IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 8-212 / 97-1175

IN RE THE MARRIAGE OF BRETT JAMES PRUITT AND JULIE ANN PRUITT

Upon the Petition of
BRETT JAMES PRUITT,
Appellant,

And Concerning
JULIE ANN PRUITT,
Appellee.

Appeal from the Iowa District Court for Polk County, Dale B. Hagen, Judge.

Brett Pruitt appeals various economic provisions of the parties' dissolution decree. **AFFIRMED.**

Thomas J. McCann, Des Moines, for appellant.

James H. Gilliam of Brown, Winick, Graves, Gross, Baskerville & Schoenebaum, P.L.C., Des Moines, for appellee.

Heard by Cady, C.J., and Vogel and Mahan, JJ.

VOGEL, J.

The appellant, Brett Pruitt, appeals various economic provisions of the parties' dissolution decree. We affirm the decision of the trial court in its entirety.

Background facts. Brett and Julie Pruitt were married in December 1984. Two children were born to the marriage, Brandon, born in March 1988, and Blake, born in December 1991. Brett was thirty-six years of age at the time of trial and Julie was thirty-four.

Brett is a high school graduate who works for his father's business, Iowa Fire Equipment Company; Brett has worked his way up to vice-president of sales and head of marketing and his base salary is $63,000 per year, supplemented by potential bonuses.

Julie is also a high school graduate with some post-high school credits from Des Moines Area Community College. Shortly before her marriage, Julie completed a twenty-four week training course leading to her employment as a travel agent. She was employed by Travel & Transport, Inc. from August 1986 until December 1993 and earned no more than $24,000 per year. Julie worked at several other companies in various travel agent/coordinator capacities until she ceased employment in January 1996 to spend her time with the children. In her last year of full employment, Julie earned $25,940. Brett moved out of the marital home shortly thereafter.

Following trial, the trial court granted Julie physical care of the parties' children and ordered Brett pay $949.85 per month in child support. Brett was further ordered to pay Julie $600 per month in rehabilitative alimony for fifty-four months. Brett was awarded the marital home; however, Julie was allowed to continue to reside in the home for three months following the trial. Brett was ordered to pay Julie $2000 toward her attorney fees. Brett has appealed.

Scope of review. In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of the witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7); *In re Marriage of Vrban*, 359 N.W.2d 420, 423 (Iowa 1984).

I. Rehabilitative alimony. Brett contends the trial court erred in ordering him to pay Julie $600 per month in alimony for fifty-four months. He contends there is no evidence that Julie sacrificed her career path in order to maintain the family and further asserts he should not have to pay alimony when Julie is capable of supporting herself with her travel agent experience.

Alimony is a stipend to a spouse in lieu of the other spouse's legal obligation for support. *In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa App. 1995); *In re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989).

In determining the appropriateness of alimony, the court must consider (1) the earning capacity of each party, and (2) the present standards of living and ability to pay balanced against the relative need of the other. *In re Marriage of Estlund*, 344 N.W.2d 276, 281 (Iowa App. 1983). Alimony may be used to remedy inequities in a marriage and to compensate a spouse who leaves a marriage at a financial disadvantage. *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993).

Specifically, rehabilitative alimony is a means of supporting an economically dependant spouse through a limited period of reeducation or retraining former skills or providing new training to develop new skills. *In re Marriage of Peterson*, 491 N.W.2d 535, 538 (Iowa App. 1992). The goal of rehabilitative alimony is to create incentive and opportunity for the dependent spouse to become self-supporting. *In re Marriage of Grauer*, 478 N.W.2d 83, 85 (Iowa 1991) ; *Francis*, 442 N.W.2d at 63.

Julie acknowledges she can return to employment in the area of travel coordinator; however, she contends there would be little room for advancement or increased earning capacity, which would not allow her to adequately maintain the standard of living to which she was accustomed during the marriage. Julie wants to pursue a career in exercise science, which she maintains she can only achieve through a period of retraining for just over four years, while working part-time.

While it is helpful to look at prior case law in Iowa concerning rehabilitative alimony, an award of alimony in general depends on the circumstances of each

particular case. *In re Marriage of Welchel*, 476 N.W.2d 104, 110 (Iowa App. 1991). 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). The discretionary award of alimony is made after considering the factors listed in Iowa Code section 598.21(3) (1997). These factors include: (1) the length of the marriage; (2) the age, physical, and emotional health of the parties; (3) the property distribution made in the dissolution decree; (4) the educational levels of the parties; (5) the earning capacity of the party seeking maintenance; (6) the ability of the party seeking maintenance to become self-supporting at the standard of living enjoyed during the marriage; (7) the tax consequences to each party; (8) any mutual agreements by the parties concerning financial or service contributions; (9) the provisions of any antenuptial agreement; and (10) any other factors the court determines relevant on a case-by-case basis.

In setting forth the alimony award to Julie, the trial court reasoned, "The wide disparity in the parties' respective earning capacity, and the length of their marriage warrants an award of rehabilitative alimony allowing her to establish her career and advance her education."

We find the fact that Julie has a present earning capacity does not preclude her from being awarded rehabilitative alimony "where there is a strong potential of increasing that earning capacity." *Peterson*, 491 N.W.2d at 538; *see Francis*, 442

N.W.2d at 66. While it would have been beneficial to us if Julie established monetary figures as to her potential earning capacity in the area of exercise science following the decree, we find nevertheless that an increase in earning capacity may be inferred by the completion of a college degree and Julie's testimony regarding her desire to increase her earning capacity by additional schooling.

We accordingly find Julie's request is reasonable and we affirm the trial court on this issue.

II. Ninety-day possession of marital homestead. Brett next contends the trial court erred in allowing Julie to remain in the marital home for three months following the trial, while he was still obligated to make house payments during those months. He claims he should receive credit for these house payments in the amount of $745.00 per month as alimony.

Julie testified she needed three months to remain in the marital home as there were many things to consider when moving and she could not feasibly secure housing until she found out what financial resources were available to her from the trial court's ruling. For those three months, Brett made the mortgage and real estate tax payments, both of which he was entitled to use as itemized deductions on his federal and state income tax returns. Thus, while the payments were not characterized as alimony for which he argues he would have received a tax deduction, he nonetheless had a sizable tax benefit available to him. Furthermore, the trial court delayed the

commencement of Brett's alimony obligations until the three-month period had passed.

We find the trial court appropriately used its equitable powers by allowing Julie to continue to occupy the marital home for three months.

III. Dependency tax exemption/exchange of income information. Brett further contends the trial court erred in allowing him only one of the children as an exemption on his federal and state income tax returns.

While Brett cites Iowa case law helpful to his position that, provided he is current on child support obligations as the noncustodial parent, he should be awarded the dependency exemption for both children, these cases are not determinative given the facts of this case. It is entirely appropriate to award one tax exemption to each parent in this situation. We acknowledge that Brett is paying a substantial amount of support and earns more than Julie, so it would benefit him to be allowed both exemptions; however, Julie will also be providing for both children on a daily basis while working part-time. We agree with the trial court that she should have the benefit of one dependency exemption.

Brett also argues the trial court erred in ordering, "the parties shall exchange tax and wage information by May 1 of each year." He contends such an exchange of information is not warranted due to his expectation that his income will not increase in the future.

An annual exchange of income information is helpful to monitor the appropriate level of child support. The information could also benefit Brett, as Julie's earning capacity may increase, creating the possibility of a reduced child support obligation for Brett.

We find the trial court correctly ordered the annual exchange of tax information between the parties.

IV. Property division. Brett argues the trial court erred in including in the marital property a life insurance policy valued at $400. Brett further argues he should not be held liable for Julie's auto repairs.

The parties to a marriage are entitled to a just and equitable share of the property accumulated during the marriage. *In re Marriage of Starcevic*, 522 N.W.2d 855, 857 (Iowa App. 1994). The trial court did not make specific findings as to the values of the assets and debts awarded to the parties and neither party filed a 179 (b) motion to expand the court's ruling. Our review of the equities is therefore somewhat limited. Finding no apparent disproportion or inequities in the division of property, we affirm.

V. Attorney fees. Finally, Brett argues the trial court erred in ordering him to pay $2000 toward Julie's attorney fees and costs. Julie requests she be awarded appellate attorney fees in this action.

An award of attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Gilliam*, 525 N.W.2d 436, 439 (Iowa App. 1994). 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 Roberts*, 545 N.W.2d 340, 345 (Iowa App. 1996). Brett earns substantially more than Julie. We determine the trial court was within its discretion in ordering Brett to pay for Julie's trial fees and costs. We further determine Brett shall pay Julie $1000 for appellate attorney fees. Costs are assessed to Brett.

Having considered all arguments before us on appeal, we affirm the decision of the trial court in its entirety.

AFFIRMED.