

IN THE COURT OF APPEALS OF IOWA

No. 2-291 / 91-1204

FILED

NOV 30 1992

CLERK SUPREME COURT

IN RE THE MARRIAGE OF WILMA WINTERS AND STEVEN J. WINTERS

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Upon the Petition of

WILMA WINTERS,

Petitioner-Appellee/Cross-Appellant,

And Concerning

STEVEN J. WINTERS,

Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Fayette County,
John Bauercamper, Judge.

The husband appeals and the wife cross-appeals from the
economic provisions of a dissolution decree. **AFFIRMED AS
MODIFIED.**

Jeffrey E. Clements, West Union, for appellant.

John D. Standafer of Donohue Law Office, P.C.,
West Union, for appellee.

Considered by Donielson, P.J., and Hayden and Habhab,
JJ.

DONIELSON, P.J.

Steven and Wilma Winters were married on September 8, 1979. The parties have two children: Heather, born September 11, 1982, and Christopher, born August 12, 1985.

Wilma was born September 15, 1959. She is a high school graduate. She has no particular job skills or training. Wilma worked throughout the marriage on a full-time basis at Iowa Ham Processors in West Union, Iowa, until the plant closed in 1987. She currently works two part-time jobs. Wilma's net monthly income is \$474. Wilma brought few assets into the marriage.

Steven was born July 13, 1958, and is also a high school graduate. Steven is employed as a truck driver by Mihm Oil Company. He is paid on a per load basis, based upon the types of loads he hauls. For the years 1987 to 1990 Steven's gross annual income averaged \$33,100. In 1990 his net monthly income was \$2,200. For the first six months of 1991, his net monthly income was \$1,335. Steven brought assets worth about \$18,000 to the marriage.

The district court issued a decree of dissolution on July 8, 1991. The parties had agreed that the children should be placed in their joint custody, with primary physical care awarded to Wilma. In applying the child support guidelines, the court considered Steven's net monthly income to be about \$1,569 and Wilma's net income to be \$474. Steven was ordered to pay \$538 per month in child support for the two children.

The district court ordered that the amount of child support should be adjusted annually. Each party was ordered to exchange income tax returns no later than May 1 of each year so child support could be adjusted. Steven received the two tax deductions for the children and was ordered to provide health coverage for the children. No spousal support was awarded in view of the property distribution.

The court determined that because of the difference in the parties' earning capacities, Wilma should be awarded a greater amount of the parties' assets. The court found that although Steven brought more assets to the marriage, this amount was offset by the amount the parties saved by living rent-free in a house owned by Wilma's parents. The court awarded Wilma net assets worth \$23,697 and Steven net assets worth \$15,645. Steven appealed and Wilma cross-appealed.

I. SCOPE OF REVIEW

Our scope of review in dissolution cases is de novo. In re Marriage of Craig, 462 N.W.2d 692, 693 (Iowa App. 1990). While not bound by the trial court's determination of factual findings, we will give them considerable weight, especially when considering the credibility of witnesses. Id.

II. PROPERTY DIVISION

Steven contends the district court's division of property was not equitable. He claims the court should

have divided the parties' assets equally, instead of awarding Wilma a greater share.

The partners in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. In re Marriage of Russell, 473 N.W.2d 244, 246 (Iowa App. 1991). The Iowa courts do not require an equal division or percentage distribution. Id. The determining factor is what is fair and equitable in each particular circumstance. Id.

The district court specifically awarded Wilma more of the parties' assets because she was not awarded any spousal support. Under the circumstances of this case, and particularly in view of Wilma's earning capacity, we believe the district court's distribution of the parties' assets is equitable. We affirm on this issue.

III. CHILD SUPPORT

A. Steven contends his child support obligation should be reduced. He points out that his net monthly income in 1991 was to \$1,335. Steven believes his child support obligation should be based solely on his 1991 net monthly income, and thus would be \$458 per month. In her cross-appeal, Wilma argues that Steven's child support should be based on his 1990 net monthly income of \$2,200. Using this amount, his child support obligation would be \$755 per month. We will consider these two arguments together.

There is a rebuttable presumption that the amount of child support which would result from the application of the guidelines prescribed by the supreme court is the correct amount of child support to be awarded. In re Marriage of Bergfeld, 465 N.W.2d 865, 869 (Iowa 1991). The court must determine the parent's current monthly income from the most reliable evidence presented. In re Marriage of Powell, 474 N.W.2d 531, 534 (Iowa 1991). Where the parent's income is subject to substantial fluctuations, it may be necessary to average the income over a reasonable period when determining the current monthly income. Id.

The district court averaged the amount of Steven's net income during 1990 and 1991, and then made additional deductions for increased taxes and health insurance costs. Based on the evidence in this case, we affirm the order of the district court requiring Steven to pay \$538 per month in child support.

B. The district court also ordered Steven's child support obligation to be subject to an annual adjustment. Steven asks us to eliminate this provision from the dissolution decree.

The law of Iowa does not favor child support awards which provide a sliding scale based on a parent's fluctuating income. In re Marriage of Blume, 473 N.W.2d 629, 632 (Iowa App. 1991). Although the child support guidelines may not necessarily be described as requiring complicated computations, we nonetheless agree with the

rationale that generally child support should be set at a single amount subject to future modifications. Id. at 632-633.

We modify the dissolution decree to eliminate the provision making Steven's child support obligation subject to an annual adjustment. If there is a substantial change in circumstances in the future, then the support provision may be an appropriate matter for modification proceedings.

IV. ALIMONY

Wilma asks for rehabilitative alimony of \$113 per month for a reasonable period of time. She states that she has no particular job skills or training and that she has been unable to find suitable employment to allow her to be self-supporting.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. In re Marriage of Whelchel, 476 N.W.2d 104, 110 (Iowa App. 1991). When determining the appropriateness of alimony, the court should consider the earning capacity of each party. In re Marriage of Oler, 451 N.W.2d 9, 13 (Iowa App. 1989). We consider property division and alimony together in evaluating their individual sufficiency. In re Marriage of Russell, 473 N.W.2d 244, 246 (Iowa App. 1991).

Wilma was awarded a greater amount of the parties' assets due to the fact her earning capacity is not as great as Steven's. Based on the property division, we find alimony to be inappropriate in this case.

V. ATTORNEY FEES

Wilma asks for attorney fees for this appeal. 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 Hunt, 476 N.W.2d 99, 103 (Iowa App. 1991). We order Steven to pay \$500 toward Wilma's attorney fees for this appeal.

VI. SUMMARY

In summary, we have affirmed the district court's division of property and its order requiring Steven to pay child support of \$538 per month for the two children. We modified the decree to eliminate the provision for an annual adjustment of the child support obligation. We affirmed the district court's decision not to award any spousal support, based on the division of property. We have ordered Steven to pay \$500 toward Wilma's attorney fees for this appeal. Costs of this appeal are assessed one-half to each party.

AFFIRMED AS MODIFIED.