IN THE COURT OF APPEALS OF IOWA

No. 5-667 / 94-2126

FILED
JUN 27 1996
CLERK SUPREME COURT

IN RE THE MARRIAGE OF GERHARD J. FISCHER, SR. AND CONSTANCE J. FISCHER

Upon the Petition of
GERHARD J. FISCHER, SR.,
Appellant,

And Concerning
CONSTANCE J. FISCHER,
Appellee.

Appeal from the Iowa District Court for Muscatine County, David E. Schoenthaler, Judge.

Gerhard Fischer appeals certain economic provisions in the parties' dissolution of marriage decree. **AFFIRMED.**

Jeffrey M. Johnson, Muscatine, for appellant.

Jean A. Pfeiffer of Muscatine Legal Services, Muscatine, for appellee.

Considered en banc.

PER CURIAM

This is an appeal by a husband claiming the property division and award of alimony in the parties' dissolution decree were inequitable. We affirm on appeal.

Gerhard and Constance Fischer were married in 1973. Only the parties' two younger children, who were college age, are affected by this action. Gerhard is employed as a welder, and he has annual income of $44,979. Constance was not employed outside the home, although she did perform psychic readings for which she earned $2,700 per year. Constance planned to return to college.

The district court entered a dissolution decree for the parties on November 17, 1994. The court awarded Gerhard property worth $19,928 and Constance property worth $18,400. Gerhard was also awarded accounts worth $21,932 which he was to use for the expenses of the two younger children. Constance was awarded alimony of $650 per month for a period of three years. Gerhard has appealed.

I. Gerhard contends the division of property was inequitable. He states Constance dissipated property during the marriage, and believes she is not entitled to an equal share of the marital property.

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 Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). The determining factor is what is fair and equitable in each particular circumstance. *Id.*

We determine the parties made equal contributions to the marriage. Constance took care of the parties' children and most of the household duties, which left Gerhard free to travel the country seeking jobs as a welder. Gerhard contributed by his income. We find the distribution of property in this case was equitable.

II. Gerhard claims the award of alimony was excessive. He believes either Constance's property award should be reduced or her alimony should be eliminated. He does not believe she should receive both one-half of the property and alimony.

The district court awarded Constance rehabilitative alimony. Rehabilitative alimony was conceived as a way of supporting an economically dependent spouse through a limited period of re-education or retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting. *In re Marriage of Francis*, 442 N.W.2d 59, 63 (Iowa 1989).

We agree with the district court that Constance is entitled to rehabilitative alimony in addition to her share of the marital assets. As discussed above, Constance is entitled to an equal share of the assets due to her contributions to the marriage. She is entitled to rehabilitative alimony to allow her to go back to school. The record shows Constance has minimal employment skills at the present time. A college degree may assist her to become self-supporting.

We affirm the district court on all issues raised in this appeal. Costs of the appeal are assessed to Gerhard.

AFFIRMED.

Habhab, Cady, Streit and Vogel, JJ., concur; Huitink, J., and Sackett, C.J., dissent.

HUITINK, J. (dissenting)

I respectfully dissent. The majority's decision to affirm the alimony award in this case cannot be reconciled with either controlling precedent or the facts of this case.

The majority correctly recites the purpose of rehabilitative alimony is to support an economically dependent spouse through a limited period of re-education with the goal of becoming self-supporting. *In re Marriage of Frances*, 442 N.W.2d 59, 63 (Iowa 1989). In my view, an award of alimony under the circumstances of this case will not accomplish this purpose.

The record does not support the majority's implicit finding that Constance is incapable of supporting herself without further education. Although she is an under-employed psychic and palm reader, there is no evidence suggesting she is incapable of or unable to find more productive employment. It is presumptuous for the majority to conclude otherwise.

Constance proposes to improve her circumstances by completing college and writing science fiction books. Other than this declaration, there is no evidence she has made any effort to enroll in school or determine what her prospects for employment as a science fiction writer will be if she finishes college. Although Constance should not be discouraged from pursuing her goals, she should be required to demonstrate a reasonable probability of successfully completing re-education or training that will result in more meaningful employment. She has not done so, and

it is manifestly unfair to require Gerhard to pay $650 each month so Constance can pursue a career as a palm reading psychic who writes science fiction books.

I would accordingly eliminate Gerhard's alimony obligation.

Sackett, C.J., joins in this dissent.