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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF CAROLYN K. LACEY AND DOUGLAS L. LACEY

Upon the Petition of)

CAROLYN K. LACEY,)

Petitioner-Appellant,)

And Concerning)

DOUGLAS L. LACEY,)

Respondent-Appellee.)

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Filed September 30, 1987

7-261
86-650

Appeal from the Iowa District Court for Woodbury County (No. 9748), Edwin L. Mitchell, Judge.

Petitioner wife appeals from the decree dissolving the parties' marriage, asserting that the property division, support, attorney fee, and court costs provisions of the decree are inequitable. She requests attorney fees on appeal. **AFFIRMED AS MODIFIED.**

Edward J. Keane and Alice S. Horneber of Margolin, Gildemeister, Willia, Mugan & Keane, Sioux City, for appellant.

Timothy W. Shuminsky of Shuminsky, Shuminsky & Molstad, Sioux City, for appellee.

Considered by Oxberger, C.J., and Snell and Hayden, JJ.

PER CURIAM

The parties to this appeal, Carolyn and Douglas Lacey, were granted a dissolution of their marriage by the District Court for Woodbury County on February 20, 1986. The district court, in those parts of the dissolution decree pertinent to this appeal, divided the marital property, imposed support obligations upon Douglas, awarded attorney's fees to Carolyn, and taxed costs equally to both parties. Following largely unsuccessful posttrial motions, Carolyn brings this appeal in order to challenge each of the above-noted portions of the decree, as amended. Our review is de novo. Iowa R. App. P. 4. Although we are not bound by the district court's findings of fact, we give them weight, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7).

I.

Carolyn's challenge to the decree's economic provisions consists of the following specific allegations of district court error: (1) an incorrect underestimation of Douglas's income; (2) an incorrect over-estimation of Douglas's financial liabilities; (3) an unjustified and inequitable failure to award Carolyn alimony to allow her to resume her nursing career; (4) the inequitable result that the support payments are taxable to Carolyn; (5) inequitably providing for the support payments to decrease by $250.00 each year; and (6) inequitably requiring Carolyn to be responsible for the parties' children's health insurance and uncovered medical expenses.

Carolyn maintains that several district court errors resulted in an inequitable property division. In reviewing a district court's division of marital property, we are guided by the criteria set out in Iowa Code section 598.21(1) (1985). We reaffirm our rejection of any rule based upon a percentage division of the assets. In re Marriage of Lattig, 318 N.W.2d 811, 814 (Iowa App. 1982). We are not bound to achieve a precisely equal division in awards of marital property.

In re Marriage of Anderson, 243 N.W.2d 562, 564 (Iowa 1976). In general, the division of property is based upon each marital partner's right to a just and equitable share of the property accumulated as a result of the efforts of both parties. In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1976). The controlling mandate is that courts achieve an equitable and just award under the circumstances. In re Marriage of Wallace, 315 N.W.2d 827, 831 (Iowa App. 1981).

Carolyn contends the district court underestimated Douglas's income. Douglas, a partner in a certified public accounting firm, earns a guaranteed draw every two weeks in addition to periodic payments of a percentage of the partnership profits. This percentage is subject to change. Carolyn argues the district court should have used a figure of 16.79% instead of 11.89% in estimating Douglas's future income. The former figure reflects an accrued basis for calculation; the latter figure represents an income tax basis. The district court adopted, in essence, the former figure in order to allow "for normal fluctuation in the general economic conditions affecting the Sioux City area." We think the record supports the district court's approximation of Douglas's annual income and we are not persuaded to change it.

Neither are we convinced of the validity of Carolyn's claim that district court error prejudicially affected that court's division of liabilities. The tax liability allocated to Douglas which Carolyn takes issue with represents the combined liability of the parties for income received during the marriage. We think the district court was correct in taking those obligations into account. See Iowa Code § 598.21(1) (1985).

Similarly, while we agree with Carolyn that the district court improperly considered a $12,000.00 portion of a bank credit line as a marital liability, we do not believe this error mandates a modification of the district court's amended

decree. As of July 17, 1985, the outstanding balance on this account was $11,000.00. On that date, the district court entered an award for temporary allowances wherein it stated that "[t]he parties . . . shall be personally responsible for the payment of any charges occurring on any . . . charge account occurring after the date of this Order." Between that date and the date of trial, the account's outstanding balance increased by $12,000.00. Douglas concedes he is responsible for this borrowing but maintained at trial it was necessary in order to comply with the district court's temporary support order. Nevertheless, in line with the district court's July 1985 order—and we note that no appeal was taken from this order, see In re Marriage of Prybil, 230 N.W.2d 487, 488 (Iowa 1975) (order allowing for temporary support held appealable)—we think the $12,000.00 increase in debt may not be allocated as a marital liability.

We do not think, however, that this determination necessitates a further realignment of the marital assets and liabilities. The district court's division leaves Carolyn with a net distribution of $16,813.89 and Douglas with a net distribution, after the above-mentioned $12,000.00 debt is excised, of $23,543.62. This distribution awards each party a substantial amount of assets. Equity does not require a precisely equal division of marital property. In re Marriage of Anderson, 243 N.W.2d at 564. We believe the present division is within the bounds of equity and we are not inclined to disturb it.

The district court made the following award of undifferentiated support payments to Carolyn, who was granted physical custody of the parties' two minor children:

(a) $2,500 per month commencing April 1, 1986, through March 1, 1987.
(b) $2,250 per month commencing April 1, 1987, through March 1, 1988.
(c) $2,000 per month commencing April 1, 1988, through March 1, 1989.

(d) $1,750 per month commencing April 1, 1989, through March 1, 1990.
(e) $1,500 per month commencing April 1, 1990, through March 1, 1991.
(f) $1,250 per month commencing April 1, 1991, through March 1, 1992.
(g) $1,000 per month commencing April 1, 1992, through March 1, 1996.

On the date the decree was entered the children were eleven and eight years old. Carolyn maintains the district court erred in failing to award her alimony during the time necessary for her to resume her nursing career.

We are informed by both the cases and Iowa Code section 598.21(3) that the payment of alimony is not an absolute right; it is awarded out of fairness, according to the particular facts of the case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976); Iowa Code 598.21(3) (1985). One factor to be given great weight in such a determination is the ability of the supported spouse to engage in gainful employment. In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972); Iowa Code § 598.21(a), (e) (1985). When determining the appropriateness of alimony, the trial court must consider the earning capacity of each party, present standards of living, and ability to pay balanced against the relative needs of the other. In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983). Carolyn currently holds a three-year nursing degree and, prior to the birth of the parties' oldest child, had been full-time head nurse at a local hospital. Following the birth and during the entire marriage, she worked only part-time. The district court, in its fact findings, recognized that

> [i]n order for Carolyn to be able to maintain her own support, until retirement age, at a reasonable level, she will require substantial initial support during an adjustment period.

Contrary to Carolyn's contention, we think the record demonstrates the district court was aware of her need to reenter the job market and made adequate allowance therefor in its support order. However, we do agree with Carolyn's request

that a portion of the undifferentiated support award be expressly labeled as alimony as we believe the equities of the present case demand that Carolyn have the tax deductibility advantage of the remaining portion of the support award. See Iowa Code § 598.21(4)(h) (1985). Carolyn estimated that she would need approximately $12,000.00 in order to complete her bachelor of nursing degree and that, going to school part-time, working part-time, and caring for the children, it would require four years to obtain her degree. Accordingly, we think $250.00 of the monthly support award should be classified as alimony for the first four years. Thereafter the alimony classification shall cease and the entire support award will be for the benefit of the children. The decree is modified to so provide.

Carolyn maintains the decree's provision that the support award decrease by $250.00 each year is inequitable. We disagree. The provision recognizes Carolyn's gradual re-entry into the labor force and her consequently greater ability to contribute to the support of the children. Neither are we persuaded of the inequity of that portion of the decree which obligates Carolyn's responsibility for the children's health insurance and uncovered medical expenses. The economic provisions of the decree, as modified herein, are accordingly affirmed.

II.

Carolyn contends the district court erred in requiring Douglas to pay only $3,000.00 of the $4,967.95 she expended in attorney's fees for trial. In addition, she alleges error in the district court's equal division of costs. Recognizing that the district court is vested with considerable discretion in allowing attorney fees to be awarded in dissolution decrees, In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983), we think the allowance of attorney's fees here is reasonable and should not be disturbed. See In re Marriage of Pittman, 346

N.W.2d 33, 37 (Iowa 1984). Similarly, we find no error in the district court's allocation of costs.

Carolyn requests attorney's fees and costs associated with this appeal. In evaluating such a request, we 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 conclude that both parties should be responsible for their respective attorney's fees incurred upon this appeal. See Pittman, 346 N.W.2d at 37. Costs are assessed one-half to each party.

AFFIRMED AS MODIFIED.