

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ROBERTA A. HARTKEMEYER
AND WILLIAM F. HARTKEMEYER

FILED

JAN 27 1988

CLERK SUPREME COURT

Upon the Petition of)

ROBERTA A. HARTKEMEYER,)

Petitioner-Appellee,)

And Concerning)

WILLIAM F. HARTKEMEYER,)

Respondent-Appellant.)

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Filed January 27, 1988

7-349
86-1845

Appeal from the Iowa District Court for Linn County (No. DM 12773),
Lynne E. Brady, Judge.

Respondent appeals from a dissolution decree requiring him, inter alia, to pay alimony for an indefinite period of time and to pay a portion of petitioner's attorney fees, contending that the award of alimony did not satisfy the statutory criteria and was excessive and improperly influenced by respondent's inheritance. In addition, respondent contests his obligation for a portion of respondent's attorney fees while petitioner seeks attorney fees from respondent for this appeal **AFFIRMED AS MODIFIED.**

Linda H. Robbins of Hall & Irvine, Cedar Rapids, for respondent-appellee.

Richard C. Wenzel of Wenzel, Piersall, Riccolo & Harms, P.C., Cedar Rapids, for petitioner-appellee.

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

PER CURIAM

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The parties to this appeal, Roberta and William Hartkemeyer, were granted a dissolution of their twenty-six year marriage by the District Court for Linn County on November 21, 1986. The district court divided the marital property, imposed spousal support obligations upon William, and awarded attorney's fees to Roberta. Our review is de novo. Iowa R. App. P. 4. Although we are not bound by the district court's fact-findings, we give them weight, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7).

I.

(A)

William contends the district court erred in awarding spousal support.

As he phrases this contention in his brief:

Although the Court does not say so, since none of the criteria for alimony contained in the Code were met, the only logical conclusion is the Court considered the inheritance in the award of alimony. In essence, the trial court awarded the Respondent's inheritance to the Petitioner and labeled it as alimony.

William contends this consideration of his inheritance, which consists of a farm now being sold on an installment contract, is inappropriate. We disagree with William's claim of error on two grounds. First, and as we shall more fully discuss infra, we think Roberta is entitled to alimony by virtue of several of the statutory criteria, independent of any consideration of William's inheritance. Moreover, we are not convinced of the impropriety of a district court's consideration of a spouse's inheritance in the formulation of an appropriate support award.

We are informed by both the cases and Iowa Code section 598.21(3) that the payment of alimony is not an absolute right; it is awarded out of fairness, according to the particular facts of the case. E.g., In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976); Iowa Code § 598.21(3) (1985). When determining the appropriateness of alimony, the trial court must consider the earning capacity

of each party, present standards of living, and ability to pay balanced against the relative needs of the other. E.g., In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983).

Iowa Code section 598.21(2) provides, in pertinent part, that "[p]roperty inherited by either party . . . prior to or during the course of the marriage is the property of that party and is not subject to a property division" Neither this nor any other section prohibits a court from considering this property to determine the propriety of spousal support. In fact, we think such a prohibition would be contrary to the well-established principle: the support analysis hinges on a balancing of one person's needs against the second person's ability to pay. E.g., Marriage of Estlund, 344 N.W.2d at 281. We consider the \$9,200 income William received from his inheritance in 1986 in determining his ability to pay alimony. See also In re Marriage of Wallace, 315 N.W.2d 827, 831 (Iowa App. 1981). As we cannot say, either as a factual or legal matter, that the district court erred with respect to William's first contention, we reject it.

(B)

William maintains Roberta fails to satisfy the criteria established by our statute and cases for the award of spousal support. The principles which guide our review of this issue are set forth in Iowa Code § 598.21(3); Marriage of Estlund, 344 N.W.2d at 281. We see no need for a lengthy recitation of these well-known principles here.

In determining the issue of alimony we have considered the following factors:

1. Roberta has worked full time since 1959 with the Board of Education as an accounting clerk.
2. Her employment was secondary to her family responsibilities, therefore reducing her opportunity for advancement.

3. Roberta has high blood pressure. She admits having a problem dieting. She is 5'3" and weighs 290 lbs.

4. Roberta is 45 years old; William is 44.

5. Both parties are high school graduates.

6. William's net income is \$23,228 plus \$9,200 from the inheritance.

7. Roberta's net income is \$11,508.

8. The four children of the parties are adults.

9. William received \$28,694.96 in net property plus his inheritance of \$71,248.00.

10. Roberta received \$25,810.15 property in the original decree plus a corrected pension value of \$12,443.36 for a total net value of \$38,253.51.

We conclude Roberta should receive rehabilitative alimony to compensate for her reduced career advancement due to her family obligations during the marriage. The trial court ordered \$400 per month for five years and \$300 thereafter

We find that due to the age of the parties (middle forties) that lifetime alimony is not warranted. We modify the trial court's decree to provide alimony of \$300 per month for a period of ten years plus one month. The payments shall cease upon the happening of one of the following events: (1) the death of the petitioner; (2) the death of the respondent; (3) the remarriage of the petitioner.

II.

William maintains the district court incorrectly valued the parties' respective pensions. As a result, argues William, the district court's award of \$980 to Roberta as an attempt to equalize the value of their respective pensions was error. We agree. The district court's valuation was based upon a seven percent interest rate; William's employer's pension plan uses an interest rate

of nine percent. Using this latter rate, William's pension computes to a present value of \$12,092.38. This amount is substantially the same as the present value of Roberta's pension. Accordingly, the district court's award of \$980 to Roberta was not required to equalize the value of the respective pensions. We modify the decree and strike the award of \$980.

III.

William argues the district court erred in awarding Roberta \$1,000 in attorney's fees. Recognizing that the district court is vested with considerable discretion in such matters, In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983), we are not persuaded to interfere with the district court's judgment in the present case.

Roberta requests attorney fees for this appeal. In evaluating such a request, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). We conclude that the parties should be responsible for their respective attorney's fees incurred upon this appeal. See In re Marriage of Pittman, 346 N.W.2d 33, 37 (Iowa 1984). Costs are assessed one-half to each party.

AFFIRMED AS MODIFIED.