IN THE COURT OF APPEALS OF IOWA

No. 1-54 / 90-364

IN RE THE MARRIAGE OF LANA K. COURTNEY AND DONALD E. COURTNEY

FILED
AUG 27 1991
CLERK SUPREME COURT

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Upon the Petition of

LANA K. COURTNEY,

Petitioner-Appellee/Cross-Appellant,

And Concerning

DONALD E. COURTNEY,

Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Scott County, David J. Sohr, Judge.

Both parties appeal from a dissolution decree, challenging its economic provisions. **AFFIRMED AS MODIFIED.**

Dennis D. Jasper of Stafne, Lewis, Jasper, Alexander & Preacher, Bettendorf, for appellant/cross-appellee.

William B. Norton, Lowden, for appellee/cross-appellant.

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

OXBERGER, C.J.

Lana and Donald Courtney were married in 1961. Their two children are adults.

Donald, forty-nine years old at trial time, has been a factory worker for J.I. Case all his adult life. He presently earns about $36,000 per year. He is already eligible to retire at a pension rate of $1,250 per month; he has expressed an intention to retire in five years or so. He is unable to read or write.

Lana, forty-eight years old at trial time, obtained a bachelor's degree and most of the credits for a master's degree during the marriage. She has previously worked as a medical technologist but no longer holds such employment because her hands shake. She does not expect her education to improve her prospects very much. Although her master's degree will be in computer science, she testified she does not actually feel competent to hold a job in this field. (Her attorney suggests that she may suffer from low self-esteem due to battered spouse syndrome.) Lana is currently unemployed and living from savings; she anticipates seeking employment as a cleaning lady.

The dissolution decree awarded Donald the parties' residence, which was valued at $42,500 and was apparently free of debt. The decree awarded Lana two other parcels of real estate with a total value of $31,000; apparently these are also free of debt. The decree awarded Lana savings and

stocks valued at over $32,000; the decree awarded Donald savings and stocks valued at about $14,000. Lana received a vehicle and household goods; Donald received tools valued at over $6,600, several vehicles, and household goods.

The decree directed that when Donald begins to receive pension benefits from his J.I. Case pension plan, Lana is to receive 4/9 of each pension payment. The decree also directed Donald to pay Lana alimony of $600 per month for fourteen months and $400 per month for an additional twelve months thereafter. At the end of twenty-six months the alimony will cease.

Donald has appealed from the dissolution decree, and Lana has cross-appealed. Donald challenges the division of property, the division of his pension benefits, and the award of alimony to Lana. He argues the decree did not take into consideration (1) Lana's superior education or (2) cash of some $27,000 that she allegedly secreted or squandered after the parties' separation.

Lana asks that her alimony award be extended in duration from twenty-six months to thirty-six months.

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

witnesses, but are not bound by them. Iowa R. App. P 14(f)(7).

Donald first contends that the trial court erred in the division of the assets. In particular, the trial court divided evenly certain J.I. Case stock between the parties and directed the parties to sell certain guns and gun related accessories, a tractor and skid loader, and divide the proceeds after the expense of the sale equally between them.

The parties agreed to the value of the stock and skid loader. The parties agreed to the value of some of the guns, but not all. Donald would like to have the stock, skidloader, guns and a picture of his family. He argues that it is fair to award him the assets and enter a judgment against him for the sum of one-half of the total value of the assets. We agree.

Lana agreed that the value of the J.I. Case stock was $2,650. She also agreed the skid loader was worth $1,500 and some of the guns had a value of $555. At trial, Lana agreed she only wanted a car, her furniture and just money. We award Donald the J.I. Case stock, skidloader and those guns the parties have previously agreed to a value upon. We direct Donald to pay $2,352.50 to Lana, which represents the sum of one-half of the total value of the aforementioned assets. We direct Donald's family picture be given to him and no monetary value assessed to the

picture. We direct that all guns the parties did not agree to value upon at the time of trial be sold, and the proceeds of the sale be equally divided between the parties.

ALIMONY

Donald assert Lana's education provides a substantial bases for earning capacity, and an award of alimony for twenty-six months is not necessary. We disagree and modify alimony from twenty-six months to thirty-six months.

The trial court made limited findings of fact bearing on the issue of alimony. It did find "Each (of the parties) is capable of being self-supporting -- the respondent at this time, and the petitioner in the not too distant future."

Lana explains the trial court's award because she is suffering from "battered women's syndrome." The therapist treating Lana testified she was subject to "severe forms of control, physical violence, threat of physical violence, sexual violence." "I would say with Lana it's a severe case and the outcome has been her self-esteem, her self-concept has been totally destroyed, which is a result of the control tactics that were used throughout the marriage."

Donld in his reply brief attacks the therapist's credibility. The trial court saw and heard the witness. We will defer to the trial court's assessment of

credibility. We find the three-year term alimony will give Lana sufficient time to recover her self-esteem so she may become self-supporting. We affirm the trial court's award of alimony to Lana and, except as otherwise modified, affirm the trial court's decree.

Each party will pay his or her own attorney's fees. Costs are to be divided evenly between the parties.

AFFIRMED AS MODIFIED.