FILED
APR 24 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ROSALIE ALMINE STONEBURNER
AND ARCHIE GALE STONEBURNER, JR.

375

Upon the Petition of)

ROSALIE ALMINE STONEBURNER,)

Petitioner-Appellee/)
Cross-Appellant,) Filed April 24, 1984
)

And Concerning)

ARCHIE GALE STONEBURNER, JR.) 4-68
) 83-909

Respondent-Appellant/)
Cross-Appellee.)

Appeal from the Iowa District Court for Guthrie County - M. C. Herrick, Judge.

Husband has appealed and wife has cross-appealed from a dissolution decree, both challenging various economic provisions of the decree. MODIFIED AND REMANDED.

David A. Hoyt of Wilcox, Polking, Gerken & Schwarzkopf, P.C., Jefferson, for respondent-appellant/cross-appellee.

Robert H. Laden and Thomas P. Schlapkohl of Hyland, Laden & Pearson, P.C., Des Moines, for petitioner-appellee/cross-appellant.

Considered by Oxberger, C.J., and Snell, Schlegel, Hayden, and Sackett, JJ.

Rosalie Almine Stoneburner and Archie Gale Stoneburner, Jr., were married in 1968. At the time of the dissolution in 1983, Rosalie was 57 and Archie was 54. Each party has adult children from previous marriages; no children were born to their marriage.

Archie has an eighth-grade education. He is employed as a mill tender at Firestone Tire and Rubber. His gross pay fluctuates but is around $25,000 per year. He will be eligible to retire with a pension of $500-550 per month in two years because he will then have accumulated 30 years of service; he will become eligible for social security in eight years, when he reaches 62, but no evidence was presented of how much he would be able to receive. Archie has hypertension and some circulatory problems in his legs; he expects that these problems may require surgery and may interfere with his employment. Rosalie responds that he is exaggerating this health problem and that he could alleviate the problem if he would stop his allegedly heavy drinking.

Rosalie was not employed outside the home during the marriage and apparently has not been employed since before her first marriage, including the ten years after her husband died when she was unmarried. She has a seventh-grade education. She is in generally good health, although she testified to some nerve trouble in her right arm which causes her to experience some numbness in her fingers.

The trial court awarded Rosalie the parties' house, which she had owned before the marriage; this house was valued at approximately $16,000 and was subject to no mortgage. The trial court also awarded Rosalie the home furnishings, a camping trailer worth $3,500, and bank accounts of about $12,000. Archie was awarded personal effects, a car, a motorcycle, and bank accounts of about $14,000.

377

Archie was directed to pay Rosalie alimony of $300 per month until she dies or remarries. He was also directed to carry a $10,000 life insurance policy on his own life, payable to Rosalie, for as long as he has an alimony obligation to Rosalie. Finally, he was directed to contribute $1,500 toward Rosalie's attorneys' fees and to pay the court costs.

Archie has appealed several aspects of the decree; Rosalie has cross-appealed. Our review is de novo. Iowa R. App. P. 4 (1983). We review the entire record and adjudicate anew the rights of the parties on issues properly presented and preserved. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977). 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 re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974); In re Marriage of Bowen, 219 N.W.2d 683, 687 (Iowa 1974).

I. Alimony. Archie challenges the award of alimony to Rosalie until she dies or remarries. He contends the alimony award should terminate at least when he becomes eligible for social security benefits, at which time Rosalie will also become eligible for social security benefits based on his contributions. He also argues that an alimony award is necessary only until Rosalie can obtain training and employment. He further contends that the trial court should have made a finding regarding Rosalie's reduced need for support because of her present status as a beneficiary in her father's estate.

On cross-appeal, Rosalie contends that the monthly award should be increased to $500 per month because she testified that her expenses come to more than that, including $75 per month for health insurance she must carry now that she is not included in Archie's group plan.

In reviewing an alimony award, we must take into consideration the factors enumerated in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), and the Iowa Supreme Court's 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).

We find little likelihood that Rosalie will be able to find employment at 58 with no skills, no experience, and a seventh-grade education, even if she took up some type of employment training program. A modification of the decree requiring Archie to pay alimony only until Rosalie can obtain employment would be unavailing.

However, Archie's contention that his obligation should terminate when he and Rosalie become eligible for social security benefits bears some consideration. Between the times when he retires in two years and when he is eligible for social security benefits, he will be receiving only $550 per month. To pay $300 per month will require that he expend his savings. He will have little to fall back on by the time he begins to draw social security benefits. Yet, Rosalie's needs will be no less during this time, thus the alimony must continue. Because Rosalie will be able to receive social security benefits as Archie's wife when Archie is able to receive social security benefits, we will modify the decree to require that at such time as Archie applies for social security benefits and files proof that Rosalie is receiving benefits as a divorced spouse, and upon filing of proof of said application and amount of payments to be received, the amount of benefits received shall be credited against the alimony. See Craft v. Craft, 226 N.W.2d 6, 8-9 (Iowa 1975). This modification is preferable to complete elimination of the alimony at that time because no evidence is available to us concerning how much Rosalie will be able to receive as a social security recipient, and thus we cannot determine if it would be adequate.

Rosalie is one of two beneficiaries under the estate of her recently deceased father, whose property includes land worth $38,000. At trial, Rosalie testified she had not yet received any money from the estate and has no idea how much she will receive. We do not know if the estate has debts against it or how much taxes will deplete it. The fact that Rosalie has an interest is a proper factor to be considered in arriving at the net worth of each party, their relative needs and the value of the resources of each party. Locke v. Locke, 246 N.W.2d 246, 252-53 (Iowa 1976). The case is therefore remanded to the trial court to take further evidence in order to determine the value of Rosalie's interest in her father's estate, and to consider the value of Rosalie's interest in determining whether or not the alimony award should be reduced and, if so, to make the appropriate reduction.

Rosalie bases her request for an increase in her alimony award on the fact that she needs $500 per month for living expenses and that she became accustomed to that standard of living during the fifteen years she was married to Archie. Archie disagrees, pointing out that she survived on a ten dollar per week allowance which he alotted her during their marriage. This is not indicative of her current needs, though, because the allowance evidently was for clothes and personal items, not for food or heat.

Rosalie did receive, in the decree, a $12,000 savings account. She makes no rent or house payments, her children are grown, she has no apparent expenses but herself, her house, and her $75 per month health insurance payments. We deny her request for additional amounts.

II. Insurance. Archie also challenges the requirement that he obtain a $10,000 life insurance policy payable to Rosalie in order to secure his alimony obligation. He contends his health problems render life insurance burdensomely expensive.

We find that his health problems, rather than providing a reason to release him from an obligation to insure his life to Rosalie's benefit, provide a reason to affirm the trial court's order. If he is in poor health, as he maintains, it is proper for us to guarantee that Rosalie is properly provided with a means of support should he die before she does, because she has no other means of support. This fulfills the purpose of alimony, as "an allowance to the ex-wife in lieu of the husband's legal obligation to support her." Knipfer v. Knipfer, 259 Iowa 347, 352, 144 N.W.2d 140, 143 (1966).

III. Division of Property. Archie challenges the division of property insofar as it awarded Rosalie the camping trailer. He contends the camping trailer is of no use to her because she does not drive. He does not challenge any other feature of the division of property.

In reviewing economic and property provisions 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 light of the factors enumerated in Iowa Code section 598.21 (1983), and 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)).

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); Williams, 199 N.W.2d at 345; Schantz, 163 N.W.2d at 405.

In the instant case, the trial court managed to make the distribution of the property between the two parties fairly equally. If we were to modify the decree by awarding the camper to Archie, the distribution would be inequitable.

IV. Attorneys' Fees. Finally, Archie challenges the award of trial attorneys' fees and trial court costs. He claims he should be charged with neither $1,500 of Rosalie's attorneys' fees nor the court costs of the dissolution because Rosalie has funds from which she could pay both expenses. We disagree.

"Trial courts have considerable discretion in fixing fees." In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977). "The allowance depends on the financial condition of the parties and their respective ability to pay." Id. The property settlement allots to Rosalie enough on which to live, but certainly does not leave her with substantial reserves. Archie, on the other hand, received a property settlement roughly equal to Rosalie's and will be earning a good income for at least another year. However, Rosalie's position is not so impoverished that it is necessary for Archie to pay all of her attorneys' fees, as Rosalie requests on cross-appeal.

Archie next complains that the fees charged by Rosalie's attorney were unreasonable and that therefore he should not have to pay any of her fees, or at least not as much as ordered. We do not find Archie's arguments persuasive. "Trial courts are familiar with the value of services in dissolution matters." Id. Trial court received an accounting of Rosalie's attorneys' services and the fees charged. It was the trial court's decision to make as to whether the fees were reasonable. Its decision indicates no abuse of discretion to us. Furthermore, because Archie was required to pay a fixed amount towards Rosalie's fees, he is not the appropriate party to question the reasonableness of those fees. If Rosalie wishes to challenge their reasonableness, she may bring that up with the trial court.

Rosalie has applied for attorneys' fees in connection with this appeal. Notwithstanding our affirmance of the trial court of the issues raised by Archie, and because we also affirmed those orders challenged by Rosalie on cross-appeal, we do not believe Archie should be required to contribute toward Rosalie's attorneys' fees in connection with this appeal. The application for attorneys' fees is denied; each party shall bear his or her respective attorneys' fees for this appeal. Costs on appeal are taxed to appellant.

MODIFIED AND REMANDED.