IN THE COURT OF APPEALS OF IOWA

No. 1-498 / 90-1909

FILED
MAY 28 1992
CLERK SUPREME COURT

IN RE THE MARRIAGE OF GLORIA JEAN STAHL AND ALLEN GENE STAHL

Upon the Petition of

GLORIA JEAN STAHL,

Appellee,

And Concerning

ALLEN GENE STAHL,

Appellant.

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Appeal from the Iowa District Court for Clinton County, James R. Havercamp, Judge.

Husband appeals from a dissolution decree, challenging its economic provisions. **AFFIRMED.**

Patrick W. Driscoll of Stanley, Rehling, Lande & Van Der Kamp, Davenport, for appellant.

Steven E. Mayer of Mayer, Mayer, Lonergan & Rolfes, Clinton, for appellee.

Considered by Oxberger, C.J., and Schlegel and Sackett, JJ.

OXBERGER, C.J.

This appeal turns on whether the evidence supports the following trial court's finding:

> Respondent's (Allen) evidence of two burglaries and the theft of $78,000 in cash of marital assets is not credible. When coupled with allegations of a fraudulent fire property loss and fraudulent Worker's Compensation claims, that evidence as easily supports the conclusion that respondent has precipitated a unilateral pre-decree marital property disposition to his benefit as that cash has mysteriously disappeared as he explains.

Allen states in his brief:

> Such conclusions are absolutely unwarranted and unsupported by any of the evidence.

In In re Marriage of Williams, 421 N.W.2d 160 (Iowa App. 1988), we said:

> A party who has not been fair and accountable with property under his or her control during the dissolution process must be charged accordingly. To hold otherwise would in numerous instances weigh heavily against the marriage partner not in business. The courts of this state have an obligation to require accountability. Failure to disclose, secretion of assets, or transfer of assets during the dissolution process must be dealt with harshly. Otherwise the process becomes an uncivilized procedure and the issues become not ones of fairness and justice but which party can outmaneuver the other.

This marriage lasted twenty-nine years and resulted in three sons, now ages 25, 26, and 29. Gloria was the primary homemaker and Allen was the primary breadwinner. Gloria worked some outside the home during the marriage. She is presently employed earning $5.00 per hour.

The parties separated in March 1989. Allen was ordered to pay Gloria temporary support. He has paid approximately

$900 and still owes $5,000. The parties had $10,100 in the bank at the time of separation. Allen spent all these funds. When the parties separated, Gloria took some furniture. She had received a $28,000 inheritance from her mother. She invested $12,000 in the family home. When the parties separated, Allen hid her $16,000 inheritance and other cash totaling between $60,000 and $70,000 in two places, one under the patio, and some in the barn. He claims sometime after Gloria left someone dug up the money under the patio. He continued to keep the money in the barn. He claims someone later stole this money too. He claims only his girlfriend, Gloria, his sister and his mother knew he had hidden cash.

A few months after the parties separated, the family home burned down. The insurance company has denied his claim for loss. Allen owns a pickup but, when he was recently arrested, the county seized the pickup. He borrowed $4,000 to make bond to obtain his release from jail. Allen has filed three workers' compensation claims. They have been denied. He has received partial payment of $25,000 for an asbestosis claim. He claims he has not worked since April 1990. He says he is depressed and his neck hurts. The Social Security Administration has denied his disability claim.

We concur with the trial court's conclusion that "respondent has precipitated a unilateral pre-decree

marital property disposition to his benefit as that cash has mysteriously disappeared. . . ." We find Allen's explanation regarding the loss of $78,000 shortly after the separation is not credible. We concur with the trial court's property division.

The trial court found that even though Allen is currently unemployed, he has the earning capacity to pay alimony of $50 per week for forty-eight months. We find that Allen's choice to not work is consistent with his efforts to deny Gloria an equitable share of the marital assets. Allen offered no medical evidence to support his claim he is unable to work. Three workers' compensation claims have been denied. The Social Security Administration denied his claim for disability payments. We reject Allen's claim he is unable to work. We affirm the alimony award.

Gloria has asked for attorney fees for this appeal. 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 Hunt, 476 N.W.2d 99, 103 (Iowa App. 1991). We order Allen to pay the amount of $500 toward Gloria's appellate attorney fees. Costs of this action are assessed to Allen.

AFFIRMED.

Schlegel, J., concurs; Sackett, J., concurs in part and dissents in part.

SACKETT, J. (concurring in part and dissenting in part)

I concur in part and dissent in part.

In this appeal Allen Stahl challenges the economic provision of his dissolution decree. He contends the property division was not equitable and he should not have been ordered to pay alimony.

Allen has not been gainfully employed since 1987. He has tried a number of jobs and has been unable to keep them. He has engaged in a number of bizarre behaviors. The trial court recognizes Allen has had psychological problems and has a mental disability diagnosed as post-accident neurosis, severe depressive type.

Allen developed a distrust of banks and kept large amounts of cash at home. Gloria was aware of this fact. The cash has now disappeared. The trial court fashioned a property division which charged Allen with property that disappeared under his control. The majority has affirmed this division and I concur with its decision to do so.

I am, however, unable to agree with the majority's directive that Allen pay alimony. I am convinced Allen suffers from mental problems and some physical problems. He has been unable to maintain employment. Gloria is employed and has received substantial assets. Applying gender-neutral criteria, I would modify the decree to eliminate the alimony award. There is no basis to require an unemployed spouse to pay alimony to an employed spouse where the employed spouse has received considerable property.