IN THE COURT OF APPEALS OF IOWA

No. 0-641 / 00-0175
Filed January 10, 2001

IN RE THE MARRIAGE OF JAMES A. HOOD AND CHRISTY A. HOOD

Upon the Petition of
JAMES A. HOOD,
Petitioner-Appellee,

And Concerning
CHRISTY A. HOOD n/k/a
CHRISTY A. WHIPPLE,
Respondent-Appellant.

Appeal from the Iowa District Court for Mahaska County, Richard J. Vogel, Judge.

Respondent Christy A. Hood n/k/a Christy A. Whipple appeals the district court's order dissolving the marriage, distributing assets and awarding alimony. **AFFIRMED AS MODIFIED.**

Martha L. Mertz of Mick & Mertz, Knoxville, and Michael P. Brice, Oskaloosa, for appellant.

Randy S. DeGeest of DeGeest Law Office, Oskaloosa, for appellee.

Considered by Streit, P.J., and Vaitheswaran, J., and R. Peterson, S.J.*

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

R. PETERSON, S.J.

James A. Hood and Christy A. Whipple's marriage was dissolved on January 9, 2000. Christy appeals contending the trial court erred in not awarding her permanent alimony in an amount sufficient to enable her to maintain her current standard of living. We affirm as modified.

Background Facts and Proceedings.

Christy and James were married on December 21, 1991. They lived together in a home that was owned by Christy for approximately one year before their marriage. Christy had purchased this home for $19,000, and James moved in with her approximately four months after she purchased it. The home was sold in 1996 for $37,500. The profit on this sale was $17,547.52. These funds, along with $21,000 given to them by Christy's father, provided the down payment for the home Christy and James were living in at the time of the dissolution. The trial court found the value of this home at the time of the dissolution was $122,200 and there was a balance on the mortgage of $53,830.

At the time of the trial of the dissolution, James was forty years of age and Christy was forty-six years of age. James is a high school graduate and is employed at Vermeer Manufacturing. His current hourly wage is $13.46. His 1997 W-2 statement gave the following information: gross income of $32,169.90 after the normal deductions for payroll taxes, and net income of $24,016.02, or a net weekly income of $461.85. His W-2 statement for 1998 gave the following information: gross income of $28,033.07 after the normal deductions for payroll taxes, and net income of $22,242.54, or a net weekly income of $427.74.

Christy has an associate's degree in criminal justice and lacks seven credit hours to complete a bachelor's degree in sociology. She began attending college after her marriage to James. She received some grants to defray some of her tuition expenses.

In 1992, Christy encountered health problems and was diagnosed as having fibromyalgia with myofascial pain syndrome. This physical condition causes her pain. At this time, she believes if she were to go back to college and take the other seven credits and get her degree, she would not be able to work. She also believes her physical condition is deteriorating and she has had surgeries on both arms, shoulders, wrists, and hands because the affliction has caused nerve damage.

Christy applied for disability through the Social Security Administration and initially was denied benefits. However, on February 21, 1998, she was notified she qualified for monthly disability benefits. Initial benefits were $607 monthly, and she received $9510 in February of 1998 for retroactive benefits.

At the time of the trial, her benefits had increased to $615 per month. She contends in argument that her monthly expenses are $1515 per month.

At the time of the trial, Christy was not employed. However, she does volunteer work at the public library. She assists with the children's program and helps with the computer work and does genealogy work.

The trial court found the equity in the home to be $68,170 and awarded the homestead to Christy and also awarded her a 1997 Thunderbird automobile valued at $3000, a hot tub valued at $2000, life insurance with a value of $3976, and household goods and appliances valued at $9000. This amounted to a total value of $86,146. Christy was also required to assume the outstanding mortgage on the homestead and the balance due on the Thunderbird automobile. The debts on these assets are reflected in the values assigned to them. James was awarded a 1983 Ford truck valued at $1900, his 401k plan valued at $38,800, tools and a riding lawn mower with a combined value of $1750, and certain miscellaneous items valued at $1000. James was also required to assume debts in the sum of $6933. The total net value of the assets awarded to James was $36,517. James was also required to pay alimony in the sum of $300 per month for twenty-four months commencing February 1, 2000 to Christy.

Standard of Review. Our review is de novo. Iowa R. App. P. 4. We are required to examine the record made at the trial and determine anew rights on issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). The findings of the trial court, however, are recognized and given weight, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). The trial court has the advantage of hearing the evidence and observing the witnesses. *In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992). This perspective can greatly enhance a decision making process and is not forgotten on appeal. *See In re Marriage of Callahan*, 214 N.W.2d 133, 136 (Iowa 1974).

Alimony. Alimony is not an absolute right. An award depends upon the circumstances of each particular case. *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976). A discretionary award of alimony is made after considering the factors listed in Iowa Code section 598.21(3). *See In re Marriage* *of Hayne*, 334 N.W.2d 347, 350 (Iowa App. 1983). Property division and alimony should be considered together in evaluating their individual sufficiency. *In re Marriage of Miller*, 532 N.W.2d 161, 162 (Iowa App. 1995). There are three types of alimony: traditional alimony, rehabilitative alimony, and reimbursement alimony. *In re Marriage of Francis*, 442 N.W.2d 59, 63 (Iowa 1989). Traditional alimony is that which takes the place of support that would have been provided had the marriage continued. Rehabilitative alimony is a way of supporting an economically dependent spouse through a limited period of reeducation or retraining following a divorce thereby creating an incentive and opportunity for the spouse to become self-supporting. Reimbursement alimony is based on economic sacrifices made by one spouse during the marriage that directly enhances the future earning capacity of the other spouse.

The trial court awarded rehabilitative alimony, and we agree with that type of award. However, we believe the award should be increased to the sum of $500 per month and continue for a period of three years.

Christy contends the disability prevents her from working or continuing with her education. However, she is able to participate in the activities at the public library, and the trial court had the opportunity of observing her during the trial.

James contends in argument that Christy received substantially more of the assets of the marriage than he did. According to James's property settlement and alimony proposal included in the appendix, Christy received assets with a value of $86,146. We have reduced the equity in the homestead to $68,170, the amount determined by the trial court. James received assets valued at $43,450. The primary asset he received was his 401k plan which had a value of $38,800. Reducing this value by the amount of the debts he was required to pay, he received net assets in the amount of $36,517. If the value of Christy's assets are reduced by the profit on the sale of her home purchased before their marriage and the $21,000 down payment provided by her father, the net value of her assets would be $38,547.52. The assets Christy received were not income producing.

In conclusion, we believe the trial court was correct in awarding rehabilitative alimony. However, we believe alimony should be increased to the sum of $500 per month for a period of three years. The increase in amount and duration of the alimony shall be effective as of February 1, 2000.

AFFIRMED AS MODIFIED.