IN THE COURT OF APPEALS OF IOWA

No. 1-121 / 90-1069

IN RE THE MARRIAGE OF MARCIA JUNE FOREMAN AND MICHAEL DEAN FOREMAN

FILED
OCT 29 1991
CLERK SUPREME COURT

Upon the Petition of

MARCIA JUNE FOREMAN,

Petitioner-Appellee/Cross-Appellant,

And Concerning

MICHAEL DEAN FOREMAN,

Respondent-Appellant/Cross-Appellee.

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Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge.

Both parties have appealed from a dissolution decree, challenging its economic provisions. The wife also requests attorney's fees on appeal. **AFFIRMED.**

Joseph A. Nugent, Des Moines, for appellant/cross-appellee.

Leslie Babich of Babich, Bennett & Nickerson, Des Moines, for appellee/cross-appellant.

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

OXBERGER, C.J.

Marcia and Michael Foreman were married in 1964. Their two children are both adults. When this dissolution action was initiated the younger child, Charles, was enrolled in the Des Moines Area Community College; however, prior to trial that child graduated and began working full-time.

Michael is a civil engineer with Des Moines Water Works. He earns a gross income of around $48,000 per year and a net income of $2,900 per month.

Marcia has college credits but lacks a degree. She hopes to obtain a bachelor's degree in health information management, which will take about a year. She also hopes to obtain a master's degree at a later time. She presently works as a part-time medical transcriptionist, earning a gross income of about $9,620 per year, or $800 per month. Her part-time employment provides her with no fringe benefits. She is currently suffering from mental and emotional instability, as a response to the marital separation and other stresses; the court concluded she may be unable to work or study full-time for a year following the decree.

The district court determined it would be equitable for the parties to receive an equal division of the assets and liabilities accumulated during the marriage. Each party received net assets worth $63,061. In order to achieve this division, Michael was ordered to pay a property settlement of $9,150 to Marcia.

The district court directed Michael to pay Marcia alimony of $1,200 per month for the first four years after the decree, $750 per month thereafter until Michael reaches the age of 65 or retires, and $500 per month thereafter until one of the parties dies. The alimony obligation shall continue for four years regardless of whether Marcia remarries; after the first four years, alimony will terminate if Marcia remarries.

The district court directed Michael to contribute $5,000 toward Marcia's trial attorney's fees.

Michael has appealed from the dissolution decree, challenging the division of property and the award of alimony to Marcia. Marcia has cross-appealed.

I. In this equity action our review is de novo. Iowa R. App. P. 4. 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).

II. Michael first claims the district court should have granted his application to reduce his temporary support obligation. On August 24, 1989, the district court ordered Michael to pay Marcia $1,400 per month so that she could pay the mortgage on the marital home, all expenses associated with the home, and support herself and their child, Charles, during the pendency of the dissolution proceedings. After Charles graduated in December 1989, Michael sought to reduce his temporary support obligation.

The district court refused his request. Michael did not appeal this ruling.

Temporary orders entered pursuant to Iowa Code section 598.11 are "final judgments" and are appealable as a matter of right. In re Marriage of Campbell, 451 N.W.2d 192, 195 (Iowa App. 1989). The failure to take a timely appeal from a temporary order waives the right to review. Id. We conclude Michael waived his right to appeal the temporary support ruling.

III. Michael contends the alimony award to Marcia is unreasonable. He does not dispute that Marcia needs a certain amount of rehabilitative alimony. He does challenge the award of lifetime alimony and the finding that Marcia will be unable to work or be a full-time student for an additional year.

Alimony is an allowance to the ex-spouse in lieu of a legal obligation to support that person. In re Marriage of Cooper, 451 N.W.2d 507, 509 (Iowa App. 1989). Alimony is not an absolute right; its award depends upon the unique circumstances of each individual case. Id. We consider property division and alimony together in evaluating their individual sufficiency. Id.

In our de novo review of the record we find ample evidence to show Marcia would not be able to work full-time or be a student full-time for an additional year because of her emotional problems. The district court took this into consideration when it awarded Marcia rehabilitative alimony of $1,200 per month for 48 months.

Rehabilitative alimony should support 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). The evidence in this case supports an award of rehabilitative alimony.

The evidence also supports an award of permanent alimony. Traditional alimony may be required in a long-term marriage where life patterns have largely been set and the earning potential of both parties can be predicted with some reliability. See Francis, 442 N.W.2d at 62-63.

In this case Marcia worked for about twenty of the 26 years the parties were married. However, her work did not advance her in any particular career, but only helped to meet the financial needs of the family. Marcia has not accumulated a pension plan as Michael has. Furthermore, when and if Marcia does graduate from college, she will be at an advanced age, and will not have time to develop a pension plan that will support her after she retires. For all of these reasons we affirm the award of alimony as set forth by the district court. The alimony award is not based on an expectation Marcia will complete college as that fact is too speculative.

IV. Michael also contends he should not have been assessed the costs of this action, including the deposition of Marcia's psychoanalyst. As with attorney fees, we find a trial court has considerable discretion in assessing the costs of an action. See In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). We find the district court did not abuse its discretion here.

V. In her cross-appeal, Marcia first claims the decree should not have terminated her award of permanent alimony if she remarries. With the exception of rehabilitative alimony, there does not appear to be any general support for including a provision in a decree which mandates the continuation of permanent alimony beyond remarriage. In re Marriage of Cooper, 451 N.W.2d 507, 509 (Iowa App. 1989).

VI. In the property division Marcia was awarded the marital home. She feels this asset was overvalued, and that $10,250 should have been subtracted from its value to reflect the cost of selling the home. As the district court pointed out, however, there is no evidence Marcia plans the sell the house in the near future. We believe the district court properly valued the house.

VII. Marcia claims she should have been awarded the full amount of her trial attorney fees, $8,000. The district court did order Michael to pay $5,000 of that amount.

Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Campbell, 451 N.W.2d 192, 195 (Iowa App. 1989). To overturn an award the complaining party must show that the trial court abused its discretion. Id. Awards of attorney fees must be for fair and reasonable amounts and based on the parties' respective abilities to pay. Id. We do not believe the district court abused its discretion in this case.

VIII. Finally, Marcia asks for attorney fees for this appeal. We order Michael to pay the amount of $750 towards Marcia's attorney fees for this appeal.

AFFIRMED.