IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF LINDA LEE DALTON AND ROBERT MORRIS DALTON

Upon the Petition of	)	
LINDA LEE DALTON,	)	
Petitioner-Appellant,	)	Filed September 24, 1985
And Concerning	)	
ROBERT MORRIS DALTON,	)	5-425 / 84-1915
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Mills County - Glen M. McGee, Judge

Petitioner-appellant appeals from the dissolution decree, challenging several economic provisions and a provision stating that child custody and support may be litigated again if either party moves more than 25 miles away from Glenwood, Iowa. **AFFIRMED AS MODIFIED.**

Matthew Walsh, Council Bluffs, for petitioner-appellant.

Robert J. Laubenthal of Smith, Peterson, Beckman & Willson, Council Bluffs, for respondent-appellee.

Considered by Donielson, P.J., and Snell and Hayden, JJ.

DONIELSON, P.J.

The wife has appealed from the dissolution decree. She challenges several economic provisions, and she also challenges a provision stating that child custody and child support may be litigated again if either party moves more than 25 miles away from the marital domicile in Glenwood, Iowa. The wife also requests attorney's fees on appeal.

The parties were married in 1968. They have two children, a girl born in November 1968 and a boy born in August 1973. The dissolution decree placed the children in joint legal custody and in Linda's physical care. The custody award is not challenged in this appeal.

Robert is employed in a sales job with a variable income based on commissions. In 1983 he earned a little over $17,000; during the first seven months of 1984 he earned about $10,800. Linda is not currently employed, but is taking college courses and hopes to become a nurse.

For the first nine years of the marriage the parties operated a restaurant which had been owned by Robert before the marriage. In 1977, the parties sold this restaurant on contract for a total price of $125,000. On the trial date slightly over $38,000 remained payable on this contract. The dissolution decree awarded all rights under this contract to Robert, in part to account for the fact that he had entered the marriage already owning significant property.

The parties' only other substantial asset was a house valued at $115,000 but subject to a mortgage debt of slightly over $32,000. The dissolution decree directed that this house be sold and that the net proceeds be divided evenly between the parties. Each party was awarded an automobile and various furniture items, household goods, and personal effects. Robert was directed to pay child support of $225 per month. Neither party was awarded alimony.

The dissolution decree also provided that if either party moves more than 25 miles away from the marital domicile, Glenwood, Iowa, "the matters of child custody and child support may be brought before the court . . . without the necessity of showing a material change of circumstances."

Linda has appealed from the dissolution decree. She challenges the provision stating that child custody and child support may be litigated again if either party moves more than 25 miles from Glenwood; she argues that this provision applies primarily to her, since she is the custodial parent, and she suggests that the provision is intended to discourage her from moving.

Linda also challenges several of the decree's economic provisions. She contends the child support award is inadequate. She requests a larger division of property, and specifically she asks for half the remaining balance due on the restaurant sales contract. In addition, she requests either a temporary award of rehabilitative alimony, or an additional property award of $10,000 to support her while she pursues her education. Finally, she argues that the division of property was inequitable because the trial court placed too high a value on the assets owned by Robert before the marriage.

While this appeal was pending, the parties jointly sought a partial remand for a hearing relating to the sale of the house. The partial remand was granted, but it has not affected the progress of the appeal.

Our review is de novo. Iowa R. App. P. 14. We give weight to the fact findings of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7).

I.

Petitioner claims the trial court erred in valuing the premarital assets awarded to Robert. Before the parties were married, Robert purchased a Dairy Queen franchise, built an addition to this business, owned a 1967 Buick, and purchased the land upon which the parties' home was built. The trial court valued Robert's premarital assets at approximately $48,000 and awarded him the remaining payment left on the contract for the sale of his restaurant business which amounted to $38,286.

Linda maintains these assets should have been valued at $10,770 and seeks additional property to compensate her for this overvaluation. We find no merit in Linda's claims. The trial court correctly used the asset's present value in determining the amount of property to be divided. However, in valuing the premarital assets Robert brought into the marriage, the court used the original (1967) purchase price of the various assets instead of using the properties' current value as alleged by Linda. Robert was entitled to the 1967 value of the assets he brought into the marriage after the court found the present value of the property to be divided. The trial court employed a proper method of determining the value of the premarital assets Robert brought into the marriage.

Linda further contends the trial court erred in the overall property division. She seeks the value of the house without deducting taxes and interest costs and believes a portion of Robert's life insurance policy of $5,161 should have been awarded to her. We cannot agree.

Iowa Code section 598.21(1) does not statutorily sanction a percentage division of property. In re Marriage of Bornstein, 359 N.W.2d 500 (Iowa Ct. App. 1984). Rather, the ultimate issue is whether the distribution is equitable under the circumstances. In re Marriage of Callenius, 309 N.W.2d 510, 514 (Iowa 1981).

The trial court's property division is equitable. Robert brought $48,270 in assets to the marriage and the court awarded $38,286 to compensate him accordingly. The parties' primary remaining asset, the house, was to be divided equally after the mortgage and any other expenses were paid. While Robert was awarded the life insurance policy, he was ordered to name the children as beneficiaries. We will not disturb this portion of the court's order.

II.

Linda maintains the child support of $225 per month per child is inadequate. We cannot concur with her position. While both parents have an obligation to support their children, this obligation shall be apportioned according to their ability to pay. In re Marriage of Heinemann, 309 N.W.2d 151, 153 (Iowa Ct. App. 1981).

Robert is a salesman and, while his income has risen annually, his net monthly income is approximately $1,247. He also receives a monthly payment of $1,030 on the sales contract for the restaurant. He claims monthly expenses of $1,841 in his brief, which virtually equal his net income.

Robert provides insurance for the children and takes care of them nearly three days a week. The support Robert provides, both financially and emotionally, leads us to conclude the present child support amount is adequate.

III.

Linda requests that she be awarded $10,000 in rehabilitative alimony or as additional property settlement so she can complete her nurse's training program. Payment of alimony is not an absolute right. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). In determining whether alimony is appropriate in a given situation, the court will consider the resources the parties receive from the property settlement and the parties' educational backgrounds. See In re Marriage of Hortsmann, 263 N.W.2d 885, 891 (Iowa 1978); In re Marriage of Campbell, 204 N.W.2d 638, 639 (Iowa 1973); Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968). Under these facts, we find it is appropriate for Linda to immediately receive $200 per month in alimony. Such payments shall continue for four years. Linda is healthy and intelligent, however, she has been absent from the work force for nearly sixteen years. She is pursuing a nursing career. This alimony award will assist her until she finds suitable employment.

IV.

The trial court awarded joint custody; Linda was designated the custodial parent and the parties' practice of Robert having the children Friday afternoon through Sunday evening was recognized. Linda challenges the court's provision which provides that if either party moves more than twenty-five miles from Glenwood, the court will then consider custody without a showing of substantial change of circumstances.

While this is not the first time we have seen such a provision, we find such a restriction is unwise in this case. The twenty-five-mile radius barely includes the entire Omaha-Council Bluffs metropolitan area which is a major source of employment. Such a provision may have an adverse impact on Linda's future ability to find suitable employment, especially if she becomes a nurse.

Since there is no indication that Linda intends to move from Glenwood in the foreseeable future and given that the children are seventeen and thirteen years old, we modify the child custody provision by striking the portion dealing with reconsideration of custody should either party move twenty-five miles from the parties' marital domicile.

We are cognizant of the joint custody arrangement whereby the father has custody of the children during weekends and we do not intend to jeopardize this practice. While it is important for the children to develop a healthy relationship with both parents, the portion of the order regarding reconsideration of custody should either party move twenty-five miles from Glenwood is unduly restrictive.

V.

Linda requests $15,000 for attorney fees on appeal. In determining whether it is appropriate to award attorney's fees, the parties' resources are considered. Locke v Locke, 263 N.W.2d 694, 696 (Iowa 1978); In re Marriage of Lattig, 318 N W 2d 811, 817 (Iowa 1982). The criteria reviewed are the needs of the requesting party, the party's ability to pay and the results on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981). Linda has been a homemaker for sixteen years and is pursuing a nursing degree on a part-time basis She is presently unemployed. Robert, on the other hand, has steady employment. Based on the record, we find it appropriate to have Robert pay $500 of Linda's attorney's fees.

AFFIRMED AS MODIFIED.