IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ANN LYNN SWEENEY
AND THOMAS SARSET SWEENEY

FILED
AUG 27 1986
CLERK SUPREME COURT

Upon the Petition of
ANN LYNN SWEENEY,

Petitioner-Appellee,

And Concerning
THOMAS SARSET SWEENEY,

Respondent-Appellant.

Filed August 27, 1986

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84-1871

Appeal from the Iowa District Court for Hamilton County (No. 0-949) - Carl E. Peterson, Judge.

Respondent appeals from the decree dissolving his marriage. **AFFIRMED AS MODIFIED.**

R. Thomas Price, Fort Dodge, for appellant.

Patrick B. Chambers, Webster City, for appellee.

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

SACKETT, J.

Respondent Thomas Sweeney appeals from the decree dissolving the parties' marriage. Thomas contends (1) the trial court should have ordered joint custody with Petitioner Ann Sweeney having physical care rather than awarding Ann sole custody of the children; (2) the child support and alimony are excessive; and (3) the property division is inequitable. We affirm the decree dissolving the parties' marriage and modify the alimony and custody awards.

Ann Sweeney, age 40, and Thomas Sweeney, age 44, were married in 1963. They have three children born in 1964, 1969 and 1976. At the time of their marriage both parties were college students. During the marriage Thomas received a bachelor's and master's degree. Thomas was employed by the State of Iowa until 1984, when he lost his job.

At the time of trial Thomas was still unemployed. He suffers from epilepsy and takes daily medication for this condition. He last suffered a seizure in January, 1983. Thomas has also been diagnosed as suffering clinical depression.

During the course of the marriage Ann assumed the majority of the parenting responsibility for the children. She received an associate of arts degree and has worked part time as a secretary. At time of trial Ann was a junior at Iowa State University and expected to receive her teaching certificate in May, 1986.

During the marriage the parties had acquired a net worth of approximately $75,000. Of that amount $2,300 represented a gift from Thomas' mother and $34,500 represented property Ann had inherited. The trial court divided the assets in the following manner:

Ann		Thomas	
One-half equity in personal residence	$10,000	One-half equity in personal residence	$10,000

Vehicle	1,600	Equity in vehicle	3,500
IPERS account	6,000	IPERS account	8,000[1]
Cash inheritance	14,000	Cash value of life insurance policies	1,900
Personal property inheritance	10,500		
Inherited property	10,000		
Furniture	3,500		
	$55,600		$23,400
Debts allocated	600		4,400
	$55,000		$19,000

The court ordered Thomas to pay child support of $750 per month to be reduced to $400 per month when the oldest child reaches 18, marries, dies or becomes self-supporting. Thomas was also ordered to pay Ann alimony of $50 per month.

The property division made by the trial court basically sets aside to Ann her inherited property and divided the balance of the parties' net worth nearly equally. Thomas contends the division is inequitable and does not give him credit for his mother's gift.

On review of a dissolution involving property division, child support and alimony, the entire record is examined and the parties' rights determined anew based on all credible evidence of properly presented and preserved issues. Iowa R. App. 4; In re Marriage of Stewart, 356 N.W.2d 611, 612 (Iowa App. 1984). We give weight to the trial court's findings of fact, but we are not bound by them. Iowa R. App. P. 4, 14(f)(7); In re Marriage of Wallace, 315 N.W.2d 827, 830 (Iowa App. 1981).

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[1] $5,000 of this amount was allocated to an account from which Thomas' child support would be paid until the account was depleted.

There is no mechanical rule which dictates equal division of marital assets and liabilities. In re Marriage of Stewart, 356 N.W.2d at 612. Rather, the ultimate question is whether distribution is equitable under specified facts of a particular case. In re Marriage of Bornstein, 359 N.W.2d 500, 503 (Iowa App. 1984). All economic aspects of the decree must be viewed as an integrated whole. Id. Section 598.21 provides inherited or gifted property is the property of the person receiving it and is not subject to division except upon a finding that a failure to divide such property is inequitable to the other party or the children of the marriage. See In re Marriage of Byall, 353 N.W.2d 103, 105 (Iowa App. 1984); In re Marriage of Thomas, 319 N.W.2d 209, 210 (Iowa 1982).

A fair and equitable resolution of the problems confronting this family is not easy. Although both have higher degrees the degrees do not necessarily carry with them the guarantee of lucrative employment. Ann and Thomas have three children to whom they both owe a duty to support. The needs of these children are great.

During the marriage Ann absented herself from the job market to raise the parties' three children and worked outside the home only occasionally. The family relied on Thomas' earnings and accumulations for financial support and security. In 1984, Thomas lost his job and is currently unemployed. His support contributions must come from his accumulation of assets.

Thomas' job prospects do not appear to be good at the present. It is difficult to determine whether his inability to obtain employment is the result of his depression or Iowa's poor economic climate. However, the factors appear to be interrelated. The economic climate obviously contributes to the availability of jobs and ultimately affects Thomas' mental state.

The parties currently have economic problems which have been compounded by the parties' decision to dissolve their marriage. We recognize that realistically Ann will also find it necessary to utilize some of her assets from the property division for family support. Because of Ann's financial responsibility for the children, we determine it was equitable for the trial court to set aside her inherited property and allocate the balance of the parties' assets as it did. We affirm the property division.

We agree with Thomas the support award made by the trial court should be modified. Thomas is currently unemployed and is using accumulated assets to meet support obligations. We consider him employable and anticipate he should be able to earn $12,000 annually. We modify the award to provide Thomas pay child support of $150 per month per child according to the same time schedule set forth by the trial court.

Thomas argues the alimony award is inequitable. For 20 years Ann remained out of the job market to assume responsibility for family care. She is attempting to rehabilitate herself to reenter the job market by seeking additional education. With a teaching certificate Ann has the ability to make significant economic contributions to her children's welfare.

Obviously Thomas has an obligation to assist with Ann's rehabilitation. However, in assessing the need for alimony we must also look at Ann's financial situation and the fact she is receiving substantially more assets than Thomas. Inherited or gifted property can be considered on the issue of alimony. In re Marriage of Stewart, 356 N.W.2d 611, 613 (Iowa App. 1984). In addition, we find Thomas does not leave the marriage at an economic advantage. Although allocations for property and alimony have different purposes, we can properly consider how property has been divided in assessing needs and resources of the

parties in affixing alimony. In re Marriage of Sparks, 323 N.W.2d 264, 267 (Iowa App. 1982).

We therefore modify the decree and eliminate the alimony award.

The trial court awarded sole custody of the parties' three children to Ann and granted Thomas visitation.

Thomas agrees physical care of the children should be placed with Ann. However, he contends the trial court should have made a joint custody award. We agree.

The overriding concern in awarding custody is the best interest of the child. Iowa Rule App. P. 14(f)(15); Iowa Code §598.41(1) (1985).

The record reflects Thomas has been a loving and caring father. He is supportive of physical care being awarded to Ann. An award of joint custody should be made with Ann having physical care and Thomas having rights of reasonable visitation. See In re Marriage of Fish, 350 N.W.2d 226, 229 (Iowa App. 1984); In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983). We modify the decree accordingly.

Costs on appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.