

IN THE COURT OF APPEALS OF IOWA

FILED

SEP 27 1983

CLERK SUPREME COURT
JULIE M. IOSSI

IN RE THE MARRIAGE OF DARRELL W. IOSSI AND CHRISTINE M. IOSSI

UPON THE PETITION OF
DARRELL W. IOSSI,

) Filed September 27, 1983

) Petitioner-Appellant,

) AND CONCERNING
) CHRISTINE M. IOSSI,) 3-144
) 2-68967

) Respondent/Cross-Appellant.)

Appeal from Scott District Court, Lowell D. Phelps, Judge.

Petitioner-husband appeals and respondent-wife cross-appeals from economic and visitation provisions of the parties' dissolution decree. AFFIRMED AS MODIFIED.

Michael J. Motto of John J. Carlin, P.C., Davenport, for petitioner-appellant.

H. Reed Doughty of Winstein, Kavensky, Wallace & Doughty, Rock Island, for respondent/cross-appellant.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, and Hayden, JJ. Sackett, J., takes no part.

PER CURIAM

Darrell W. Iossi and Christine M. Iossi were married in 1966 and were, respectively, 34 and 32 at the time of trial. Darrell is vice-president and one-fourth owner of a family sandblasting business with a gross monthly salary of \$3,500 per month and an additional income of \$1,000 per meeting of the board of directors. He received a bonus of \$22,000 in 1980 and \$27,000 in 1981, but did not anticipate receiving a bonus in 1982. Christine is a teacher at a parochial school with a salary of \$4,000 for the year 1981-82 to be increased to \$10,000 for the year 1982-83.

The dissolution decree, as amended, ordered equal division of the parties' assets including two checks totaling \$1,051 which Christine asserts represents payment by an insurance company for disappearance of her engagement ring and reimbursement for a rental car for which she had paid. Christine was awarded rent-free occupancy of the parties' home until none of the three children are entitled to support, at which time the home was ordered to be sold with the net proceeds equally divided. Christine was ordered to make the mortgage payments in the meantime but, upon sale, she was to receive from Darrell's share of the proceeds, half of the amounts she paid against the principal on the mortgage. Certain Arizona property owned by the parties was ordered sold with the proceeds to be equally divided. Christine was awarded alimony of \$400 per month terminable upon her death or remarriage and approximately half of the attorney fees she had actually incurred up to that time.

Christine was awarded custody of the parties' three children, now aged 13, 7, and 7, together with child support of \$75 per week per child. The decree awarded Darrell visitation rights on alternating weekends and holidays and every Wednesday. The decree also provided for additional visitation during one two-

week period and an additional one-week period selected by Christine during June, July, and August with Darrell's weekend and Wednesday visitation rights canceled for those periods. The decree further provided that the oldest child may work in Darrell's family business but limited the time to one-half of any two weekdays per week during summer and Christmas vacations and a half day on any other day that he was out of school.

On appeal, Darrell asserts that the alimony and child support awards of the dissolution decree were inequitable and that the trial court's visitation schedule fails to allow him to meaningfully exercise his visitation rights. Christine cross-appeals, claiming: (1) that the proceeds from two checks totaling \$1,051 should have been awarded to her rather than ordered equally divided; (2) that Darrell should be ordered to account for any profits he may have made from rental of certain property owned by the parties' and (3) that she should be awarded additional attorney's fees for trial and all of her attorney fees for this appeal.

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 them weight, especially with regard to the credibility of witnesses. Iowa R. App. P. 14(f)(7). In reviewing each individual economic provision of a dissolution decree, we consider all the provisions together as an integrated whole. See In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976). In reviewing the property provisions of a dissolution decree, we consider the factors articulated in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), as modified in In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972)(fault for breakdown of marriage eliminated from Schantz factors), and the factors enumerated in Iowa Code § 598.21(1983).

L. Alimony and Child Support

Darrell contends the alimony and child support payments are excessive. He alleges the trial court did not take into account the resale value of the Arizona

property or the value to Christine of rent-free occupancy of the family home, so the amounts fixed by the trial court for alimony and child support were inequitable. In reviewing an alimony award, we must take into consideration the factors in Schantz, and the Iowa Supreme Court recognition that:

"Although property rights and alimony may be closely related, they are distinguishable and have differing purposes. In re Marriage of Murray, 213 N.W.2d 657, 659 (Iowa 1973). Division of property is based on each marital partner's right to a just and equitable share of the property accumulated as the result of their joint efforts. Knipfer v. Knipfer, 259 Iowa 347, 353, 144 N.W.2d 140, 143 (1966). Alimony is an allowance to the ex-wife in lieu of the husband's legal obligation to support her. Id. at 352, 144 N.W.2d at 143.

In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981).

Darrell and Christine were married for sixteen years, during which time they became accustomed to a high standard of living. They are apparently both in good physical condition, as are their three children. The trial court made an equitable division of the marital property. The difference in the financial status of the two parties lies in their respective earning capacities. Darrell has a far greater potential for increasing his assets than does Christine. Although Christine lives in the family home rent-free, she must pay the mortgage payments, home improvement loan payments, home insurance premiums, real estate taxes, and ordinary upkeep expenses. The principal payments of the mortgage and loan will not be repayed to her until the house is sold and the proceeds are distributed. She will not get the benefit of \$75 per week child support once the eldest child turns 18, which is not far down the road. But she will still have to make the house payments. Darrell owned substantial assets which were not subject to the property division, Christine did not; due in part to the dissolution decree, Christine's needs for support are greater than Darrell's and Darrell is better able to pay. See Schantz at 405 (Factor #9). We do not find the alimony award excessive.

Nor do we find the child support allowance excessive. The supreme court has stated:

Factors to be considered are parties' age, health, present earning capacity, future prospects, amount of resources owned by each or both parties, contributions of each to the joint accumulations, the children involved, duration of the marriage, indebtedness of each or both, and any other relevant factors which might assist the trial court in reaching a just and equitable decision.

In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974). The children have become accustomed to a high standard of living. To help them make the adjustment to the new family status, the court deemed it necessary to allow them to continue to live well. The court's decision to place a larger burden on Darrell for the children's support is in accord with Darrell's greater ability to pay.

II. Visitation Rights

Darrell claims the visitation provisions effectively prevent him from meaningfully exercising his visitation rights because it allows Christine too much discretion in deciding when he can visit the children in the summer. He argues further that the decree does not allow him to recover the visitation time which is lost when Christine chooses to take her vacation. This argument is without merit. Darrell is allowed one ten-day period for each of the months of June, July, and August, during which times Christine has no visitation rights. The arrangement seems equitable. We will not force Christine to take a three-week vacation during a specified time each year. As long as she gives adequate notice of her plans to Darrell, he is not harmed by her discretion.

We modify the visitation orders in two respects. First, to clarify paragraph 3, subparagraph (6) of the dissolution decree, the visitation period should read: "In the months of June, July and August, from the second Friday of

each of said months at 5:00 p.m. through the following nine consecutive days until the Sunday at the end of the nine days, at 8:00 p.m."

Second, we find paragraph 4 of the dissolution decree, as amended in paragraph 4 of the order expanding and enlarging the decree, to be somewhat limited in the extent to which it allows David to work at his father's business. We therefore modify the decree, substituting the following paragraph:

David may work at Edwin W. Iossi, Inc., if he desires to do so, as often as he wishes, with the following limitations:

(a) While David is thirteen and fourteen, he may work up to one-half of any two weekdays per week during summer and Christmas vacations, and may work one-half day on any other scheduled days that he is out of school.

(b) While David is fifteen, he may work up to one-half day each weekday or two full weekdays per week during summer vacation, up to one-half of any two weekdays per week during Christmas vacation, up to one-half day on any one day per weekend during the school season, and one half-day on any other scheduled days that he is out of school.

(c) After David becomes 16 years old, he may work as many hours as he desires.

Furthermore, we admonish Christine not to discourage David from working at his father's business. We encourage Darrell not to limit David to working in the family business, should David desire employment elsewhere. Finally, we admonish both parents not to use David or the two girls as a weapon against the other parent and to encourage them scholastically and socially as well as commercially.

III. Property Division

Christine claims the proceeds from two checks should have been awarded to her, not divided equally as decreed. One check, for \$551, was an insurance reimbursement for damages to a rental car which she had paid for. No authority or reasoning is given as to why Christine feels this money is hers alone; thus, we will not modify that portion of the order.

Christine claims the second check, for \$500, represents an insurance payment for the disappearance of her engagement ring. The proceeds should be considered as repayment for her personal property and therefore should all go to her.

Christine asserts no accounting was made to her for profits made on certain income property and that those profits should have been divided equally between the parties. However, there is no requirement in a division of assets that parity between the parties be effected. 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). Even if the trial court's goal was to divide the assets equally, there is no requirement that the division be mathematically precise. Conley at 223. The test for an acceptable allocation of assets is whether the distribution constitutes an equitable and just award under the particular circumstances of the parties. Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976); In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972); Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968). We find the property distribution to be equitable and just under the circumstances.

IV. Attorney Fees

Christine submitted a request to the trial court for an award of \$3,000 for her attorneys' services of representation. Only \$1449.50 was itemized by affidavit; thus, the trial court awarded only \$1449.50. On appeal, Christine claims the trial court should have awarded the full \$3000. She requests an award for the difference and also for her attorneys' fees for this appeal.

The Iowa Supreme Court has outlined the factors to be considered in reviewing requests for attorney fees:

A determination of reasonable attorney fees must include, but is not limited to, a consideration of these elements: (1) the amount of time spent; (2) nature, extent and difficulty of the services; (3) amount involved; (4) responsibility assumed; (5) results obtained; (6) customary charges for similar services; and (7) the professional standing and experience of the attorney.

In re Marriage of Jennerjohn, 203 N.W.2d 237, 245 (Iowa 1972). We give weight to the trial court finding and conclude the award was justified; we therefore do not change it. See In re Marriage of Williams, 303 N.W.2d 160, 167 (Iowa 1981). Furthermore, because both parties seem to be in relatively the same monetary position after the dissolution decree, we deem both parties able to pay their own attorney fees on appeal. See id.

AFFIRMED AS MODIFIED.

All judges concur except Oxberger, C.J., and Hayden, J., who dissent.

OXBERGER, C.J.

I would affirm.

Hayden, J., joins this dissent.