IN THE IOWA COURT OF APPEALS

IN RE THE MARRIAGE OF SAMUEL J. CALIGIURI AND R. EVELYN CALIGIURI

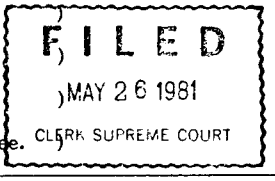
Upom the Petiition of

Filed May 26, 1981

SAMUEL J. CALIGIURI,)

Petitioner-Appellant.) 0-435
2-64295

And Concerning



R. EVELYN CALIGIURI,

Respondent-Appellee.)

Appeal from Polk District Court. A. B. Crouch, Judge.

Petitioner-husband appeals and respondent-wife cross-appeals economic provisions of dissolution of marriage decree. AFFIRMED AS MODIFIED.

Raymond Rosenberg, of Rosenberg & Margulies, Des Moines, Ia., for petitioner-appellant.

Harlan M. Hockett, of Flagg, Hockett, Benhart, Golden & Cook, Des Moines, Ia., for resondent-appellee.

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

PER CURIAM

Petitioner-husband, Samuel J. Caligiuri, appeals the alimony and property division provisions of a dissolution of marriage decree. Respondent-wife, Evelyn Caligiuri, cross-appeals the alimony provision and seeks attorney fees on appeal and an increase in attorney fees awarded to her at trial. We modify the trial court's decree and affirm as modified.

Sam and Evelyn were married on November 21, 1953, while Sam was in the Navy and Evelyn worked as a secretary at Banker's Life in Des Moines, Iowa. Sam, age 46 at the time of trial, held several jobs during the marriage, and now is a salesman for Brico Industries, a manufacturer of nuts, bolts, and screws. Sam also owns and operates a bar and is one-half owner of other income-producing realty in Des Moines. Evelyn, age 47 at the time of trial, has worked only as a secretary, and except for a nine month period of employment in 1968-1969, Evelyn has not been employed since 1956. The parties' two children, Steve and Mark, were ages 24 and 22 respectively as of the time of trial and are not subjects of the appeal. The twenty-six year-old marriage was dissolved on October 23, 1979.

Our review is de novo. Iowa R. App. P. 4. We are not bound by the trial court's findings of fact, but we give weight to them, especially regarding the credibility of witnesses. Iowa R. App. P. 14(f)(7).

I. Sam contends that the property division provisions of the dissolution decree were unfair to him. Although frequently an equal division of assets is made, there is no requirement that this be done. In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980); In re Marriage of Conley, 284 N.W.2d 220,223 (Iowa 1979). The test for an acceptable division of assets is to ask what would constitute an equitable and just award under the circumstances. Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976). In reviewing the property division provisions of a dissolution decree, we consider the factors articulated in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except fault. In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972).

In its decree the trial court awarded Evelyn net assets [1] of $48,000. Sam was awarded assets [1] amounting to $79,888 and was ordered to pay debts amounting to $84,291, including the $18,000 property settlement Sam was ordered to pay Evelyn. Comparing the $48,000 in net assets awarded to Evelyn with the negative $4,403 in net assets awarded to Sam, it is clear that the property division is unfair to Sam. In order to rectify matters, we hereby reduce the cash property settlement from $18,000 to $8,000. This brings Evelyn's net assets down to $38,000 and Sam's net assets up to $5,597, still an uneven property division, but not an unfair one. The parties had two homes. The entirety of Evelyn's assets consists in her one-half interest in the home located at 3215 S.W. 28th Street. Sam receives all remaining assets, including full ownership of the other home. Sam also assumes virtually all the parties' debts. Most of the debt was incurred individually by Sam in the course of his business enterprises, over which he had complete control and in which Evelyn never participated during the marriage. Also, Sam was awarded business assets that produce $10,200 in annual income. Evelyn's assets produce no income. Hence, the difference in value between the assets awarded to Sam and Evelyn is smaller than appearances indicate and in the long run may even favor Sam.

II. Sam contends that the alimony award made to Evelyn was unfairly high and Evelyn contends that it was unfairly low. The factors enunciated in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except fault, In re Marriage of Williams 199 N.W.2d 339, 345 (Iowa 1972), control our review of the alimony provisions of a dissolution decree. Although alimony on one hand and allocation of property rights on the other have different purposes, they are still closely related in the matter of determining the amount to be allowed. Schantz, 163 N.W.2d at 405.

Sam argues that the $450 monthly alimony award is unfairly high. Evelyn is unemployed and, except for a nine month stint in 1968-1969, has not worked since 1956. Evelyn has had no vocational training aside from typing and shorthand courses taken in high school. Evelyn is plagued with physical problems. Dr. Roy Overton, Evelyn's physician since 1966, testified that Evelyn has had a hysterectomy and has suffered from

thrombophlebitis and bursitis and that she now has coccygodenia. She has low back strain caused by a degenerative disease. Evelyn's coccygodenia makes it difficult for her to take a job requiring prolonged periods of sitting, and her lower back strain makes it impracticable for her to take a job requiring lifting or bending or prolonged periods of standing.

Evelyn has suffered from psychological problems, although the testimony concerning them is somewhat conflicting. Dr. Allen Silberman, a professional psychologist, believes that Evelyn is so anxiety-ridden and depressed that she could not function in a competitive work environment and that she could not hold onto a job for any extended period of time. Dr. Roy Overton describes Evelyn as a chronic depressive and believes that her neurosis and depression are so severe that she is not mentally capable of ever holding down a job. Dr. Overton also states that Evelyn's physical problems play a role in preventing her from keeping a job. Doctor Hector Cavallin, a psychiatrist, whose sole exposure to Evelyn consists of a thirty-three minute conference with her, testified that after one to two years of rehabilitative vocational training Evelyn would be ready to re-enter the job market. Dr. Cavallin believes that Evelyn's depression and anxiety constitute a crisis in her life, but that they do not rise to the level of psychiatric illness that will permanently impair her employment opportunities.

Based on the medical testimony and Evelyn's vocational history, we conclude that Evelyn's earning potential is limited and speculative. The alimony award of $450 per month is needed to satisfy Evelyn's personal expenses and provide needed health care so as to enable her to overcome her disabilities and re-enter the job market.

Sam asserts as his main reason for the unfairness of the $450 alimony award his inability to pay. Sam argues that with a monthly income of less than $2,190 and monthly debt payments of $1,654, he could not possibly pay the monthly alimony and meet his own monthly expenses. Sam's other assets, however, are available and may need to be used to satisfy his obligations. We therefore affirm as reasonable the trial court's alimony award.

III. Evelyn contends that the award to her of $1,500 for attorney fees incurred at trial should be increased. Attorney fees are not allowable as a matter of right. In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977). The allowance depends on the financial conditions of the parties and their respective ablilities to pay. Willcoxson, 250

N.W.2d at 425. Dissolution courts have considerable discretion respecting the award of attorney fees. In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980). The trial court did not abuse its discretion in awarding Evelyn $1,500 in attorney fees, and we therefore affirm the award.

Additionally, Evelyn requests an award of attorney fees incurred on appeal. In evaluating a request for attorney fees incurred on appeal we consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Erickson, 228 N.W.2d 57, 59 (Iowa 1975); In re Marriage of Stom, 226 N.W.2d 797, 800 (Iowa 1975). Applying these factors to the case at bar, we order Sam to pay $1,000 of Evelyn's attorney fees on appeal.

Costs are assessed against Sam.

AFFIRMED AS MODIFIED.