FILED
FEB 26 1985
33
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ROGER DEAN BATES AND MARIANA BATES

Upon the Petition of)
ROGER DEAN BATES,)
Petitioner-Appellee,) Filed February 26, 1985
And Concerning)
MARIANA BATES,) 4-544
Respondent-Appellant.) 84-647

Appeal from the Iowa District Court for Linn County - Robert E. Ford, Judge.

Respondent wife appeals from a dissolution decree. She asks that her alimony award should be increased and requests attorneys' fees on appeal. AFFIRMED AS MODIFIED.

T. Todd Becker and Mary K. Hoefer of the Tom Riley Law Firm, Cedar Rapids, for respondent-appellant.

David S. Nelson of Nelson & Nelson, Cedar Rapids, for petitioner-appellee.

Heard by Oxberger, C.J., and Donielson and Snell, JJ., but considered en banc.

DONIELSON, J.

Respondent wife appeals from a dissolution decree and asks that her alimony award be increased. She also requests attorney fees on appeal. We affirm as modified.

Roger and Mariana Bates were married in 1966 and have three children, William, age 16; Raymond, age 18; and John, age 20. The parties' one minor son was placed in Roger's custody, and the custody award is not challenged on appeal. Roger was awarded no child support.

Roger is currently employed as an engineer at Rockwell Collins and earns $2,330 per month. He also receives $1,213 per month disability pension from the Veterans' Administration.

Mariana was employed in a variety of low-paying jobs during much of the marriage. However, she has not worked outside the home since 1979 because she suffers from a disease identified as an "atypical somatiform disorder." This disease is characterized by feelings of physical pain for which doctors can find no organic cause. A psychiatrist testified that Mariana's pain is genuine and is not under her voluntary control. Because of this illness, Mariana receives Social Security disability payments of $271 per month.

The trial court awarded Roger most of the parties' assets, such as their house, cars, and small investments. The court found the net value of these assets to be $58,244. The court ordered Roger to pay Mariana a cash property award of $28,122. In addition, Mariana was awarded some furniture and personal effects.

The trial court also directed Roger to pay Mariana alimony of $300 per month. The court provided that this alimony award may be reviewed on application of either party. Mariana has appealed from this determination and argues that the alimony award should be increased to $650 per month.

Our review is de novo. Iowa R. App. P. 4. While the findings of the trial court are not binding upon us, we view them with considerable weight. In re Marriage of Burham, 283 N.W.2d 269, 274 (Iowa 1979).

In considering the fairness of the alimony provision, we consider the factors listed in Iowa Code section 598.21(3). In doing so, it is apparent that the alimony award should be increased. Mariana has expenses of $811 per month. Pursuant to the property settlement provisions of the divorce decree, she received a lump sum of $3,000 with the balance owed to be paid in monthly installments of $250 per month. Thus, she receives income of $821 per month: $271 in disability payments, $300 in alimony, and $250 in satisfaction of the property settlement. This income is only sufficient to cover the bare essentials of her living expenses.

The trial court "contemplates that Respondent will have to become gainfully employed as soon as possible." However, the record reflects that this expectation may be unrealistic. It is undisputed that Mariana suffers from a disabling illness that makes it impossible to maintain any employment, and there is no credible evidence (except for Roger's speculation) that she will be able to return to the work force in the future.

In light of these considerations, we modify the trial court's ruling by increasing the alimony to $400 per month. Roger's financial statements indicate that he will have either $431 or $807 beyond his expenses each month; thus, it is evident that he will be able to provide the additional support. We believe that an alimony obligation of $400 per month reflects a proper balance between Mariana's needs and Roger's ability to pay.

Mariana requests attorney fees on appeal. We evaluate this request in light of the factors set forth in In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa 1981). In doing so, we conclude that an award of $1000 attorney fees to the respondent would be appropriate. This covers Mariana's fees on appeal, as well as at the trial level, and includes the $200 award made by the trial court.

AFFIRMED AS MODIFIED.