IN THE COURT OF APPEALS OF IOWA

No. 5-137 / 94-424

IN RE THE MARRIAGE OF DOROTHY ANN WOODS AND ROBERT WILLIAM WOODS

FILED
AUG 17 1995
CLERK SUPREME COURT

Upon the Petition of
DOROTHY ANN WOODS,

Petitioner-Appellee/Cross-Appellant,

And Concerning
ROBERT WILLIAM WOODS,

Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Polk County, Linda R. Reade, Judge.

Respondent appeals, and petitioner cross-appeals, from various economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Eric Borseth of Borseth & Genest, Pleasant Hill, for appellant.

David L. Brown of Hansen, McClintock & Riley, Des Moines, for appellee.

Considered en banc.

PER CURIAM

Robert and Dorothy Woods were married on July 1, 1958. Dorothy filed a petition for dissolution on October 26, 1992. At the time of trial, Dorothy was fifty-three years of age and Robert fifty-four. They had two children born of the marriage who are now adults and not subject to this action.

Dorothy was primarily a homemaker. Although she worked part-time and full-time during the marriage, this income was used to supplement Robert's income. Robert had been in the military, and after leaving the military had worked a number of jobs until 1970 when he joined the Pleasant Hill police department as a patrolman. In 1979, Robert was promoted to chief of police, a position he held for four years. In 1984, Robert obtained employment with the State of Iowa as bureau chief of the department of inspection and appeals. At the time of trial, Robert earned a yearly salary of $39,900. As part of his benefit package, he receives $10,000 in term life insurance, full medical coverage and sick leave. Dorothy presently works as a salaried clerical worker at Emco, earning $14,352 in 1994, plus overtime. Dorothy enjoys good health. Robert underwent an angioplasty in 1990 and suffered some heart damage.

Prior to trial, Robert and Dorothy entered into a stipulation regarding the division of marital property. On February 25, 1994, the district court entered its decree. Pursuant to the stipulation, the district court awarded Robert $51,338 and Dorothy $116,607, which included the marital home valued at $75,000. The court

additionally ordered various stocks, bonds, mutual funds and bank accounts totaling $31,974 to be divided equally. Robert was ordered to pay the $6900 debt on their Ford truck and Dorothy was ordered to pay a $4700 mortgage on the homestead and $3900 for her Ford automobile. The district court also ordered Robert to pay Dorothy $650 per month alimony until her death or remarriage. He was additionally ordered to pay $1000 towards Dorothy's attorney fees. Robert has appealed and Dorothy has cross-appealed.

Robert argues the district court erred in awarding Dorothy alimony until her death or remarriage. He notes that she was awarded nearly $124,000 in marital property. He further points out that she has over $26,000 in an IRA and is generally in a better financial condition. He contends the alimony award should be reduced to $200 per month and also that it should terminate upon his death or his retirement. Robert lastly contends the district court erred in ordering him to pay $1000 towards Dorothy's attorney fees. On cross-appeal, Dorothy argues the district court erred in failing to award her a greater amount of monthly alimony. She additionally requests an award of appellate attorney fees and costs.

I. Scope of Review. Since this is an action in equity, our review is de novo. Iowa R. App. P. 4; *In re Marriage of Hayne*, 334 N.W.2d 347, 350 (Iowa App. 1983).

II. Alimony. Robert argues the lower court erred in awarding alimony, the amount of the alimony, and if allowed, its termination date. Dorothy requests a greater amount of alimony.

Equitable principles require that, in dissolution cases, the spouse with the lesser earning capacity is entitled to be supported, for a reasonable time, in a manner closely resembling the standard existing during marriage. *Id.* at 351. The award of alimony depends on the circumstances of each particular case. *In re Marriage of Fleener*, 247 N.W.2d 219, 220 Iowa 1976). It is not an absolute right. *Id.* See also Iowa Code section 598.211(3) (1995) for factors used as controlling the alimony amount. The trial court set out that part of the law it relied on to make the alimony adjustment. The award of $650 per month is a reasonable amount under the circumstances of this case.

A different problem arises as to the termination date of the alimony. The trial court ordered alimony payments to continue until the remarriage or death of Dorothy. No reference was made to retirement of both parties or death of Robert. In this case, Dorothy was awarded substantially more assets in the property settlement than Robert. In addition, she is employed and has retirement funds building up. Generally speaking, alimony should terminate at the death of either party. *In re Marriage of Van Ryswyk*, 492 N.W.2d 728, 731 (Iowa App. 1992). No good reason exists in this record to order otherwise. In addition, the alimony should cease at the retirement of Robert. His reduced income would not support the amount of alimony ordered. The

trial court decision is modified to provide that the alimony cease on the death of either party, on the retirement of Robert, or the remarriage of Dorothy.

Because of this modification, no reason exists for life insurance protection for Dorothy and that provision is removed from the dissolution decree.

III. Attorney Fees. The trial court ordered Robert to pay $1,000 of Dorothy's trial attorney fees. To reverse this award, it must be shown that the trial court abused its discretion. *In re Marriage of Lux*, 489 N.W.2d 28, 31 (Iowa App. 1992). No such abuse is shown here.

Dorothy also requests attorney fees on this appeal. Such an award depends on the relative financial circumstances of the parties. *In re Marriage of Burham*, 283 N.W.2d 269, 278 (Iowa 1979). Also, we consider whether the person requesting the award was obligated to defend the trial court decree. *In re Marriage of Johnston*, 492 N.W.2d 206, 208-209 (Iowa App. 1992). Dorothy is awarded $500 toward the appellate attorney fees. The appeal costs are assessed against Robert.

AFFIRMED AS MODIFIED.