

IN THE COURT OF APPEALS OF IOWA

FILED

SEP 25 1986

CLERK SUPREME COURT

IN RE THE MARRIAGE OF JOSEPH M. PAULSEN AND MELODY L. PAULSEN

Upon the Petition of)

JOSEPH M. PAULSEN,)

Petitioner-Appellant,)

And Concerning)

MELODY L. PAULSEN,)

Respondent-Appellee.)

154

Filed September 25, 1986

6-255
85-1630

Appeal from the Iowa District Court for Scott County (No. 35748) - James
M. Havercamp, Judge.

Petitioner husband appeals from the decree dissolving the parties' marriage.
AFFIRMED AS MODIFIED.

Richard E. H. Phelps II, Newton, for appellant.

Harold J. DeLange II of Wehr & DeLange, Davenport, for appellee.

Considered by Oxberger, C.J., and Snell and Sackett, JJ.

Petitioner Joseph M. Paulsen appeals from his dissolution decree challenging the property, child support, alimony, and visitation awards. Petitioner Joseph M Paulsen, born in 1954, and respondent Melody L. Paulsen, born in 1956, were married in 1976. It was the first marriage for each. They have three children born in 1977, 1979, and 1983.

Joseph was employed during the marriage in the construction industry. Melody has one year of nurses training and was employed for a short time during the marriage in the medical field. She has assumed the primary care of the parties' children, and the parties agreed she should continue to have custody of the children.

The trial court divided the parties' assets and liabilities nearly evenly. The court ordered Joseph to pay child support of \$50 per week per child, maintain health and accident insurance on the children, and pay \$700 per month as rehabilitative alimony for twelve months.

I. Scope of Review

Joseph contends the trial court erred in numerous factual findings and contends the alimony award and property division are inequitable and the visitation should be modified.

Our review is *de novo*. Iowa R. App. P. 4. We give weight to the findings of fact made by the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7). Because we find the facts anew we do not address the issue of alleged erroneous fact findings made by the trial court.

II. Property Division

Is the property award inequitable? The trial court awarded Joseph property valued at \$28,751 and awarded Melody property valued at \$31,132. Joseph was

ordered to pay a home improvement loan of \$5,934, and Melody was ordered to pay charge accounts of \$7,600.

Joseph contends the division is inequitable because it fails to give him adequate credit for property brought into the marriage, particularly an equity in a prior residence, tools, and a portion of a pension fund. He further contends he should be given credit for items Melody sold during the marriage.

A determination of the assets of the marriage was made at time of trial and we reject Joseph's argument we should adjust the assets by any expenditures made during separation. See Locke v. Locke, 246 N.W.2d 246, 252 (Iowa 1976); In re Marriage of Byall, 353 N.W.2d 103, 107 (Iowa App. 1984).

About a year and one-half prior to marrying Melody, Joseph purchased a home on contract for \$11,500. He paid \$500 down and made monthly payments of \$75. About a year and one-half after the parties married, they sold the house for \$32,000 and invested the proceeds from the sale in their current residence. Joseph claims the property division made by the trial court has failed to give him credit for appreciation that occurred during his premarital ownership. He also testified he had tools when he married Melody. We determine Joseph should have credit for some tools brought into the marriage and for appreciation on his home prior to marriage. We therefore modify the award and provide Melody shall be responsible for the home improvement loan of \$5,934.

We reject his argument that a portion of his pension fund was accumulated prior to marriage, there being no evidence cited supporting such a conclusion. We also reject his argument the pension should not be considered in the property division. Pension benefits should be considered in a property division based on current worth. See In re Marriage of Bevers, 326 N.W.2d 896, 900 (Iowa 1982); Byall, 353 N.W.2d at 106.

In all other respects, the property award made by the trial court is affirmed.

III. Rehabilitative Alimony

Joseph contends \$700 per month rehabilitative alimony for twelve months is inequitable. The dissolution decree was entered in October, 1985. In 1984, Joseph had gross wages of \$47,949 and additionally received unemployment compensation of \$1,568. He claimed employee business expenses of \$8,945. In 1984 he voluntarily quit his job for the job which he had at time of trial with a gross salary of \$31,200 plus a year-end bonus of a percentage of the company's business. Melody is not currently employed and has absented herself from the job market to assume responsibility for the parties' three children. She is having a difficult time finding employment outside the home. She has testified that with one year's additional nursing training she will be in a position to be gainfully employed.

Joseph currently resides in Texas and has for most of the separation period. Therefore, Melody has assumed total custodial responsibilities for three young children. Joseph contends Melody is in fact employable and is critical of her failure to find outside employment and to make monetary contributions to the family.

We consider Melody's contribution in assuming total custodial care for the three children and consider the amount of time and energy the total responsibility for their three young children takes in assessing her need for rehabilitative alimony. We determine Melody leaves the marriage at an economic disadvantage and agree with the trial court she should have rehabilitative alimony.

Iowa Code § 598.21(3)(f) (1985) provides upon every judgment of annulment, dissolution, or separate maintenance, the court may grant an order requiring support payments for a limited or indefinite length after considering the following:

(f) The feasibility of the party seeking maintenance becoming self-supporting at a standard comparable to that enjoyed during the marriage, and the length of time necessary to achieve this goal. (emphasis added)

Section 598.21(3)(f) serves as a statutory directive for a rehabilitative type of alimony. Rehabilitative alimony has been granted where the court has determined that a spouse was out of the job market for the duration of the twelve-year marriage and may need further training. Bevers, 326 N.W.2d at 900.

The principal purpose of rehabilitative alimony is to establish the capacity for self-support in the receiving spouse by redeveloping previous skills or providing new training to develop potential supportive skills. Pierson v. Pierson, 462 So.2d 613, 614 (Fla. Dist. Ct. App. 1985). It is payable for a short, specific, and determinate period of time during which the receiving spouse can seek the skills necessary to obtain suitable employment. See Turner v. Turner, 158 N.J. Super. 313, 385 A.2d 1280, 1280-81 (1978).

The record clearly shows Melody needs rehabilitation. She has one year of nurses training and previously was employed in the medical field. However, she was out of the job market during the major portion of the marriage. The training she seeks will enable her to sharpen her prior skills and provide a profession wherein she is more employable. The education to be undertaken is for a reasonable period and within her capabilities to complete. In addition, the career she seeks will enable her to achieve economic independence for herself and allow her to assist with the children's future financial needs.

Melody has not received sufficient marital assets to assist her with this rehabilitation. Joseph does have sufficient income to assist her with this rehabilitation. Although we recognize this will put a considerable burden on Joseph, we determine that burden is short-term and defined. We affirm the alimony award made by the trial court.

Joseph contends he should only be required to pay health and accident insurance if supplied by his employer. We disagree and affirm the trial court's determination.

V. Visitation

Joseph was given reasonable visitation. However, he complains that he is required to give two weeks notice of his intent to exercise visitation. He contends because he is in Texas and Melody and the children are in Iowa, his opportunities to visit his children will be few. He asserts if he were in the area unexpectedly it would be unreasonable to prevent him from visiting the children because the two-week notice had not been given. We consider his complaint to be reasonable. There is no evidence Joseph has abused visitation. Therefore, we determine he should have reasonable access to the children when in the jurisdiction and note that common courtesy would dictate Joseph give Melody notice as soon as he knows he will be in Iowa. We also determine the two-week notice is reasonable if Joseph should intend to take the children to Texas for visitation. We modify the decree accordingly.

We award Melody attorney fees of \$750. Costs on appeal are taxed three-fourths to Joseph and one-fourth to Melody.

AFFIRMED AS MODIFIED.