IN THE COURT OF APPEALS OF IOWA

No. 1-565 / 91-686

IN RE THE MARRIAGE OF DANIEL G. WARDEN AND NANCY E. WARDEN

FILED
MAY 28 1992
CLERK SUPREME COURT

Upon the Petition of

DANIEL G. WARDEN,

Appellant,

And Concerning

NANCY E. WARDEN,

Appellee.

1054

Appeal from the Iowa District Court for Linn County, Thomas L. Koehler, Judge.

Daniel Warden appeals from the economic provisions of a district court decree of dissolution. **AFFIRMED AS MODIFIED.**

Mona Knoll of Nazette, Hendrickson, Marner & Good, Cedar Rapids, for appellant.

Barbara A. Van Allen of Legal Services Corporation of Iowa, Cedar Rapids, for appellee.

Considered en banc.

OXBERGER, C.J.

Daniel and Nancy Warden were married on November 1, 1974, in Van Cleve, Iowa. Three children were born of the marriage. Prior to trial, the parties stipulated they should have joint legal custody of the children with the primary physical care of the children with Daniel.

At trial, Nancy was thirty-four years old. She is in good health. For over fifteen years, Nancy has contributed to the family as a homemaker. In November 1990, Nancy began working part-time. Nancy is also taking classes to obtain a two-year degree in the medical area. The trial court found her net income is $116.00 per week.

Daniel, age thirty-five and in good health, has worked for the Chicago and Northwestern Transportation Company since 1979. He earns over $30,000 per year. His income, however, fluctuates because of the nature of the job.

In May 1990, Daniel filed a petition for dissolution of marriage. Prior to final disposition, the parties agreed about custody, disposition of the marital home, division of certain debts, attorney fees, and costs. Following trial, the district court entered its decree of dissolution. The court recognized the parties' settlement and incorporated it into the decree. Daniel was awarded physical care of the parties' children, the marital residence, and his entire pension. Daniel was required to pay Nancy alimony of $300 per month for thirty-six months. Nancy was not

required to pay child support. Each party was responsible for his or her own attorney fees. Following entry of the decree, Daniel appealed, challenging the economic provisions of the decree.

SCOPE OF REVIEW: Our review in cases such as these is de novo. Iowa R. App. P. 4. We give weight to the fact-findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We are not bound by these determinations, however. Id. Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

CHILD SUPPORT GUIDELINES: We consider whether the trial court was correct in not requiring both parents to provide some amount of child support. The trial court, in the present case, required only the father to pay child support. The mother was assessed no responsibility for child support. The Iowa Supreme Court stated in conjunction with the establishment of Iowa's Uniform Child Support Guidelines:

> It is the policy of this state that every parent contribute to the support of his or her children in accordance with the means available. In this range the appropriate figure is deemed to be within the sound discretion of the court or the agency fixing support by administrative order. Some amount of child support is required. (emphasis added). Iowa Rules of Court, 519 (West Publishing Co. 1991).

In light of this policy, we find a trial court's discretion, under the Child Support Guidelines, in assessing the amount each parent is to pay is not absolute. We find it contrary to this State's policy for a trial court applying the child support guidelines to exempt one parent entirely from paying any amount. We find the policy that some amount of child support is required from every parent is clear.

Under the circumstances of this case, the trial court determined Nancy's income to be $116.00 per week. She now attends school attempting to complete a "medical assisting" program. To remain in keeping with the policy that "some amount of child support" be required, we modify the trial court's order to require Nancy to pay $10.00 per week child support.

Daniel argues that Nancy's future earning capacity will be significantly different upon graduating from a two-year program. We find no merit to this argument. Should Nancy's income rise significantly beyond the $116.00 per week range, Daniel will not be precluded from seeking a modification of child support.

PROPERTY DIVISION: Daniel asserts the trial court erred in dividing the property and assets of the parties. He argues the division was not equitable, particularly because he has the primary care of the three children. He asks this court to restructure the trial court's decree. We decline to do so.

The partners in a 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). The distribution of the property of the parties should be that which is equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(1). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983). In the present case, Daniel voluntarily prepared the settlement proposal. In addition to receiving the house, he was awarded his pension in its entirety. Upon review of the remaining property division, we find the distribution equitable and will not disturb it on appeal.

REHABILITATIVE ALIMONY: We next consider whether the trial court erred in awarding Nancy rehabilitative alimony. 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). Within this statutory context, we find the trial court was well within its discretion to award the alimony. Nancy has been contributing to the family as a homemaker for over fifteen years. It is clear she is attempting to use this time to acquire an education for her

future support. Her present financial ability leaves her life style very modest while she shoulders this educational goal. We therefore affirm the trial court on this issue.

ATTORNEY'S FEES: An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981).

Taking into consideration the particulars of this case, we decline to award attorney's fees. Each party will pay his or her own attorney's fees. Costs are taxed to the appellant. We have considered all other issues presented and, except as modified, affirm the trial court.

AFFIRMED AS MODIFIED.

All judges concur except Sackett and Donielson, JJ., who concur in part and dissent in part.

SACKETT, J. (concurring in part and dissenting in part)

I concur in part and dissent in part. I find no valid reason to depart from the child support guidelines. I would order Nancy to pay child support of $133 a month.

Donielson, J., joins this partial dissent.