IN THE COURT OF APPEALS OF IOWA

No. 9-829 / 99-247
Filed August 30, 2000

IN RE THE MARRIAGE OF FELIX E. GONZALES AND JUDITH A. GONZALES

Upon the Petition of
FELIX E. GONZALES,
Petitioner-Appellee/Cross-Appellant,

And Concerning
JUDITH A. GONZALES,
Respondent-Appellant/Cross-Appellee.

FILED
AUG 30 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Webster County, Joel E. Swanson, Judge.

Judith Gonzales appeals, and Felix Gonzales cross-appeals, certain economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Thomas P. Schlapkohl, Des Moines, for appellant.

Monty L. Fisher, Fort Dodge, for appellee.

Considered by Sackett, C.J., and Huitink and Vaitheswaran, JJ.

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PER CURIAM

Judith Gonzales appeals certain provisions of the parties' dissolution decree. She claims: (1) Felix Gonzales's child support obligation should be increased; (2) her alimony should be increased; (3) Felix should be required to pay interest on her cash property settlement; (4) Felix should be required to maintain life insurance to secure his child support and alimony obligations; and (5) she is entitled to attorney fees for this appeal. In a cross-appeal, Felix claims the amount of alimony is excessive. We affirm as modified.

Felix and Judith were married in 1982. They have three children, Laurel, born in March 1985; Rachel, born in June 1991; and Christian, born in January 1994.

Both parties were forty-two years old at the time of the dissolution hearing in November 1998. Felix is a medical doctor who specializes in the ears, nose, and throat. He earned $435,793 in 1995; $457,286 in 1996; and $396,038 in 1997. However, he expected his income to decrease to about $300,000 in 1998 due to changes in insurance reimbursement.

Judith is a registered nurse, but she has not worked outside the home for several years. If she returned to work full-time as a registered nurse, she could earn about $30,000 to $40,000 per year. Judith would like to return to school to become a psychiatric nurse practitioner. She estimated it would take her between five to seven years to complete her studies. She could earn about $50,000 per year in this field of employment.

The district court entered a dissolution decree for the parties on December 9, 1998. The court placed the children in the parties' joint legal custody, with

Judith having physical care. Felix was ordered to pay child support of $2500 per month for the three minor children. Felix was also ordered to pay alimony of $5000 per month for a period of eighty-four months, then $2500 per month for a period of sixty months. Felix was awarded property worth about $271,613, which included his medical practice. Judith was awarded property worth about $193,571. In addition, Felix was ordered to pay Judith a cash property settlement of $25,000, payable in installments of $5000 per year. Felix was ordered to pay $10,000 for Judith's trial attorney fees. Judith appealed and Felix cross-appealed.

I. SCOPE OF REVIEW

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. CHILD SUPPORT

Judith contends the district court improperly based Felix's child support obligation on a finding his income for 1998 would be about $300,000. She asserts Felix's child support obligation should be calculated based on the average of his income from 1995 to 1997, which would be about $425,000. Judith asks to have Felix pay child support of $4416 per month for the three minor children.

Felix's net monthly income is more than $6000. Under the child support guidelines, when the net monthly income of a noncustodial parent is more than $6000, the amount awarded in child support rests within the sound discretion of the district court. *In re Marriage of Maher,* 596 N.W.2d 561, 565 (Iowa 1999). In no event, however, may the award be less than the guidelines amount for a noncustodial parent with a net monthly income of $6000. *Id.* If no income is imputed to Judith, Felix would be required to pay child support of at least $2040 per month for the three minor children. We find the district court acted equitably in ordering Felix to pay child support of $2500 per month.

III. ALIMONY

Judith claims the alimony award of $5,000 per month for eighty-four months is inequitable. She asks to receive alimony of $6333 per month until she reaches the age of sixty-two, dies, or remarries. She states she has living expenses of at least $10,000 per month, and she needs alimony of at least $6333, plus child support, to meet her expenses. In his cross-appeal, Felix contends the award of alimony is excessive because Judith has the ability to earn between $30,000 to $40,000 per year at the present time. We will consider these arguments together.

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) (1997). *See In re Marriage of Sychra,* 552 N.W.2d 907, 908 (Iowa App. 1996). We consider the length of 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).

An alimony award will differ in amount and duration according to the purpose it is designed to serve. *In re Marriage of Francis,* 442 N.W.2d 59, 62 (Iowa 1989). Traditional or permanent alimony is usually payable for life or for so long as the dependent spouse is incapable of self-support. *In re Marriage of Hettinga,* 574 N.W.2d 920, 922 (Iowa App. 1997).

We have considered both parties' challenges to the alimony award and agree with Judith that she should receive traditional alimony. While we recognize Judith has the ability to earn at least $30,000 per year, if not more, even with additional training her earning capacity will never approach that of Felix. *Cf. In re Marriage of O'Rourke,* 547 N.W.2d 864, 867 (Iowa App. 1996) (awarding traditional alimony where wife had significant income, but husband's income vastly exceeded that of wife). However, we believe her request for $6333 per month until she reaches sixty-two, remarries, or dies, is excessive. For this reason, we conclude Judith should be awarded alimony of $2500 per month, payable until she reaches the age of sixty-two, remarries, or either party dies.

IV. INTEREST

Felix was ordered to pay Judith a cash property settlement of $25,000, payable in five equal annual installments. The district court specifically directed that no interest should be paid on the unpaid balance. On appeal, Judith claims Felix should be required to pay interest on the cash property settlement.

Courts may award interest on property distribution awards different than that called for in section 535.3 if equity so dictates, or may award no interest at all. *In re Marriage of Pittman*, 346 N.W.2d 33, 37 (Iowa 1984); *In re Marriage of Pertzsch*, 451 N.W.2d 22, 24 (Iowa App. 1989). Upon review of the entire property division in this case, we find the decision not to award interest is equitable.

V. LIFE INSURANCE

Judith asks us to require Felix to maintain a life insurance policy to secure his child support and alimony obligations. We deny this request. Generally, an insurance policy to pay child support or alimony after a party's death is unnecessary because there is no obligation to pay these amounts after the party's death. *See In re Marriage of Lytle*, 475 N.W.2d 11, 12 (Iowa App. 1991) (citing *In re Marriage of Boehlje*, 433 N.W.2d 81, 85 (Iowa App. 1989)). We find no reason in the record to require Felix to secure these obligations by a life insurance policy.

VI. ATTORNEY FEES

Judith 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 Daniels*, 568 N.W.2d 51, 56 (Iowa App. 1997). Under the facts of this case, we determine Felix should pay $1000 toward Judith's appellate attorney fees.

We affirm the district court on all issues, except to modify Felix's alimony obligation to require him to pay $2500 per month in alimony until Judith becomes

sixty-two years old, remarries, or either party dies. Costs of this appeal are assessed one-half to each party.

AFFIRMED AS MODIFIED.