IN THE COURT OF APPEALS OF IOWA

FILED
JUN 27 1996
CLERK SUPREME COURT

No. 6-016 / 95-0104

IN RE THE MARRIAGE OF ELIZABETH McGUIRE AND JAMES McGUIRE

Upon the Petition of
ELIZABETH McGUIRE,

Petitioner-Appellant,

And Concerning
JAMES McGUIRE,

Respondent-Appellee.

Appeal from the Iowa District Court for Cerro Gordo County, Ronald H. Schectman, Judge.

Elizabeth McGuire appeals certain economic provisions in the parties' dissolution of marriage decree. **AFFIRMED.**

Kristy B. Arzberger, Mason City, for appellant.

N. Leroy Walters, Mason City, for appellee.

Considered by Huitink, P.J., Streit, J., and McCartney, S.J.*

* Senior judge from the Second Judicial District serving on this court by order of the Iowa Supreme Court.

PER CURIAM

This is an appeal by a wife challenging the child support, alimony, property distribution, and attorney fee provisions of the parties' dissolution decree. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Elizabeth and James McGuire were married in 1977. They have one minor child, Angela, who was born in 1978. Elizabeth owns a bridal shop, Special Occasions, which earned about $24,000.in 1993. James is an attorney who operates as a professional corporation. His average annual income is about $110,000.

The district court entered a dissolution decree for the parties on November 29, 1994. The court granted the parties joint legal custody of Angela, with Elizabeth having primary physical care. The court found James' net monthly income exceeded $3,000 per month, which placed the award of child support within the court's discretion. The court ordered James to pay child support of $788 per month. After September 1, 1997, James is to make these payments directly to Angela for her college expenses.

James was ordered to pay alimony of $1,700 per month for a period of five years. Elizabeth was awarded property worth $85,570, which included the marital residence and her business. She was ordered to pay her student loan of $4,000, which gives her total net assets of $81,570. James was awarded property worth $118,150, which included his law practice and an office building. He was ordered to pay debts

of $154,200, which gives him a negative award of $36,050. James was ordered to pay $2,350 toward Elizabeth's trial attorney fees. Elizabeth now appeals.

I. Elizabeth contends James' child support obligation should be increased. She states his average annual income is actually $129,000. She disregards his income for 1991, which was lower than that of other years. James testified his practice consisted primary of contingency fee cases, and stated that his income fluctuated from year to year. We agree with the district court that James' average income from the last six years should be used.

Elizabeth also contends the court improperly calculated James' net monthly income. We find the court did not actually find a net monthly income for James. The court recognized that since James' net monthly income exceeded $3,000 the amount of child support was within the court's discretion. On our de novo review, we are obliged to apply the most current guidelines. *In re Marriage of Bolick*, 539 N.W.2d 357, 360 (Iowa 1995). Applying the current child support guidelines; we find James' child support obligation is substantially the same as the amount he was required to pay by the district court We affirm James' child support obligation of $788 per month.

II. Elizabeth challenges the district court's ruling that after September 1, 1997, James should pay $788 per month to Angela for her college expenses. Elizabeth asks to have this amount paid to her, so that she can use it for Angela's

benefit. After a child reaches the age of eighteen, the child support guidelines do not apply. We agree with the district court that James may pay Angela directly for her college expenses.

III. Elizabeth asks to have the amount and duration of her alimony award increased. 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). We consider property division and alimony together in evaluating their individual sufficiency. *Id.* We find the award of alimony was equitable under the facts of the case. Elizabeth received a greater share of the parties' net assets. Also, the award gives her time for her business to become better established.

IV. Elizabeth claims the property distribution is inequitable to her. She asks to have the jewelry and furs awarded to James, and that she receive a cash property settlement instead. She also disputes the validity of a debt of $78,850 which James was ordered to pay. In addition, she claims the district court improperly valued her business and James' law practice. 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).

James has no more need of the jewelry and furs than Elizabeth, and she may sell them if she does not want to keep them. Concerning the debt of $78,850, the

district court specifically found this was a legitimate debt. The district court had the advantage of observing the parties and is better able to determine their credibility. We find the value placed on the businesses by the trial court to be well within the permissible range of the evidence, and we will not disturb it on appeal. We find the division of property was equitable.

V. Elizabeth claims the district court abused its discretion by failing to order James to pay the full amount of her trial attorney fees. Iowa trial courts have considerable discretion in awarding attorney fees. *In re Marriage of Hunt*, 476 N.W.2d 99, 103 (Iowa App. 1991). We find no abuse of discretion here. Elizabeth was awarded a greater share of the parties' property, and should be able to pay a portion of her own attorney fees.

VI. Elizabeth also seeks attorney fees for this appeal. We determine each party should pay his or her own attorney fees for the appeal.

We affirm the district court on all issues raised in this appeal. Costs of this appeal are assessed to Elizabeth.

AFFIRMED.