IN THE COURT OF APPEALS OF IOWA

No. 1-036 / 90-1052

FILED
APR 02 1991
CLERK SUPREME COURT

IN RE THE MARRIAGE OF SUSAN J. HUTCHINSON AND DENNIS W. HUTCHINSON

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Upon the Petition of
SUSAN J. HUTCHINSON,

Appellee/Cross-Appellant,

And Concerning
DENNIS W. HUTCHINSON,

Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Jasper County, Jerrold W. Jordan, Judge.

The husband has appealed from a dissolution decree, contending the award of alimony to the wife is excessive. The wife has cross-appealed, contending her alimony award is inadequate. She also requests attorney's fees on appeal. **AFFIRMED AS MODIFIED.**

Charles M. Manly III, Grinnell, for the appellant/cross-appellee.

Dennis F. Chalupa, Newton, for the appellee/cross-appellant.

Heard by Donielson, P.J., and Schlegel and Habhab, JJ.

DONIELSON, P.J.

Susan and Dennis Hutchinson were married in 1967. Their two children are both adults.

Dennis is a farmer in partnership with his father. His farming operation has been profitable; from 1986 to 1989 Dennis enjoyed an income ranging from $87,000 in 1986 to $58,000 in 1989, with an average income of $71,983.75.

Susan is certified as an art teacher but was not employed outside the house during most of the marriage. She recently took a part-time teaching position which pays about $11,000 per year. She also earns about $2,800 per year from a part-time job in a flower shop. She testified that a full-time job teaching art would be hard to find, would probably require her to move, and would pay only about $18,000 per year if available at all.

The parties stipulated to a division of their property. Under the stipulation, Dennis received all the farm-related assets and Susan received a cash award of $185,000. The stipulation was approved by the district court, and the division of property is not challenged in this appeal.

The district court directed Dennis to pay Susan alimony of $1000 per month until Susan's death or remarriage. The district court provided that the alimony would not terminate on Dennis's death, but would instead be allowed as a claim against his estate.

Dennis appeals the alimony provisions of the dissolution decree, and Susan cross-appeals. Dennis contends the alimony is excessive in both length and duration. He suggests rehabilitative alimony for only two years. Susan contends the alimony is inadequate in light of the parties' respective incomes. She suggests alimony of $2,000 per month. Susan requests attorney's fees on appeal.

Our review of this equity action is de novo. Iowa R. App. P. 4. 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).

Upon our de novo review of the record, we have considered the earning capacity of each party, the parties' marital standard of living, Dennis's current debt obligation, and the parties' respective abilities to pay balanced against their relative needs. We affirm the award of alimony in the amount of $1,000 per month. We also affirm the finding that the alimony should continue until the time of Susan's death or remarriage. However, we modify the decree in that we conclude alimony shall cease to accrue upon Dennis's death.

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). We order Dennis to pay $500 toward Susan's appellate attorney fees.

Costs of this appeal are taxed to Dennis.

AFFIRMED AS MODIFIED.