IN THE COURT OF APPEALS OF IOWA

No. 1-057 / 99-0906
Filed August 29, 2001

IN RE THE MARRIAGE OF JANICE M. LENZ and GARY L. LENZ

Upon the Petition of JANICE M. LENZ,
Petitioner-Appellee,

FILED
AUG 29 2001
CLERK SUPREME COURT

And Concerning GARY L. LENZ,
Respondent-Appellant.

Appeal from the Iowa District Court for Dubuque County, Alan L. Pearson, Judge.

Respondent appeals from the district court's order awarding temporary attorney fees in a common law marriage dissolution action. **AFFIRMED.**

Mark R. Lawson of Mark R. Lawson, P.C., Maquoketa, for appellant.

Robert L. Day, Jr., Dubuque, for appellee.

Considered by Huitink, P.J., and Vogel and Mahan, JJ.

PER CURIAM

A husband appeals a decision of the district court which ordered him to pay $22,810.88 as temporary attorney fees in an action for dissolution of a common law marriage. He claims this amount is excessive. We affirm on appeal.

Janice and Gary Lenz were married in 1971. They were divorced in 1975. However, they continued to live together and hold themselves out as a married couple. They signed numerous documents as husband and wife, and filed joint tax returns. Gary controlled the parties' finances. He owns his own business and has assets worth about $2.75 million. Janice is a certified nurse's aide. She earns between $6 and $8 per hour.

In September 1998, Janice filed a petition for dissolution of the parties' common law marriage.[1] After a three-day trial, the district court determined the parties had a common law marriage. The court found Gary was not a credible witness. Gary was ordered to pay $2000 per month in temporary spousal support. He was also ordered to pay $25,000 as temporary attorney fees. The court stated:

> It's apparent to the Court that this proceeding will involve long and protracted litigation. Without intervention by the Court, the respondent will use his superior resources to overwhelm the petitioner. It is more appropriate that she be placed in a position where she can litigate the issues on a par with the respondent.

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[1] Janice filed two earlier petitions for dissolution of the parties' common law marriage, but these were dismissed and the parties continued to live together as husband and wife.

Gary filed a motion pursuant to Iowa Rule of Civil Procedure 179(b). The court noted the temporary attorney fee award was much larger than normal, but stated this was based on the history of the case. The court ordered Janice's attorney, Robert Day, would be required to submit an itemization at the final disposition of the proceeding, and the court would "then decide whether a remitter of the award of attorney fees is appropriate or whether an additional award is called for." Gary filed a motion for interlocutory appeal. The supreme court determined the matter was appealable as a matter of right.[2]

Gary filed a motion before the supreme court seeking a limited remand for the purpose of allowing the district court to address the matter of the amount of temporary attorney fees. Day was ordered to provide an itemized breakdown of his claimed fees. In the meantime, the parties reconciled and Janice dismissed her petition for dissolution of marriage. Janice acknowledged full satisfaction of all temporary spousal support. She assigned her judgment for attorney fees to Day.

The remand hearing was held in May, 2000. Day presented an itemized bill, which showed a balance due of $23,898.38, based on an hourly rate of $125 for 181.05 hours, plus expenses of $1367.13. The district court determined the hourly rate of $125 was reasonable. The court deducted some of the hours billed. The court concluded Gary should be required to pay attorney fees of $21,443.75, plus expenses of $1367.13, making a total bill of $22,810.88.

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[2] Temporary orders involving financial assistance are final judgments which are appealable as a matter of right. *In re Marriage of Denly,* 590 N.W.2d 48, 50 (Iowa 1999).

Our review in this equitable action is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew the issues properly presented. *In re Marriage of Erickson,* 553 N.W.2d 905, 907 (Iowa Ct. App. 1996). In equity cases, especially when considering the credibility of witnesses, we give weight to the fact findings of the district court, but are not bound by them. Iowa R. App. P. 14(f)(7).

Gary contends the award of temporary attorney fees in this case was excessive. Gary does not contest Day's request to be paid $125 per hour for his services. He does not object, with any specificity, to Day's itemization of the hours he spent working on the case. Gary asserts an attorney fee for $22,810.88 is too much, and requests the amount be reduced to $3000.

An award of attorney fees lies within the discretion of the trial court.[3] *Erickson,* 553 N.W.2d at 908. Awards for attorney fees must be for fair and reasonable amounts. *In re Marriage of Miller,* 552 N.W.2d 460, 465 (Iowa Ct. App. 1996). An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. *In re Marriage of Bell,* 576 N.W.2d 618, 625 (Iowa Ct. App. 1998). In order to overturn an award of attorney fees, a party must show the trial court abused its discretion. *Miller,* 552 N.W.2d at 465.

While the temporary attorney fees in this case appear large, we find the district court did not abuse its discretion by ordering Gary to pay this amount.

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[3] Attorney fees incurred in litigating a dissolution of marriage are part and parcel of the parties' total economic profile that the court must attempt to balance in an equitable manner. *State ex rel. Miller v. Fiberlite Int'l, Inc.,* 476 N.W.2d 46, 48 (Iowa 1991). This endeavor necessarily requires a broad discretion. *Id.*

There is a very large disparity between the parties' economic resources. Gary has access, through businesses he controls, to assets worth about $2.75 million. Janice, on the other hand, has access to only minimal assets and earns only minimal income. Furthermore, before the dissolution action was dismissed, the parties had engendered a large trial court file. Gary had filed motions to dismiss and for summary judgment prior to the three-day trial on the question of whether there had been a common law marriage. Several witnesses testified and many documents were admitted at the trial. Based on all of these factors, we conclude the attorney fees awarded were fair and reasonable.

We affirm the decision of the district court.

AFFIRMED.