IN THE COURT OF APPEALS OF IOWA

No. 5-143 / 94-501

IN RE THE MARRIAGE OF YOLANDA G. MARTIN AND PAUL A. MARTIN

Upon the Petition of

YOLANDA G. MARTIN,

Petitioner-Appellee,

And Concerning

PAUL A. MARTIN,

Respondent-Appellant.

FILED
AUG 17 1995
CLERK SUPREME COURT

Appeal from the Iowa District Court for Story County, Joel E. Swanson, Judge.

Paul Martin appeals from the economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Artis Reis, West Des Moines, until her withdrawal, and then Paul A. Martin, pro se.

Kermit L. Dunahoo of Dunahoo Law Firm, Des Moines, for appellee.

Considered by Sackett, P.J., and Habhab and Cady, JJ.

SACKETT, P.J.

Respondent-appellant Paul A. Martin appeals the economic provisions of a decree dissolving his marriage to petitioner-appellee Yolanda G. Martin. Paul contends the property division was not equitable, and he should not have been ordered to pay Yolanda's trial attorney. Yolanda requests attorney fees on appeal. We affirm as modified.

Paul, fifty-five at the time of trial, and Yolanda, forty-nine, were married in 1970. Two children were born to the marriage. Only the second child, born in 1979, is subject to these proceedings.

At the time of marriage, Yolanda had a bachelor's degree. She assumed primary responsibilities for the home and children, worked part-time, and has continued to pursue an advanced education. At the time of the dissolution, Yolanda had a part-time secretarial position at Iowa State University. She hoped to complete a master's degree in international development studies in the near future. Yolanda's health is good.

Paul had a doctor of veterinary medicine degree at the time of marriage. Since then, Paul has obtained a master's degree in animal science and a Ph.D. He is a tenured associate professor of veterinary medicine at Iowa State University. Paul's physical health is good, but he has had extensive hospitalizations for mental health reasons. Paul and Yolanda have had problems throughout the marriage and there were several separations.

The trial court found the parties had agreed a nearly equal division of assets was equitable and attempted to make such a division.

The property was divided. Yolanda was awarded alimony of $500 a month for twenty-four months. Physical care of the younger child was awarded to Yolanda and Paul was ordered to pay child support.

Paul's first complaint is the trial court incorrectly valued his pension rights, both as to value given and as to date fixed for valuation. Paul contends the pension rights should have been divided as of a date he and Yolanda lived in separate households as opposed to the date the dissolution was granted. Paul relies, in part, on our decision in *In re Marriage of Oakes*, 462 N.W.2d 730 (Iowa App. 1990), in support of his position. The date of the dissolution is the only reasonable time when an assessment of the parties' net worth should be undertaken. *Locke v. Locke*, 246 N.W.2d 246, 252 (Iowa 1976); *Schantz v. Schantz*, 163 N.W.2d 398, 405 (Iowa 1968); *In re Marriage of McLaughlin*, 526 N.W.2d 342, 344 (Iowa App. 1994). We value property for division purposes at its value at the time of the dissolution. *See Locke*, 246 N.W.2d at 252. It is the net worth of the parties at the time of trial which is relevant in adjusting property rights. *In re Marriage of Moffatt*, 279 N.W.2d 15, 20 (Iowa 1979). A property division is based on the marital partners' rights to a just and equitable share of property accumulated during the marriage through their joint efforts. *See In re Marriage of Webb*, 426 N.W.2d 402, 405 (Iowa 1988).

As in *Oakes*, this may result in other than an equal division of certain property, but it does not change the fact the courts look at the available property and its valuation as of the date of the dissolution hearing. *Locke*, 246 N.W.2d at 252.

The parties had numerous separations during the marriage. Yolanda, in these times, provided a home for the children. We believe dividing the pensions' interest at the date of dissolution, as the trial court did, is equitable under the circumstances. *See also, McLaughlin*, 526 N.W.2d at 344, where we rejected a claim to value at time of separation. We affirm the trial court on this issue.

Paul next contends the trial court did not reduce the value of his pension benefits to current value. The trial court gave to Yolanda fifty percent of the Teachers Insurance and Annuity Association/College Retirement Equities Fund (TIAA/CREF) retirement account in Paul's name (current value) and fifty percent of the Registered Retirement Savings Program (RRSP) Canadian retirement account, as well as fifty percent of her own IPERS account. Paul contends the pension should be valued as of the date of dissolution. He relies on *In re Marriage of Voss*, 396 N.W.2d 801 (Iowa App. 1986), to support his position. *Voss* is instructive where pension rights will be given to one party and their value at the date of dissolution is the issue. The pension here will be divided. Consequently, a valuation at date of dissolution need not be established.

Yolanda advances the trial court's division leaves to the parties' attorneys the need to obtain the appropriate Qualified Domestic Relations Order and split the value

as of the date of trial, with each party having his or her own separate account. We, as does Yolanda, interpret the trial court's order as splitting the value of the pensions as of the date of the dissolution so that future contributions to the pensions by either spouse would not accrue benefits to the other. *See Voss*, 396 N.W.2d at 803.

We find no evidence the pensions are the type that can be divided under a Qualified Domestic Relations Order. We remand to the trial court to divide equally as of the date of dissolution through a Qualified Domestic Relations Order or, if that not be possible, to order the pensions be divided by requiring each to pay to the other one-half of a fraction of their pension when received, the numerator of the fraction being the number of years Yolanda or Paul was a part of the pension plan during the marriage and the denominator of the fraction being the total number of years during which benefits were accumulated prior to being paid. The trial court shall take what evidence may be necessary to make the division.

Paul next contends the balance of the property award is inequitable. Paul contends he was not given proper credit for property he had prior to marriage in making the property division, and the trial court did not consider the tax consequences of his I.R.A. The partners in the marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Havran*, 406 N.W.2d 450, 452 (Iowa App. 1987). We find the property division equitable.

Paul's last contention is his child support obligation of $770.90 per month is excessive. Paul advances the trial court incorrectly calculated his federal and state

income tax obligations. He now advances information showing projected federal and state income tax liability in excess of that considered at trial and used in fixing his child support. Paul also contends the trial judge should have considered the alimony he is ordered to pay as income to Yolanda and as an expense to him for the purpose of determining net monthly income.

The trial court fixed child support based on income and tax figures supplied at trial. We will not make adjustments to these figures.

Paul contends his alimony payments of $500 per month should have been added to Yolanda's income and subtracted from his and the health care costs should have been treated differently. Consideration of the amount of alimony paid under the present decree, while not provided by our guidelines as a deduction from income, may nevertheless be considered by the court in an attempt to "do justice between the parties." *See also, In re Marriage of Lalone*, 469 N.W.2d 695, 697 (Iowa 1991). We agree with Paul and modify his child support to $604.35 per month, after having made an adjustment to Yolanda's income to add back in health care costs. Paul, in fact, will pay the health care costs. Paul also contends income from full-time employment should be attributable to Yolanda. Paul points out Yolanda has nearly completed her master's degree and has the ability to earn more than $600 monthly. We reject this argument.

Paul contends the trial court abused its discretion in awarding Yolanda $2500 in attorney fees. An award of attorney fees is not a matter of right but rests in the

court's discretion considering the parties' financial positions. *See In re Marriage of Dahl*, 418 N.W.2d 358, 361 (Iowa 1987); *In re Marriage of Bornstein*, 359 N.W.2d 500, 504 (Iowa App. 1984). We affirm on this issue. We award no further attorney fees to either party. *See Dahl*, 418 N.W.2d at 361.

Costs on appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.