FILED
MAY 31 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MARDELLE L. RICE AND RUSSELL D. RICE

MARDELLE L. RICE,)

Petitioner-Appellant,) Filed May 31, 1979

And Concerning)

RUSSELL D. RICE,) 134
2-62331

Respondent-Appellee.)

Appeal from the District Court of Guthrie County - M. J. V. Hayden, Judge.

Petitioner wife appeals from economic provisions of dissolution decree. AFFIRMED WITH MODIFICATION.

L. B. Brotherson of Taylor, Taylor & Feilmeyer, Guthrie Center, Iowa, for appellant.

Leo G. Nopoulos of Dexter, Iowa, for appellee.

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

PER CURIAM

Petitioner, Mardelle Rice, appeals economic provisions of trial court's decree dissolving her 36-year marriage to respondent, Russell Rice. We affirm with modification.

At the time of trial, petitioner had an income of about $2,200 a year from painting and wallpapering; respondent owned an auto repair shop employing two - three persons. He anticipated a good cash flow in the future from the business but at trial time was heavily indebted. The trial court awarded Mardelle a 1968 car, personal and some household possessions, $10 per month alimony and the family home valued at $15,000 subject to mortgages of approximately $8,500 which petitioner was to assume. On appeal the parties agree $4,000 from the mortgages was used as financing for respondent's auto repair business. Respondent was awarded all interest in his auto repair business, including equipment valued at $9,220, accounts receivable, estimated between $900-$4,000, a 1969 motor vehicle, a motorcycle, personal and some household possessions, and a lien of $3,250 on the family residence which is one-half the equity remaining after satisfaction of the mortgages. Respondent also was ordered to assume debts totaling slightly over $23,000 which, with the exception of approximately $700, were business related.

I. Petitioner first asserts that trial court erred in failing to enter formal findings of fact and conclusions of law detailing in full the application of criteria for property division enumerated in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968). Petitioner asserts this position based on Iowa R. Civ. P. 179 which requires a court sitting without a jury to separately and in writing state its findings of fact and conclusions of law. We reject petitioner's position on two grounds. First the Schantz criteria represent a general formula and were set out to be "helpful" to the trial court; it was recognized at the time of that decision that each element would not always be pertinent or applicable. Schantz v. Schantz, 163 N.W.2d at 405. Therefore, there is no need for a formalistic finding on each criteria. Secondly, our review of equitable actions is de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court, but do not abdicate our responsibility to decide independently the issues presented. In re Marriage of

Hitchcock, 265 N.W.2d 599, 606 (Iowa 1978); Hubert v. Hines, 178 N.W.2d 354, 361 (Iowa 1970). Because of this scope of review, Iowa R. Civ. P. 179 does not warrant reversal.[1]

II. Petitioner's second assertion is that trial court erred in its division of marital property between the parties. Petitioner's award of the $15,000 homestead was subject to $8,500 in encumbrances, $4,000 of which were attributable to respondent's business activities. Respondent's assets under the decree consisted primarily of his business, business equipment valued at $9,220 subject to a $6,131.12 encumbrance, and accounts receivables valued between $900-$4,000. However, in light of his testimony that he could meet obligations of $1189 per month consisting of $800 past due federal taxes, an equipment loan of $219 per month and other debts of $170 per month plus a three person payroll, the business had value as a going concern which unfortunately is not reflected properly in the record. Despite this, we conclude trial court erred in requiring petitioner to assume the entire homestead mortgage obligation which included business financing while impressing a lien in respondent's favor for one-half of the remaining current net equity. Petitioner should have been given a set-off for the $4,000 business-related encumbrance. The resulting equity distribution is $5,250 to petitioner and $1,250 to respondent. We, therefore, modify trial court's decree to so provide.

III. Petitioner also asserts that trial court's award of $10 per month alimony is inequitable. In light of the substantial monthly debt obligations of respondent, petitioner's ability to earn income and petitioner's monthly expenses, we conclude trial court properly determined only nominal alimony should be awarded. If any of those factors change in the future, petitioner can seek a subsequent modification based on circumstances then existing.

IV. Petitioner's prayer for award of attorney fees on this appeal is not supported by an itemized statement of counsel and thus are denied.

The judgment of trial court is affirmed as modified.

AFFIRMED WITH MODIFICATIONS.

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[1] One of the primary purposes of Iowa R. Civ. P. 179 is to advise counsel and the appellate court of the basis of trial court's decision so that counsel may direct the attack to specific adverse rulings or findings. Berger v. Amana Society, 254 Iowa 1036, 1040, 120 N.W.2d 465, 467 (1963).