FILED
NOV 2 9 1990
CLERK SUPREME COURT

**IN THE COURT OF APPEALS OF IOWA**

No. 0-469 / 90-131

**IN RE THE MARRIAGE OF STEVEN W. KADLEC AND LAURA MARIE KADLEC**

158

Upon the Petition of

**STEVEN W. KADLEC,**

Appellee,

And Concerning

**LAURA MARIE KADLEC,**

Appellant.

---

Appeal from the Iowa District Court for Linn County, Paul J. Kilburg, Judge.

Wife appeals a dissolution decree, challenging economic provisions. **AFFIRMED AS MODIFIED.**

Karen A. Volz of Ackley, Kopecky & Kingery, Cedar Rapids, for appellant.

Steven Kadlec, appellee, pro se.

Considered by Oxberger, C.J., and Hayden, J., and Perkins, S.J.*

*Senior Judge from the Polk County District Court serving on this court by order of the Iowa Supreme Court.

**PERKINS, S.J.**

Steven and Laura Kadlec were married on May 10, 1964. During the course of the marriage the parties had six children: Kenneth, age 22; Kathleen, age 21; Keith, age 20; Karen, age 18; Kevin, age 15; and Kurt, age 7. At the time of their marriage Steven was employed by the U.S. Postal Service and Laura was an LPN practicing in Cedar Rapids. Laura also worked for approximately sixteen years in the intensive care unit at Mercy Hospital in Cedar Rapids.

Steven filed the present petition for dissolution of marriage on November 29, 1988. Trial was held on October 11, 1989. At trial, Steven testified he was a level fifteen supervisor at the post office, and earned a gross wage of $37,629.87. Steven also testified he had accumulated a Civil Service retirement fund of approximately $31,175, $27,745.75 of which had been accumulated during the course of the marriage. Laura testified she was employed in a doctor's office approximately thirty hours per week, earning a gross wage of $14,750 in 1988. Laura testified that while she had no retirement benefits, she had accumulated approximately $12,084 in an IRA.

Both parties testified that they had accumulated a number of assets during the marriage. The family home was valued at $60,000, with an outstanding mortgage of only

$1,200. The parties had also accumulated savings bonds worth $27,085.88. Steven drove a 1988 Dodge Caravan worth $10,000, with an unpaid balance of $6,887. Laura drove a 1983 Mercury Cougar, stipulated by the parties to be worth $600. In 1989 Laura received a gift of $2,300 from her mother to buy a newer car, but Laura testified she planned on paying her mother back. The parties also owned a camper worth $700.

At trial, Laura requested child support with an annual cost of living adjustment, rehabilitative alimony, assistance with parochial school tuition, college assistance for the children, one-half of the marital assets, including Steve's pension, and attorney fees. Steven proposed that he pay child support of $41 per week per child, plus one-half of the college tuition for a child attending a four-year college, no alimony, and no contribution toward parochial school tuition. Steven also requested no cost of living adjustment, and further argued his retirement account should be reduced by 11 per cent to reflect the amount accumulated before the marriage. Steven lastly argued the savings bonds be reduced in value by $14,000 to reflect the tax consequences if they were cashed immediately.

The trial court's decree was entered on December 1, 1989. The trial court awarded physical custody of the parties' three remaining minor children to Laura. The

trial court, pursuant to the child support guidelines promulgated by the Iowa Supreme Court, ordered Steven to pay support in the amount of $48 per week per child. The court further provided that each party shall pay one-half of the tuition of each child who wishes to attend a four-year institution of higher learning. Steven was ordered to provide health insurance benefits for the minor children. Laura was awarded the marital home, her automobile, IRA, household furnishings, and all other personal property. Steven was awarded the van, life insurance policies, IRA, savings bonds, and his retirement account. The trial court, in order to equalize the distribution of assets, ordered Laura to pay Steven $4,000, the difference being the $10,000 needed to equalize the property distribution, offset by $6,000 the court determined would be considered rehabilitative alimony. The trial court ordered Steven to contribute $500 toward Laura's attorney fees.

Laura subsequently filed a motion to reconsider and modify the decree, which was denied by the trial court. Laura has subsequently appealed. We affirm.

Our scope of review 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, but we are not bound by them. Iowa R. App. P. 14(f)(7).

## I. VALUATION OF RETIREMENT FUND

Laura first contends the property division is inequitable because the trial court failed to take into consideration the present value of Steven's retirement annuity. Laura contends Steven is entitled not only to a lump sum payment upon retirement, but is entitled to a monthly payment as an annuity. Laura maintains that if Steven retires at age 55, he would be eligible to receive $1,500 per month, and $1,400 if he agreed to take the lump sum payment. Laura argues that under the Federal Spouse Equity Act, she would be entitled to receive up to 55 per cent of Steven's retirement benefits.

Under Iowa law, a property division upon a dissolution of a marriage must be based on each partner's right to a joint and equitable share of the property accumulated as a result of their joint efforts. In re Marriage of Francis, 442 N.W.2d 59, 62 (Iowa 1989); In re Marriage of Hoak, 364 N.W.2d 185, 194 (Iowa 1985). In a marriage dissolution action an equal division or percentage division of property is not required. In re Marriage of McNerney, 417 N.W.2d 205, 207 (Iowa 1987). All economic aspects of a dissolution decree must be considered in reaching an equitable distribution of property. In re Marriage of Athy, 428 N.W.2d 310, 314 (Iowa App. 1988).

Under Iowa law, pension benefits are treated as marital property and are subject to equitable distribution. In re Marriage of Wilson, 449 N.W.2d 890, 892 (Iowa App. 1989). We have long recognized that both spouses have the same retirement goals and expectancies regarding pensions, and in appropriate circumstances either spouse may be entitled to an equitable percentage of those benefits when due and payable. Id.; In re Marriage of Curfman, 446 N.W.2d 88, 89-90 (Iowa App. 1989); In re Marriage of Williams, 421 N.W.2d 160, 167 (Iowa App. 1988). In addition to including the value of the pension, we are also required to look at the consequences of the other spouse's social security coverage. Williams, 421 N.W.2d at 167; In re Marriage of Byall, 353 N.W.2d 103, 106 (Iowa App. 1984).

Upon examination of the facts of the present case, we believe the trial court was correct in its valuation of Steven's pension. The trial court valued the pension after listening to all the evidence provided by both Steven and Laura, and determined the pension should be valued as of the time of trial, and not on a speculation as to what the pension may be worth in the future. While Steven may indeed receive an annuity upon his retirement, it would be extremely difficult to make a determination of its value before Steven retires. We additionally note that Laura has a Keogh plan available to her upon her retirement, and has been paying into the social security system for well over

sixteen years. Though Laura will undoubtedly receive fewer retirement benefits than Steven, Laura did receive the family home, which is virtually free of mortgage and worth $60,000. Given Laura's coverage under social security, and the property division as a whole, we believe the the trial court was correct in valuing the pension pursuant to the evidence offered at trial by Steven, and in awarding Steven his pension.

## II. TRANSITIONAL ALIMONY

Laura next contends she is entitled to transitional alimony. Laura points out that Steven earns approximately $18 per hour while she earns roughly $7.15 per hour. Laura maintains while the court was correct in determining she was entitled to transitional alimony, the court erred in determining the $6,000 she was entitled to receive for transitional alimony was to be offset against the court's perceived $10,000 inequity in the property division, resulting in the court ordering her to pay $4,000 to Steven. Laura argues her income will be stretched even further if parochial school tuition is taken into account.

Alimony is an allowance to the ex-spouse in lieu of a legal obligation to support that person. In re Marriage of Hitchcock, 309 N.W.2d 432, 437, (Iowa 1981). Alimony is not an absolute right; its award depends upon the unique circumstances of each particular case. In re Marriage of Cooper, 451 N.W.2d 507, 509 (Iowa App. 1989). We must

consider the factors contained in Iowa Code section 598.21(3) (1989) when considering the award of alimony. In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983). We consider property division and alimony together in evaluating their individual sufficiency. In re Marriage of Dahl, 418 N.W.2d 358, 359 (Iowa App. 1987). We have recognized that payment of alimony is especially appropriate where the purpose is rehabilitative, to assist the payee obtain a further education necessary to permit her to undertake a higher paying career. In re Marriage of Orgren, 375 N.W.2d 881,884 (Iowa App. 1985).

Our examination of the applicable case law convinces us the trial court erred in ordering Laura to pay Steven $6,000 to offset the perceived property award imbalance. Steven has a greater earning capacity. Though we believe Laura's employment as an LPN over the past twenty years will serve her well in the future, we believe Laura will need some additional support for a limited period of time to help meet family expenses. We therefore modify the original decree to hold that the award to Laura be increased by $6,000, the amount offset by the trial court.

**III. CHILD SUPPORT**

Laura next argues the trial court should have awarded a cost of living adjustment clause in ordering child support. Laura points out that Steven will receive cost of

living adjustments in the future, but she will not, and that she should not have to bear the heavy burden of the deteriorating purchasing power of child support.

On appeal, the evaluation of a child support award is guided by the factors listed in Iowa Code section 598.21(4). The amount awarded is for the reasonable and necessary support of the child. Iowa Code § 598.21(4). The obligation to support should be apportioned according to the ability of each parent to contribute. In re Marriage of Bornstein, 359 N.W.2d 500, 504 (Iowa App. 1984). And since both parents have a duty to support their children, we consider the economic provisions of the dissolution decree as a whole. In re Marriage of Mott, 444 N.W.2d 507, 509 (Iowa App. 1989).

We find the child support provisions are equitable here. As such, we decline to increase or decrease the amount of support awarded by the trial court. The issue of the cost of living increase was properly brought before the court. It was within the trial court's discretion whether to order a cost of living adjustment in accord with the factors enumerated in Iowa Code section 528.21(4).

**IV. CHILDREN'S COLLEGE EXPENSES**

Laura also maintains the trial court erred in its ruling on the parties' contribution toward the children's college expenses. Laura argues the decree wrongly provides Steven is required to pay one-half tuition only if the child

decides to attend a four-year college or university, and if the child wished to enter a technical college or other type of higher institution, Steven would not be bound to pay any of the children's college expenses. The decree provides Steven was to assist in the advanced education of any child of the parties that wishes to attend four years of college in order to obtain a degree.

We have recognized that parents have an obligation to provide for their children's higher education as their financial conditions will permit. In re Marriage of Lieberman, 426 N.W.2d 683, 685 (Iowa App. 1989). What is reasonable must be determined by examining the parents' financial resources and the children's educational needs. In re Marriage of Frink, 426 N.W.2d 477, 481 (Iowa App. 1987). An order for educational expenses should not be for more than the parents can afford to pay. Lieberman, 426 N.W.2d at 685.

We disagree with Laura's interpretation of the decree as denying support to those children who decide to attend another institution of higher learning besides a four year college. Though perhaps the decree could have been more artfully written on this point, we interpret the decree as ordering Steven to pay half of tuition at any college or other school the children decide to attend, subject to the tuition limitations outlined in the decree. Likewise, we reject Laura's argument that the decree places an undue

burden on the children to obtain alternate financing for their education in addition to the support Steven is to provide. As we noted above, support for higher education should be conditioned on the parent's ability to pay. As the cost of higher education skyrockets, it has become increasingly incumbent on those children attending college to seek additional funding or sources of income to meet the heavy financial burdens attendant with obtaining a higher degree. See Hasley v. Hasley, 433 N.W.2d 40, 42 (Iowa App. 1988). We therefore believe that the trial court was correct in ordering that each party pay half of the children's tuition.

**V. ATTORNEY FEES**

Laura additionally requests attorney fees on appeal. 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 the trial court abused its discretion. 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).

Guided by these general legal principles, we find that each party shall be responsible for their respective

attorney fees. Each party shall pay one-half the costs on appeal.

**AFFIRMED AS MODIFIED.**