FILED
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CLERK, SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ANITA MARIE SCHULTZ AND DAVID L. SCHULTZ

UPON THE PETITION OF ANITA MARIE SCHULTZ,	)	
	)	Filed June 4, 1986 288
Petitioner-Appellee,	)	6-34
AND CONCERNING DAVID L. SCHULTZ,	)	85-907
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Clayton County (CD2113-0783), Joseph C. Keefe, Judge.

Respondent appeals from the provisions of the decree dissolving the parties' marriage and providing for custody of their minor child. **MODIFIED AND AFFIRMED.**

James D. Chrisinger of Davis, Hockenberg, Wine, Brown & Koehn, Des Moines, for respondent-appellant.

Michael J. Schuster of Schuster and Mick, Guttenberg, for petitioner-appellee.

Heard by Oxberger, C.J., Schlegel, and Hayden, JJ.

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Husband appeals from provision of decree dissolving the parties' marriage. Respondent contends the trial court erred in: (1) property division; (2) temporary support; (3) child support and child custody; (4) travel expenses visitation. We affirm and modify the decree.

The parties were married September 13, 1980, and petition was filed July 20, 1983. Trial was held November 28, 1984. Wife was twenty-five years of age and husband was twenty-eight.

Prior to the marriage, husband worked on his father's dairy farm. Shortly before the marriage, the husband's parent's sold one-half share in the farming operation to him. However, the parents retained full ownership in the real estate.

Husband's assets at the time of marriage totaled $123,100 and consisted of the following:

Livestock and farm machinery	$140,000
Crops	$ 10,000
Cash	$ 44,700
Stocks	$ 21,400
Life Insurance Cash value	$ 1,500
Motor Vehicles	$ 22,000
Furniture	$ 1500
Appliances	$ 1500
Clothing	$ 500
Total	$243,100
Liabilities (note to husband's parents)	$120,000
Net	$123,100

Husband's $123,000 premarital assets have increased in value to $190,356. His parents and grandmother have given him gifts of $28,928. We conclude under our holding in In re Marriage of Wallace, Iowa Ct. App. 315 N.W.2d 827. That due to the short time of this marriage the gifts are not subject to property division in this dissolution.

We find the net value of husband's assets is $161,428. Since his assets were worth $123,000 at the time of the marriage, we find $38,328 is subject to property division.

At the time of marriage, wife's assets totaled $12,747 and consisted of:

1980 Chevy	$6500
Furniture	$1500
Clothing	$ 800
Life Insurance	
Cash value	$ 200
Bonds	$ 550
Cash Bank	$3197
Total	$12,747.16

Trial court awarded the wife the following property left over from her premarital assets:

Furniture	$2000
Bonds	$ 550
Checking acct.	$ 97
Life Insurance	
Cash value	$ 900

The court also awarded wife a 1985 Olds she purchased after the divorce was filed. It had a $9500 mortgage balance; equity was estimated at $1300. Thus the value of her assets remaining from premarital assets of $12,747 was $4847. Most of the reduction was in the value of the auto and reduction of cash. Wife has a deficiency in her premarital assets of $7900.

The trial of this case was interrupted for five months for an audit of the parties' income after allegations by the wife. The audit established that the parties had not declared $73,700 income for the years 1980-1983. The testimony was in conflict as to who was responsible for the understating of income. The trial court made no specific finding of fault and we find it unnecessary to do so in order to resolve this appeal.

The corrected returns show the parties' income was as follows:

1980	$16,732
1981	$11,835
1982	$52,052
1983	$23,166

During 1982, $15,010 was earned from sale of hogs, sale of shares of stock was $20,132. In determining husband's current earning capacity, we subtract these unusual sales from the earnings for 1982. Instead of $52,052, we use figure $17,000. Income for 1984 was $13,488. We find that husband's current earning capacity is $16,500, the average of the five years' income.

During the twelve-month period the parties were separated before trial, the husband paid $18,000 in temporary support. The original order required husband to pay $750 per month. The order was later amended to require $650 per month support. After the wife's allegation of understated income tax returns, the court required husband to pay $2500 immediate payment plus $1500 per month support. We find that the $750 per month payments were adequate and therefore husband has paid $9000 in excess temporary support.

We now turn to the solution of the economic issues. This marriage lasted less than four years. The parties are twenty-eight and twenty-five years old and in excellent health. Wife has one and one-half years of college and expects to complete a one-year paralegal program in September 1985. The divisible marital assets total $38,328.

The trial court ordered husband to pay the following:

$40,000	to wife in installemnts
$ 2,500	wife's student loan
$ 987.60	temporary living expenses
$ 9,500	car loan
$ 350	furniture loan
$ 1,864.75	audit expense
$ 550	counseling fees
$ 1,000	expert custody witness
$ 4,250	wife's attorneys fees
unknown	trial court costs
$17,416	past income taxes
$ 4,200	alimony for 7 months @ $600
$82,618	

Husband was ordered to pay $200 per week child support for twenty-six weeks, or $5200 per year. The other twenty-six weeks he is required to pay full expenses of the child while living with him.

We modify the trial court order to require husband to pay the following:

$14,164	one-half divisible marital assets
$ 7,900	deficiency of wife's premarital assets
$ 2,500	wife's student loan
$ 1,864.75	auditing expense
$ 550	counseling fees
$ 1,000	expert custody witness
$ 4,250	wife's trial counsel fees
$ 4,200	alimony 7 months @ $600 per month
$17,416	past income taxes
$53,845	

The direct cash award to wife of $14,164 and $7900 a total of $22,064 is reduced by $9000 for excess temporary support. The $13,064 is due within 90 days from date procedendo is issued in this case.

Child Custody and Visitation Expenses

Husband claims the trial court erred in granting wife physical custody of the parties' minor child. The factors in determining child custody are set out in In re Marriage of Winter, 223 N.W.2d 165 (Iowa 1974). Although both parties are excellent parents, we find no reason to change the decision of the trial court regarding child custody. However, we believe the responsibility and expense for transporting the child for visitation should be borne equally by the parties. If the parties are unable to agree, husband shall pick up and pay expenses to bring the child to his home and wife shall do likewise for visitation at her home.

Child Support

Husband claims the child support payments ordered by the trial court are beyond his ability to pay. Factors for setting a proper award of child support are set out in Section 598.21(4), Code of Iowa. We modify the trial court decree in this respect and provide the husband shall pay the wife $125 per week when

the child is in the wife's care. We affirm the trial court's terms for child support in all other aspects.

Appellate court costs are taxed equally to both parties. Both parties shall pay their own attorneys fees incurred in this appeal.

MODIFIED AND AFFIRMED.