IN THE COURT OF APPEALS OF IOWA

No. 8-268 / 97-468

IN RE THE MARRIAGE OF JANET J. RASMUSSEN AND KEITH D. RASMUSSEN

FILED
JUL 31 1998
CLERK SUPREME COURT

Upon the Petition of
JANET J. RASMUSSEN,

Appellant,

And Concerning
KEITH D. RASMUSSEN,

Appellee.

Appeal from the Iowa District Court for Monona County, James D. Scott, Judge.

Janet J. Rasmussen appeals various economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Kermit L. Dunahoo of the Dunahoo Law Firm, Des Moines, for appellant.

Richard L. Mock, Monona, for appellee.

Heard by Cady, C.J., and Streit, and Vogel, JJ.

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CADY, C.J.

Janet Rasmussen appeals various economic provisions of the parties' dissolution decree. She claims the district court erred by failing to award her alimony, make an equitable division of property, and award her trial attorney fees. She also requests appellate attorney fees. We affirm as modified.

Keith and Janet Rasmussen married in July 1986. They had no children. Janet had one daughter from a previous marriage. The parties dissolved their marriage of approximately ten years in March 1997.

Keith graduated from high school and earned a degree in mortuary science. He is currently a practicing funeral director. He also receives income from a family hog confinement operation. He earns a total net monthly income of $3953.

Janet graduated from high school and received one additional year of training as a legal secretary. She worked as a secretary for the Monona County attorney from 1972 until 1988. She currently works as a legal secretary, earning a net monthly income of $971. Her daughter receives $425 per month in social security death benefits as a result of her father's death. Janet receives no health or retirement benefits at her current job. She cashed in her IPERS retirement account after she stopped working for the county attorney. The proceeds were used to pay various marital expenses.

Janet brought approximately $40,000 worth of property into the marriage, including horses, a vehicle, the IPERS account, and a property settlement from a prior marriage. Keith brought approximately $9258 worth of property into the marriage.

The district court determined Janet was not entitled to alimony. The district court awarded her assets in the amount of $26,500 plus an additional $40,000 cash equalization payment. The district court ordered Janet to pay credit card debts in the amount of $7,996, for a net award of $58,504. The trial court also found $6,198 of Janet's assigned credit card debt was post-separation debt she incurred. Keith received assets in the amount of $39,310. He was ordered to pay debts in the amount of $3,232, for a net award of $36,078.

On appeal Janet claims the district court erred by failing to: (1) award her alimony; (2) reach an equitable division of property; and (3) award her trial attorney fees. She also requests appellate attorney fees.

I. Standard of Review

We review this equitable matter de novo. Iowa R. App. P. 4. This requires us to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Ruter*, 564 N.W.2d 849, 851 (Iowa App. 1997). At the same time, we recognize the value in listening to and observing the parties and witnesses. Iowa R. App. P. 14(f)(7). Consequently, we give weight to the findings of the trial court, although they are not binding. *Id.*

II. Alimony

Alimony is an allowance to the former spouse in lieu of a legal obligation to support that person. *See In re Marriage of Gonzalez*, 561 N.W.2d 94, 99 (Iowa App. 1997). When determining the appropriateness of alimony, we consider: (1) the earning capacity of each party; and (2) present standards of living and ability to pay balanced against the relative needs of the other. *In re Marriage of Kurtt*, 561 N.W.2d 385, 387 (Iowa App. 1997); *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa App. 1994).

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *Gonzalez*, 561 N.W.2d at 99. Many factors are considered in determining the appropriate amount of alimony to be awarded to a spouse. *In re Marriage of Siglin*, 555 N.W.2d 846, 850 (Iowa App. 1996); Iowa Code § 598.21(3) (1997). Alimony may be used to remedy the inequities in a marriage and to compensate a spouse who leaves the marriage at a financial disadvantage. *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993). We also consider the division of property in determining alimony. *Siglin*, 555 N.W.2d at 850.

Alimony has traditionally taken the place of support that would have been provided had the marriage continued. *In re Marriage of Francis*, 442 N.W.2d 59, 63 (Iowa 1989). It is awarded to accomplish one or more of three purposes. We have observed:

> *Rehabilitative alimony* serves to support an economically dependent spouse through a limited period of education and retraining. Its objective is self-sufficiency. An award of *reimbursement alimony* is predicated upon economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the other. *Traditional alimony* is payable for life or for so long as a dependent spouse is incapable of self-support. The amount of alimony awarded and its duration will differ according to the purpose it is designed to serve.

In re Marriage of O'Rourke, 547 N.W.2d 864, 866-67 (Iowa App. 1996) (citations omitted). In determining whether to award alimony, we consider "[t]he feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage and the length of time necessary to achieve this goal." Iowa Code § 598.21(3)(f) (1997).

Janet claims the district court erred by failing to award her alimony. She points out her income is not enough to pay her living expenses or maintain the standard of living she enjoyed during the marriage. She also emphasizes Keith's income is substantially greater than hers, allowing him to continue to enjoy a better standard of living. Keith, on the other hand, asserts the $40,000 cash payment renders alimony unnecessary.

Reimbursement or rehabilitative alimony are not appropriate in this case. Consequently, any alimony award must serve one of the purposes associated with traditional alimony. After Janet quit her job, the parties lived on Keith's monthly income of $3,935. Keith will continue to earn this income, while Janet's earning potential is much more limited. She currently earns a net income of $971 per month,

and it is not likely she will receive a substantial salary increase. In light of the Janet's need, the earning capacity of each party, and the length of the marriage, we find Keith should pay Janet alimony for a period of five years. For the first two years of this period, he will pay her $750 per month, and for the last three years, he will pay her $500 per month. Although we consider the property division in determining alimony, alimony and property awards serve different purposes. *In re Marriage of McNerney*, 417 N.W.2d 205, 209 (Iowa 1987). In this case, the cash award of $40,000 was given to achieve an equitable property distribution. Janet should not be forced to expend her property award to maintain her standard of living.

The alimony shall be paid to the clerk of court on the first day of each month following the issuance of the procedendo. Alimony shall cease upon the death of either party or if Janet remarries.

III. Equitable Distribution

The partners to a marriage are entitled to a just and equitable share of property accumulated through their joint efforts. *See Gonzalez*, 561 N.W.2d at 98; *see also In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). The Iowa courts do not require an equal division or a percentage division in determining a just and equitable share of property. *Gonzalez*, 561 N.W.2d at 98. Instead, each particular circumstance determines what is fair and equitable. *Id.* Further, the property distribution should be made pursuant to the criteria codified in Iowa Code section 598.21(1). *Id.* Finally, it is well established that pension benefits, although

individually owned, are treated as marital property subject to division. *Kurtt*, 561 N.W.2d at 388; *see In re Marriage of Howell*, 434 N.W.2d 629, 632 (Iowa 1989) (military pension is considered marital property).

Property which a party brings into the marriage is a *factor* to consider in making an equitable division. Iowa Code § 598.21(1)(b). In some instances, this factor may justify a full credit, but it is not required. *In re Marriage of Miller*, 552 N.W.2d 460, 465 (Iowa App. 1996). Antenuptial agreements are available to preserve premarital assets. *See* Iowa Code § 598.21(1)(l). A premarital asset is not otherwise set aside like gifted or inherited property. *Miller*, 552 N.W.2d at 465. Instead, it is a factor to consider, together with all other circumstances, in making an overall division. *Id.* Moreover, in considering accumulations to pre-marital assets, we do not limit our focus to the parties' direct contributions to the increase. *Id.* Rather, we broadly consider the contributions of each party to the overall marriage, as well as all other factors. Iowa Code § 598.21(1). Financial matters make up only a portion of a marriage, and must not be emphasized over other contributions in determining an equitable contribution. *Miller*, 552 N.W.2d at 465.

Janet claims the district court erred by failing to achieve an equitable distribution of property. Specifically, she maintains the inequity in the property distribution was not cured by the $40,000 cash equalization payment. She also asserts she sacrificed her retirement to pay marital debts while Keith was able to maintain his retirement investments. In addition, she contends the trial court erred by failing to set

aside $5000 from a property settlement from a previous marriage. Finally, Janet claims the district court allocated too much marital debt to her. Keith points out the district court overlooked the debt on the 1994 Lumina van, thus causing Janet to receive $2,833 more than him. He further claims the district court's award of a $40,000 equalization payment is excessive.

We understand Janet leaves the marriage with no retirement plan, while Keith receives retirement accounts totaling $15,000. She was also assigned nearly $7,000 in debts, while Keith was assigned $3,000. Nevertheless, we primarily focus on the net difference in the division of the total assets and debts of the marriage. Keith received approximately $18,000 more in net assets than Janet. Thus, considering Janet brought approximately $30,000 more property into the marriage than Keith, we find the property settlement amount determined by the district court to result in an equitable overall division of property. The property settlement will permit Janet to fund a retirement plan and pay her debts.

IV. Attorney Fees

We have considerable discretion in awarding attorney fees. *Gonzalez*, 561 N.W.2d at 99. To overturn an award of attorney fees, the complainant must show the trial court abused its discretion. *Id.* Because of her need and his ability to pay, we find the trial court should have awarded Janet trial attorney fees in the amount of $1250.

An award of appellate attorney fees is not a matter of right, but rests in our discretion. *Kurtt*, 561 N.W.2d at 389. In determining whether to award appellate attorney fees, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the decision of the trial court on appeal. *Id.*

Considering Janet's need and both parties' ability to pay, we find Keith should contribute $750 for Janet's appellate attorney fees.

AFFIRMED AS MODIFIED.