IN THE COURT OF APPEALS OF IOWA

No. 9-023 / 98-366
Filed July 23, 1999

IN RE THE MARRIAGE OF DIANA RAE SCHUMACHER AND RICHARD WAYNE SCHUMACHER

Upon the Petition of
DIANA RAE SCHUMACHER,

Petitioner-Appellant,

And Concerning
RICHARD WAYNE SCHUMACHER,

Respondent-Appellee.

JUL 23 1999

Appeal from the Iowa District Court for Linn County, David M. Remley, Judge.

Petitioner appeals from a dissolution decree which awarded her no alimony and ordered her to pay child support. **AFFIRMED AS MODIFIED.**

Michael L. Mollman of Mollman Law Office, Cedar Rapids, for appellant.

Richard L. Boresi of King, Smith & Boresi, Cedar Rapids, for appellee.

Considered by Huitink, P.J., Mahan, J., and Hayden, S.J.* Zimmer, J., takes no part.

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

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PER CURIAM

Diana Schumacher appeals the economic provisions of the parties' dissolution decree. She asserts she should have been awarded alimony and attorney fees. She disputes the district court's decision to require her to pay child support. We affirm as modified.

Diana and Richard Schumacher were married in 1977. They have four children, only the youngest of whom, Quentin, was a minor at the time of the dissolution proceedings. Quentin was born in October 1984. Another child, Trevor, was attending college.

Diana did not work outside the home during most of the marriage, but performed child care for others. In 1993, she returned to the job market. In 1995, Diana obtained a job with a car dealership and was a salesperson. She earned about $22,600 from this job in 1996. However, due to low sales the next year, in May 1997, she accepted a job as title clerk with the same car dealership. She now earns $14,560. Diana was forty-two years old at the time of the dissolution hearing, and was in good health.

Diana has taken a number of accounting classes at Kirkwood Community College. She testified she would like to complete a two-year degree in accounting. She had not made any specific inquiries into how many hours she still needed to complete her degree, or the potential cost.

Richard is a lineman with Iowa Electric. He earns about $21 per hour, which gives him regular pay of about $43,680. He also receives overtime and expected to receive total gross income of about $50,000. Richard was fifty years old at the time of the dissolution hearing, and was in good health.

The district court entered a dissolution decree for the parties on January 9, 1998. The court placed Quentin in the primary physical care of Richard. Applying the child support guidelines, the court ordered Diana to pay child support of $159 per month. Richard was ordered to pay one-half of the college expenses of Trevor and Quentin. Diana was not ordered to pay any college expenses.

Richard was awarded total net assets worth $57,458. As part of the property division, Richard was awarded the marital home. He is required to pay Diana $42,423 as her portion of the equity in the home. Diana was awarded total net assets of $56,996. The major asset awarded to Diana is the cash property settlement which represents the equity in the home. Diana sought alimony and attorney fees, but these requests were denied by the district court. Diana appealed.

I. Appellate review of this equitable proceeding is de novo. Iowa R. App. P. 4. The court has a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Weinberger,* 507 N.W.2d 733, 735 (Iowa App. 1993). The appellate court gives weight to the fact findings of the district court, especially in determining the credibility of witnesses, but is not bound by them. Iowa R. App. P. 14(f)(7).

II. Diana asks to receive alimony of $750 per month. She states the district court improperly found she had an earning capacity of $22,613 per year because she made this much as a car salesperson in 1996. Diana testified a sales manager told her in 1997 she was in danger of losing her job due to her low level of sales. Diana then took her present job of title clerk, where she earns only $14,560 per year. Diana points to the disparity between the parties' earnings and asserts she is entitled to alimony.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Kurtt,* 561 N.W.2d 385, 387 (Iowa App. 1997). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3). *In re Marriage of Sychra,* 552 N.W.2d 907, 908 (Iowa App. 1996). We consider the length of the parties' marriage, the age and health of the parties, the parties' earning capacities, the levels of education, and the likelihood the party seeking alimony will be self-supporting at a standard of living comparable to the one enjoyed during the marriage. *In re Marriage of Clinton,* 579 N.W.2d 835, 839 (Iowa App. 1998).

We determine Diana should be awarded rehabilitative alimony to allow her to return to school to complete her accounting degree. An accounting degree would give her a better opportunity to become self-supporting. We modify the parties' dissolution decree to award Diana rehabilitative alimony of $500 per month for a period of three years. In making this award, we urge Diana to complete her accounting degree.

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III. Diana asserts she should not be required to pay child support. Again, she points to the disparity between the parties' salaries. Diana asks us to deviate from the child support guidelines and eliminate her child support obligation.

The purpose of the child support guidelines is to provide for the best interests of children by recognizing the duty of both parents to provide adequate support for their children in proportion of their respective incomes. *In re Marriage of Beecher,* 582 N.W.2d 510, 513 (Iowa 1998). There is a rebuttable presumption child support determined by the application of the guidelines is correct. *In re Marriage of Thede,* 568 N.W.2d 59, 61 (Iowa App. 1997). Ordinarily, the living expenses of the non-custodial parent do not provide a basis for departing from the guidelines. *In re Marriage of Nelson,* 570 N.W.2d 103, 108-09 (Iowa 1997). The guidelines already take into consideration the reasonable living expenses of the non-custodial parent. *Beecher,* 582 N.W.2d at 514.

We conclude Diana has not shown sufficient reason to depart from the child support guidelines.

IV. Diana contends the district court abused its discretion by failing to award her trial attorney fees. She asked to receive attorney fees of $2200. She asserts she is unable to pay her attorney fees.

We review an award of attorney fees for an abuse of discretion. *In re Marriage of Colby,* 569 N.W.2d 157, 159 (Iowa App. 1997). The district court did not abuse its discretion. Diana will receive a sizeable cash property settlement and should be able to pay her attorney fees.

V. Diana seeks attorney fees for this appeal. An award of attorney fees on appeal is not a matter of right, but rests within the court's discretion and the parties' financial position. *In re Marriage of Daniels,* 568 N.W.2d 51, 56 (Iowa App. 1997). Each party shall pay his or her own attorney fees for this appeal.

We modify the parties' dissolution decree to award Diana rehabilitative alimony of $500 per month for three years so she can obtain an accounting degree. The parties' dissolution decree is affirmed on all other issues. Costs of this appeal are assessed one-half to Diana and one-half to Richard.

AFFIRMED AS MODIFIED.