IN THE COURT OF APPEALS OF IOWA

No. 4-401 / 94-0632

FILED
OCT 25 1994
CLERK SUPREME COURT

IN RE THE MARRIAGE OF RICHARD S. TYLER AND LESLIE C. TYLER

Upon the Petition of
RICHARD S. TYLER,

Appellee,

And Concerning
LESLIE C. TYLER,

Appellant.

Appeal from the Iowa District Court for Cedar County, Charles H. Pelton, Judge.

Leslie Tyler appeals various provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Daniel L. Bray, Iowa City, for appellant.

Bruce D. Goddard, Iowa City, for appellee.

Considered by Donielson, C.J., and Cady and Huitink, JJ.

HUITINK, J.

Leslie Tyler appeals the economic, custody, and child support provisions of the parties' dissolution decree. We affirm as modified.

Leslie and Richard Tyler were married in August 1974. They have two children: Angela, born in August 1979, and Jeffrey, born in February 1983.

Richard is forty-two years old and is a professor of audiology at the University of Iowa. He earns $78,500 per year. Leslie is forty years old. Prior to the birth of the children, Leslie worked as a registered nurse. She has not worked outside of the home for most of the marriage. Richard claims she is capable of earning between $35,000 and $38,000 gross income per year.

The parties' accumulated marital assets were valued at $534,782, of which $31,084 is invested for the children. The parties stipulated exhibit S was their agreement about the division of household goods. Leslie received one-half of the household goods valued at $7000 pursuant to exhibit S, a Jeep valued at $15,718, an IRA valued at $4,138, and investments valued at $225,000 (including about $30,000 in cash). Richard was ordered to pay Leslie $1000 per month for six months.

The district court found Richard more stable and better able to minister to the children's long-term needs and awarded him primary physical care. It found Leslie has the ability to earn $25,000 net per year and ordered her to pay

$625 per month in child support. Richard was ordered to pay $1000 toward Leslie's attorney fees.

Our review in equity actions 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 the witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

Leslie first challenges the economic provisions of the decree. She argues the district court erred in failing to award her both rehabilitative and reimbursement alimony for at least five years.

Rehabilitative alimony is structured to support an economically dependent spouse through a limited period of further education or retraining following divorce. In re Marriage of Francis, 442 N.W.2d 59, 63 (Iowa 1989). When considering an award of alimony, the property division must also be considered as both are neither made nor evaluated in isolation of one another. In re Marriage of Earsa, 480 N.W.2d 84, 85 (Iowa App. 1991).

The district court granted Leslie rehabilitative alimony in the amount of $1,000 for six months. The court granted this amount in order to give Leslie an "opportunity to seek counseling and stabilize from the trauma of the dissolution of her family."

Our review of the record indicates Leslie is unsure as to her future employment plans. However, we believe she is still entitled to a reasonable amount of rehabilitative

alimony to enable her to become self-supportive. Under the circumstances of this case, six months of rehabilitative alimony is insufficient. We therefore modify the district court and award Leslie alimony in the amount of $1000 per month for twenty-four months.

Leslie received a property settlement, valued in excess of $225,000. We believe the equitable division of property adequately compensated Leslie for her contributions to the parties' marriage. An award of reimbursement alimony is not warranted. The alimony provisions of the decree are affirmed as modified.

We reject Leslie's claim that the court erred in distributing the parties' personal property according to stipulation, exhibit S. The record shows the parties agreed in open court as to the exhibit's use. The trial court had the opportunity to view the witnesses and listen to their testimony regarding exhibit S. The court's division of property was equitable, and we decline to disturb it on appeal.

Leslie also challenges the custody provisions of the decree. She contends she should be awarded physical custody of the children because she is better able to meet their educational and spiritual needs.

In determining custody, our primary consideration is the best interests of the children. Iowa Code § 598.41(3) (1993). Children need a stable environment. See In re Marriage of Carrico, 284 N.W.2d 251, 254 (Iowa 1979). Our

objective is to place the child in the environment most likely to bring the child to healthy physical, mental and social maturity. In re Marriage of Bartlett, 427 N.W.2d 876, 877 (Iowa App. 1988) (citation omitted).

We, based on our de novo review, find both parents love their children and are involved in their daily lives. We are, however, concerned about Leslie's inappropriate behavior toward Richard and the children. Her instability and impulsive behavior have caused the children to suffer an increased level of emotional trauma.

We believe it is in the children's long-term best interests to award physical custody to Richard. He can provide the more stable environment for the children, and he can better minister to their emotional, mental, and social needs. We believe Richard will ensure the children have maximum continuing contact with their mother. The district court is accordingly affirmed on this issue.

Finally, Leslie contends the trial court erred in imputing to her an earning capacity of $25,000 and ordering her to pay child support in the amount of $625 per month based on that amount.

Both parents have a legal obligation to support their children in accordance with the means available. In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976). In setting an award of child support it is appropriate to consider the earning capacity of the parents. In re Marriage of Drury, 475 N.W.2d 668, 672 (Iowa App. 1991).

It is clear the trial court, in imputing an earning capacity of $25,000 net income, accepted Richard's claim Leslie could obtain employment as a nurse in a relatively short period of time and earn $35,000 gross income per year. However, based on our de novo review of the record, we find insufficient evidence to support this finding.

Leslie has not worked outside of the home for a number of years and has no income currently. Until she obtains employment and earns an income, the property settlement will serve as her source of funds from which she pays her bills. Although her exact earning capacity is not established, it is clear she also has the ability to pay child support from the property she received.

The settlement included several income producing assets. Therefore, in this case it is more equitable to consider her property award in determining her child support obligation. See In re Marriage of Blume, 473 N.W.2d 629, 633 (Iowa App. 1991) (citation omitted). Based on her property and cash settlement Leslie should be expected to pay $500 per month in child support. We therefore modify the decision of the district court accordingly.

We determine any other issues the parties may have raised are either covered by this opinion or are without merit. The parties shall be responsible for their respective attorney fees and costs. The district court is affirmed as modified.

AFFIRMED AS MODIFIED.