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JAN 30 1981

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF KAREN KAY SCHULTZ AND VIRGIL CHARLES SCHULTZ

Upon the Petition of)
KAREN KAY SCHULTZ,) Filed January 30, 1981
Petitioner-Appellee)
And Concerning)
VIRGIL CHARLES SCHULTZ,)
Respondent-Appellant.)

0-361
0-64663

Appeal from Story District Court - Paul E. Hellwege, Judge.

Petitioner-wife appeals property division provisions of dissolution of marriage decree and seeks attorney fees. - AFFIRMED AS MODIFIED.

Lad Grove, Ames, Iowa, for respondent-appellant.

Barry S. Kaplan, of Fairall, Fairall, Reeves & Kaplan, Marshalltown, for petitioner-appellee.

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

PER CURIAM

Petitioner--wife, Karen Kay Schultz, appeals the property division provisions of a dissolution of marriage decree and seeks awards for attorney fees incurred at trial and on appeal. We modify and affirm.

Karen and Virgil Schultz were married on November 14, 1964, when Karen was 21 and Virgil 31. Their three daughters —Kristina, Darci, and Robin— were ages 14, 9, and 7 as of the time of trial. Since 1967 Virgil, a high school graduate, has worked as an animal caretaker at the National Animal Disease Laboratory in Ames, Iowa. His current annual gross income is approximately \$16,245. Karen dropped out of high school in the eleventh grade and then entered cosmetology school. After Karen graduated from cosmetology school, she worked as a cosmetologist for no more than a year. Karen has worked off and on at Bourns Incorporated in Ames since 1967. She has worked there continuously since 1973 and is now employed as a lead operator. Karen's gross income for 1979 was approximately \$11,600. In its decree of dissolution the trial court awarded custody of Kristina to Virgil and custody of Darci and Robin to Karen. The trial court ordered Virgil to pay Karen monthly child support of \$250, to be reduced to \$150 when there is only one daughter to be supported. The trial court dissolved the parties' 15 year-old marriage on January 4, 1980.

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).

1. Karen contends that the property division provisions of the dissolution decree were unfair to her. 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). If the trial court's goal is to equally divide the assets, there is no requirement that the division be achieved with mathematical precision. Conley, 284 N.W.2d at 223. 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 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).

In its decree the trial court ordered Karen to pay debts amounting approximately to \$4,307. The trial court ordered Virgil to pay debts amounting approximately to \$15,167. The latter figure includes the \$7,865 in installment payments of \$65 each month Virgil is obligated to pay Karen over a period of 121 months and a \$4,048 encumbrance against the house awarded to Virgil. The trial court awarded Karen assets amounting approximately to \$11,468. This figure includes the \$7,865 in installment payments Virgil is obligated to pay Karen over a 121 month period. The trial court awarded Virgil assets amounting approximately to \$16,350. This figure reflects the valuation of the automobile awarded to Virgil at \$50 and the house awarded to Virgil at \$15,500.

Comparing the \$1,183 in net assets awarded to Virgil with the \$7,161 in net assets awarded to Karen, it is clear that the trial court's division of property was not unfair to Karen. Even if we value the automobile awarded to Virgil at \$500 and the house awarded to him at \$18,500, as Karen urges, the assets awarded to Virgil would have a net value of \$4,633, still substantially less than the net value of the assets awarded to Karen. However, we find that Karen is entitled to interest on her share of the property division and hereby order that interest shall accrue at the rate of 12% on all unpaid amounts, commencing on January 1, 1980, all of which shall be due and payable on the due date of the last principal payment.

II. Karen contends that the trial court's refusal to order Virgil to pay a portion of her attorney fees incurred at trial was unfair. Attorney fees are not allowable as a matter of right. In re Marriage of Wilcoxson, 250 N.W.2d 425, 427 (Iowa 1977). The allowance depends on the financial conditions of the parties and their respective abilities to pay. Wilcoxson, 250 N.W.2d at 427. Dissolution courts have considerable discretion respecting the award of attorney fees. Schissel, 292 N.W.2d at 428. Karen has made no showing that her financial condition is so much worse than Virgil's that the trial court abused its discretion in failing to award her attorney fees. We therefore affirm the trial court's decision.

Additionally, Karen requests an award of attorney fees incurred by this appeal. In evaluating a request for attorney fees incurred on appeal we consider the needs of 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 hereby order Virgil to pay \$450 of Karen's attorney fees on appeal.

Costs are assessed against Virgil .

AFFIRMED AS MODIFIED.

All Judges concur except Donielson, J., who dissents.

DONIELSON, J. (dissenting)

I dissent from the majority's modification of this decree to allow interest on Karen's share of the property division. The trial court considered all the factors relevant to an equitable division of the property and did not conclude that Karen was entitled to interest. I would accept that conclusion.