IN THE COURT OF APPEALS OF IOWA

No. 1-513 / 91-180

IN RE THE MARRIAGE OF IRVIN V. MANTERNACH AND JOANNE L. MANTERNACH

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Upon the Petition of

IRVIN V. MANTERNACH,

Appellee,

And Concerning

JOANNE L. MANTERNACH,

Appellant.

FILED
APR 28 1992
CLERK SUPREME COURT

Appeal from the Iowa District Court for Dubuque County, R. J. Curnan, Judge.

Respondent appeals certain economic provisions of the parties' dissolution decree. **AFFIRMED.**

Robert L. Sudmeier of Fuerste, Carew, Coyle, Juergens & Sudmeier, P.C., Dubuque, for appellant.

James A. Trannel of Hughes & Trannel, Dubuque, for appellee.

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

DONIELSON, P.J.

Irvin and Joanne Manternach were married on August 1, 1970. The parties had three children during the marriage. The oldest of the children is now an adult and is attending college. The two younger children were ages fifteen and thirteen at the time of the dissolution hearing. The two minor children were placed in the joint legal custody of the parties, with Irvin having primary physical care. These custody provisions are not an issue in this appeal.

Irvin has been employed at the Dubuque John Deere Tractor Works since December 1965. He was forty-eight years old at the time of the dissolution hearing. Irvin is in good health. He has a gross income of about $39,000 per year, and a net income of about $2185 per month.

Joanne was forty-seven years old at the time of the dissolution hearing. She has a college degree and a teaching certificate. However, Joanne has health problems which have kept her from maintaining full-time employment. Joanne suffers from dysthymia, which is depression of a long-standing nature. She undergoes weekly counseling and is on medication.

Joanne presently has the ability to work part-time. She teaches pre-school on a part-time basis for the Dubuque Recreation Department. Her gross income from this employment is about $3000 per year. She also has a part-time job at Wendy's, and her gross income from this job is about $3000 per year. The district court found her total net income is about $390 per month.

The district court awarded the martial residence to the parties as tenants in common. Irvin may live in the house until the youngest child reaches the age of eighteen, and then the house should be sold and the proceeds divided equally between the parties. Joanne was awarded a car, but Irvin was ordered to make the payments on the car. The court awarded Irvin total net assets of about $47,000 and awarded Joanne total net assets of about $40,000. Irvin was additionally ordered to pay a property settlement of $7835 to Joanne. Joanne was awarded a portion of Irvin's pension plan, which will be payable to her at the time Irvin begins to receive benefits.

The district court ordered Irvin to pay Joanne alimony of $600 per month. These payments are to continue until the first of the following events occurs: (1) the death of either party; (2) Joanne remarries; (3) Joanne begins to receive benefits from Irvin's pension plan; or (4) Joanne maintains employment for one year which provides her with income of at least $18,000 per year. Joanne has appealed solely on the issue of alimony.

Our scope of review in dissolution cases in 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.

Joanne asks that her alimony payments be increased to $850 per month. She believes the district court overestimated her earning capacity by finding she had the ability to earn a net income of $400 per month. She believes the court also underestimated Irvin's earning capacity, and that he could earn a gross income of $41,000 per year. Joanne also points out that she has substantial counseling and medication costs.

Joanne asks that the decree be modified so her alimony payments do not cease once Irvin decides to retire. Irvin's pension plan gives him the option to retire and receive reduced benefits after thirty years of service. Joanne would then receive reduced benefits under the plan as well.

Alimony is not an absolute right; an award depends upon the circumstances of each individual 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). Also, the ability of the one spouse to pay should be balanced against the needs of the other spouse. Id.

We determine Joanne's request for increased alimony is excessive, particularly given the fact that she is not required to pay child support under the terms of the dissolution decree. We agree with the district court's finding that Joanne has the ability to contribute a net

amount of at least $400 per month to her own support. We also find no evidence in the record to show that Irvin plans to retire early. If circumstances later require, Joanne may seek a modification. We affirm the district court's award of alimony.

Joanne seeks attorney fees of $2500 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 find the parties should be responsible for their own attorney fees for this appeal. Costs are assessed to Joanne.

AFFIRMED.