $5,000 toward Kristine's attorney fees was excessive. Both parties request attorney fees on appeal.

Attorney's fees are not recoverable as a matter of right, but depend upon one party's financial needs and the other party's ability to pay. In re Marriage of Burham, 283 N.W.2d 269, 278 (Iowa 1979). The trial court has considerable discretion in awarding such fees and costs at trial. In re Marriage of Winegard, 257 N.W.2d 609, 618 (Iowa 1977). We believe the trial court considered the parties' financial needs and abilities in determining that James should pay $150 towards Kristine's expert witness fees and $5,000 towards her attorney fees. We agree with the trial court that this award is equitable.

Likewise on appeal, our primary consideration in making an award of attorney's fees is the parties' resources. James is obligated under the decree to provide alimony and child support, to pay one-half of the mortgage payments, and to pay the financial debts of the parties. In light of these facts and in light of Kristine's earning capacity, we believe the costs of this appeal should be divided equally. Each party shall pay his own attorney fees.

AFFIRMED AS MODIFIED.