IN THE COURT OF APPEALS OF IOWA

No. 2-423 / 92-90

IN RE THE MARRIAGE OF GARY M. MYERS
AND PAMELA J. MYERS

FILED
DEC 23 1992
CLERK SUPREME COURT

Upon the Petition of

GARY M. MYERS,

Appellant,

And Concerning

PAMELA J. MYERS,

Appellee.

Appeal from the Iowa District Court for Polk County, Rodney J. Ryan, Judge.

Petitioner husband appeals from various economic provisions of the district court's decree dissolving the parties' marriage. **AFFIRMED.**

Jo Ellen Whitney and Sharon K. Malheiro of Davis, Hockenburg, Wine, Brown, Koehn & Shors, P.C., Des Moines, for appellant.

Ann M. Ver Heul of Shearer, Templer & Pingel, P.C., West Des Moines, for appellee.

Considered by Oxberger, C.J., and Hayden and Habhab, JJ.

OXBERGER, C.J.

Gary and Pamela Myers were married in 1982. The parties have no children. Gary filed this dissolution action in January 1991.

At the time the parties met, they were students at Iowa State University. In the fall of 1983 Gary began law school at the University of Iowa. Pamela worked several jobs to provide income while Gary was in law school. Neither party brought significant personal property to the marriage. At the time of trial, Gary had been made a junior partner in a Des Moines law firm with a salary of approximately $48,000. Pamela earned approximately $28,000, which was earned by teaching full-time and instructing piano students part-time.

The district court awarded Pamela the marital home, valued at $80,000 with a $63,200 mortgage. She was also awarded a 1987 automobile, life insurance, mutual funds, appliances and furniture, and her IPERS account. Gary was awarded a 1990 automobile, his retirement and 401K accounts, his checking account, and a Prudential account. Gary was also awarded all his student loan debts, the Mastercard debt, and $4,000 towards Pamela's attorney fees. In addition, Gary was ordered to pay Pamela alimony of $300 per month for sixty months. Gary has appealed from the property division and alimony award.

Scope of Review

In this equity action, our review is de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. In re Marriage of Abkes, 460 N.W.2d 184, 185 (Iowa App. 1990).

I. Alimony Award and Property Division.

Gary argues the district court erred in awarding reimbursement alimony. Gary notes Pamela did not give up her schooling to support the family. Gary maintains that it was his law degree that afforded Pamela the opportunity to seek her master's degree full time. Gary argues that Pamela received assets worth $31,000 and he received only debt. Pamela contends the economic sacrifices she made to assist Gary in obtaining his law degree justify the district court's award.

Future earning capacity resulting from an advanced degree is a factor to be considered in the division of property and the award of alimony. In re Marriage of Francis, 442 N.W.2d 59, 62 (Iowa 1989). Reimbursement alimony allows the supporting spouse to enjoy the anticipated dividends the advanced degree will ordinarily provide. Id. at 61. "The purpose of reinbursement alimony is to compensate the supporting, nonstudent spouse for both having endured a lower standard of living during the marriage in order that the student spouse may further his

or her education and also for being deprived of a better standard of living in the future." In re Marriage of Jennings, 455 N.W.2d 284, 288 (Iowa App. 1990) (Habhab, J., dissenting). When the dissolution occurs shortly after the degree is obtained and the parties have limited tangible assets, the court may award reimbursement alimony to the supporting spouse in recognition of the economic and professional sacrifices made by that spouse which directly enhanced the future earning capacity of the student spouse. Id.

During the time Gary attended law school, Pamela worked as a substitute teacher and taught organ and piano lessons. She also directed a church choir and supervised extracurricular school events to earn additional income. Pamela was unable to obtain a full-time teaching contract in the area where Gary elected to attend law school. She was offered a full-time teaching position, but it required she reside within the school district. Pamela declined the position because she was concerned the 120-mile commute to law school would affect Gary's grades. At one point, she lost a long-term substitute teaching position because the principal learned she would be moving to Des Moines with Gary at the end of the school year. Pamela then moved without employment in order to accompany her husband who had obtained a position in a Des Moines law firm. Pamela was unable to secure a full-time teaching position in Des

Moines for nearly two years. During that time, she continued to supplement the parties' income through substitute and part-time teaching, directing two church choirs, and instructing approximately thirty piano students. Pamela's income would be nearly $5,000 higher annually if she had been able to accept the full-time teaching position while Gary was in law school. Because she taught only temporary and part time, she was unable to obtain the seniority necessary to command a higher salary. While the parties were living in Iowa City, Pamela took graduate courses. In the summer of 1987, Gary supported Pamela while she returned to Iowa City to complete her master's degree in education.

Pamela's parents gave the parties $7,400. They also loaned them an additional $12,000 at low interest, which the parties eventually repaid.

Gary worked part time during the school year and full time during the summers while he was in law school. His income was used to pay part of his school expenses. Gary also obtained student loans.

The career and economic sacrifices Pamela made to support Gary while he obtained his law degree justify the district court's award of reimbursement alimony. Pamela's part-time teaching positions and resourcefulness in earning additional income greatly contributed to Gary's ability to obtain an advanced degree. The one summer Gary supported

Pamela while she completed her master's degree does not offset Pamela's contributions. In addition, Gary did not inhibit his own career potential while he supported Pamela. On the other hand, Pamela sacrificed full-time employment opportunities to support Gary, which resulted in her entering her career at a much lower salary level. She was also unable to make contributions to her retirement funds. We affirm the district court's award of reimbursement alimony.

Gary next contends the property division was inequitable. The distribution of the property accumulated through the joint efforts of the parties to a marriage should be made pursuant to the criteria codified in Iowa Code section 598.21(1) (1991). Once again, we find Pamela's efforts and sacrifices justify the district court's property division. We affirm the property division as awarded by the district court.

II. Attorney Fees.

Gary contends the district court erred in awarding $4,000 in attorney fees against Gary. Pamela requests appellate attorney fees in the amount of $3,227.

Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). To overturn an award the complaining party must show that the trial court abused its discretion. Id. Awards of attorney fees must be for fair

and reasonable amounts, In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977), and based on the parties' respective abilities to pay. In re Marriage of Lattig, 318 N.W.2d 811, 817 (Iowa App. 1982).

The parties litigated the issue of attorney fees. The district court found Gary had considerably greater resources and was better able to pay Pamela's attorney fees. We find no abuse of discretion, and we affirm.

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).

Pamela was required to defend this action on appeal. Her financial resources are considerably less than Gary's. We award Pamela $500 in appellate attorney fees.

AFFIRMED.