IN THE COURT OF APPEALS OF IOWA

No. 1-413 / 90-1154

IN RE THE MARRIAGE OF MARILYN R. BUNTENBACH AND DONALD D. BUNTENBACH

FILED
DEC 31 1991
CLERK SUPREME COURT

Upon the Petition of

MARILYN R. BUNTENBACH,

Petitioner-Appellee/Cross-Appellant,

And Concerning

DONALD D. BUNTENBACH,

Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Scott County, James E. Kelley, Judge.

Respondent husband appeals and petitioner wife cross-appeals various economic provisions in the decree dissolving the parties' marriage. **AFFIRMED.**

Michael J. McCarthy of McCarthy & Lammers, Davenport, for appellant.

Dennis D. Jasper of Stafne, Lewis Jasper, Alexander & Preacher, Bettendorf, for appellee.

Considered by Oxberger, C.J., and Schlegel, and Habhab, JJ.

OXBERGER, C.J.

Marilyn and Donald Buntenbach were married on August 11, 1962. The parties had one child, Jill, who has now reached the age of majority. Donald is fifty-three years old, and has been employed by John Deere since 1966. Donald has a net income each month of $1,761. Marilyn is also fifty-three years of age, and worked full-time until the birth of their daughter. Thereafter, Marilyn worked part-time until 1988, when she obtained full-time employment at Sivyer Steel Company. Marilyn earns a net monthly income of approximately $1,070.

Marilyn filed the present dissolution action on August 12, 1988. Trial was ultimately held on January 4, 1990. Prior to trial, the parties had reached an agreement as to the division of most of the parties' assets. Pursuant to the decree, which was filed, March 13, 1990, Marilyn received net assets of $23,743, while Donald received net assets of $24,951. The trial court also awarded Marilyn alimony in the amount of $80 per week for ten years, and awarded her a share of Donald's pension from John Deere. Donald was awarded custody of Jill.

On March 22, 1990, Marilyn filed a motion to amend or enlarge the trial court's findings, contending that the distribution of personal property as decreed was inequitable. Marilyn maintained that there was animosity between her and Donald, and that Donald had refused to allow her entrance into the house to retrieve her

belongings awarded her by the trial court. The trial court denied the motion. Donald subsequently appealed, and Marilyn has cross-appealed.

Donald argues the trial court's award of spousal support was excessive in amount and duration. Donald maintains that Marilyn is in good health, and is in a secure job. Thus, Donald argues, there is no situation in the present case where a housewife must have rehabilitative alimony to enable her to obtain skills necessary for employment.

Marilyn contends on cross-appeal that the trial court should have awarded her permanent alimony in the amount of $500 per month, since her lifestyle has been severely reduced as a result of the divorce. Marilyn also points out that the property distribution will not provide significant monetary contributions in the future. Marilyn also argues that the property distribution was inequitable. She contends the piano that was awarded to Jill in the decree should have been awarded to her, since she is the church organist and needs the piano.

Marilyn additionally contends that because Donald was violent, she was prevented from obtaining her one-half share in the personal items divided pursuant to the decree, and that she still has not received her one-half share of the family photographs. Marilyn lastly contends that the trial court should have awarded her $2,500 towards attorney fees rather than $1,000.

SCOPE OF REVIEW: In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7). Our courts have repeatedly recognized that while in cases of equity the reviewing court is not bound by the fact findings of the trial court, factual disputes which depend heavily on the credibility of witnesses are best resolved by the trial court which has a better opportunity to evaluate credibility than we do. Maisel v. Gelhaus, 416 N.W.2d 81, 86 (Iowa App. 1987).

ALIMONY: We first consider whether the court was correct in awarding $80. per week for ten years to Marilyn. 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). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3). See In re Marriage of Hayne, 334 N.W.2d 347 (Iowa App. 1983).

Donald asserts on appeal that Marilyn does not need alimony. He argues the court's alimony award to Marilyn was solely done to allocate income to achieve parity between the former spouses. We disagree. The trial court

noted that Marilyn is 52 years of age, with an earning potential that will remain lower than Donald's. Marilyn's contributions to the marriage included raising their daughter, working part-time to support the family and keeping the homestead. The record indicates that Donald and Marilyn had a conventional family arrangement. While Marilyn's contribution to the marriage was directed in larger part to domestic employment, Donald's employment enabled him to develop greater earning potential and a vested pension plan. We find the trial court considered the equitable contributions of both parties in awarding alimony. Donald's suggestion that the court's sole reason in awarding alimony was to achieve parity in incomes is without merit.

Marilyn asserts the trial court did not award enough alimony. She suggests an alimony award of $500 per month. Marilyn is in good health. Her ability to acquire employment and maintain employment indicates she has marketable skills. She is currently a full-time employee and will in the future acquire a vested profit sharing plan with her employer. We consider property division and alimony together in evaluating their individual sufficiency. In re Marriage of Dahl, 418 N.W.2d 358, 359 (Iowa App. 1987); In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984). In light of the property division among the parties, one half of Donald's pension

plan, and Marilyn's earning potential we affirm the trial court's award.

We note the trial court's statement regarding the animosity between these parties:

> ...there is great animosity between the parties. They could not be civil to each other even in court. However, the Court cannot order adults to be adults...Since the parties apparently cannot physically divide dishes and pictures, the parties are left to their argument.

Donald and Marilyn bicker over personal items such as family pictures. A trial court is not in the position, nor should it be placed in the position of selecting family pictures and other such personal items for either party. The trial court recognized there are appropriate legal remedies for non compliance of court orders. The trial court may in its discretion, order an auction sale of any or all personal property, where disputes over items not specifically designated in the decree cannot be settled among the parties.

We have considered all other issues presented and affirm the trial court. Each party will pay his or her own attorney's fees. Costs are taxed one-half to Donald and one-half to Marilyn.

AFFIRMED.