IN THE COURT OF APPEALS OF IOWA

No. 3-075 / 92-737

FILED
OCT 05 1993
CLERK SUPREME COURT

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IN RE THE MARRIAGE OF ROBERT J. BUNTZ, JR., AND DIANE R. BUNTZ

Upon the Petition of
ROBERT J. BUNTZ, JR.,

Appellee,

And Concerning
DIANE R. BUNTZ,

Appellant.

Appeal from the Iowa District Court for Linn County, Larry J. Conmey, Judge.

The wife appeals the district court's dissolution decree. **AFFIRMED AS MODIFIED.**

Benjamin W. Blackstock of the Blackstock Law Offices, Cedar Rapids, for appellant.

David S. Good of Nazette, Hendrickson, Marner & Good, Cedar Rapids, for appellee.

Considered en banc.

SCHLEGEL, J. 000048

The wife appeals the district court's dissolution decree, claiming the court erred in: (1) setting the amount and duration of her alimony award; (2) dividing the parties' property; and (3) failing to make adequate provisions for her health insurance. The wife also claims the court erred in determining the amount of trial attorney fees to be awarded to her. The supreme court ordered Diane to submit her application for appellate attorney fees with this appeal.

Diane and Robert Buntz were married on October 14, 1967. They have two adult children, Bradley and Rebecca. Bradley is Diane's child from a previous marriage who Robert adopted after his marriage to Diane. Neither child lives at home.

Diane was born on May 30, 1943. She is a high school graduate and has attended one year of college. At the time of her marriage to Robert, she was employed as a secretary at Stewart's School of Hairstyling. Diane also sold Tupperware. Shortly after they were married, Robert and Diane moved to Cedar Rapids. After the move, Diane was unemployed. Two years later, with a $6000 gift from Diane's father, the couple purchased a home. Shortly thereafter, Diane gave birth to Rebecca.

Sometime in 1976, Diane and Robert incorporated a business named New Dimensions. Diane and Robert were equal owners. New Dimensions was a social service organization

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that operated group homes for adolescents and their families. In order to incorporate the business, Diane and Robert obtained a $36,000 loan from Diane's father. In 1980 the assets of New Dimensions were transferred to a nonprofit organization known as Alternative Services. This transfer allowed Diane's father to be paid back his money and also allowed Robert and Diane to make a profit.

Diane began as a bookkeeper with New Dimensions, and her responsibilities grew after the transfer to Alternative Services. Eventually, she became the director of administrative services. However, when their marriage began to break down, Diane left the business. At the time she left, Diane earned approximately $30,500.

Since Diane left Alternative Services her health has deteriorated. She has lost weight and, at the time of trial, was taking medication for depression.

Robert was born in April of 1941. He holds a masters degree in social work from the University of Iowa. He and Diane met while he was attending graduate school. He graduated just prior to the couple's marriage and move to Cedar Rapids. While in Cedar Rapids, Robert worked for Catholic Charities. In 1969 Robert went to work for Hillcrest Family Services. In 1974 Robert was hired by FAMCO to start group homes for adolescents.

Approximately one year later, FAMCO lost its license to run the group homes. Diane and Robert then started New Dimensions in order to take over the group homes. Robert

was the individual responsible for the operations of the New Dimensions group homes, and he remained in that position after the transfer to Alternative Services. At the time of trial, Robert's net monthly income was between $2500 and $2900 per month.

On June 13, 1991, Robert filed a petition for dissolution of marriage. The court's dissolution decree awarded Diane $800 per month for thirty-six months as rehabilitative alimony and also ordered Robert to maintain Diane's life insurance through Alternative Services in the amount of $175 per month. The court awarded the parties certain personal property. Among other things, Diane received the house and the 1985 Toyota. Robert received the boat plus one-half the equity in the house minus $16,219.99--the amount of the purchase price contributed by Diane from earnings prior to the marriage and from a gift to her from her father. Also, the court ordered Robert to pay $500 toward Diane's attorney fees. Diane appeals. We affirm as modified.

Our review in cases such as these 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. Iowa R. App. P. 14(f)(7). We are not bound by these determinations, however. Id. Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

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Diane first contends the trial court erred in determining the amount and duration of her alimony award. We agree. Alimony is an allowance to the former spouse in lieu of a legal obligation to support that person. See In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981). Alimony is not an absolute right; an award depends upon the circumstances of each particular case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3). See In re Marriage of Hayne, 334 N.W.2d 347 (Iowa App. 1983). When determining the appropriateness of alimony, the court must consider "(1) the earning capacity of each party, and (2) present standards of living and ability to pay balanced against relative needs of the other." In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983) (citation omitted).

When reviewing a district court's discretionary award of rehabilitative alimony in cases such as this where a spouse is clearly in need of--and entitled to--spousal support, we are often faced with the difficulty of arriving at an award which reflects an accurate assessment of the requesting parties' physical, emotional, educational, and economic "needs" and, at the same time, encourages--or even forces--the requesting party to expend an earnest effort toward overcoming the tribulations following a divorce in order to achieve self-sufficiency. Effectively achieving both of these goals is essential to effectuating equity.

The record in the present case reveals that Diane's physical, emotional, educational, and economic needs are great. Diane lost her job of sixteen years at the business--and later nonprofit corporation-- she cofounded with Robert. Diane served as the organization's administrative services director, personnel director, and purchasing agent, while Robert was employed as the executive director.

After Robert and Diane separated, Robert and the president of the board of directors determined that either Robert or Diane would have to leave the organization. Diane began to be excluded from office meetings and began having work taken away from her. In March of 1991 Robert flatly asked Diane, "When are you going to get out of here?" Diane met with the board of directors in the same month and was told her last date of employment with the company would be July 31, 1991. The record indicates Diane was working under extreme pressure at this time as a result of the difficulties with the marriage and the pressure put on her from Robert, the executive director. Diane left Alternative Services on May 5, 1991, when she could no longer withstand the pressure.

After her separation from Robert, Diane's physical and emotional health began deteriorating dramatically. Diane experienced significant weight loss and stress-related rashes, swellings, and eye problems. In addition, Diane was diagnosed by a psychiatrist as suffering from severe

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anxiety and depression. At the time of trial Diane continued to be treated for anxiety and depression and was under the care of a doctor for emotional problems which adversely affect her physically.

Diane has also had difficulty finding new employment. Since leaving Alternative Services Diane has sought other employment and has undergone career counseling at Kirkwood Community College. The director of counseling and placement at the college and a career research counselor have both assisted Diane in her effort to secure other employment. Both have indicated that securing a job involving the same or similar tasks as those performed by Diane at Alternative Services will be very difficult considering Diane's lack of college education, lack of a degree or other certifications, lack of experience and credentials in areas other than those performed at Alternative Services, and Diane's age.

Upon hearing this evidence, the district court correctly determined:

> The Court finds that Respondent's [Diane's] opportunity for meaningful employment is severely limited by her lack of degree, certification or recognition in her area of expertise.
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> * * *
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> The Court finds that because of the Respondent's limited access to the job market and her diminished emotional and physical condition, she is in need of and is entitled to spousal support. In addition to spousal support, Respondent is entitled to and qualifies for medical insurance under the COBRA provisions as applied to Alternative Services, Inc.

While the record unquestionably supports the district court's findings above, it does not support the trial court's conclusion that an alimony award of $800 per month for thirty-six months is adequate spousal support for Diane under the circumstances of this case. After considering the factors enumerated in Iowa Code section 598.21(3) (1991), including but not limited to the length of the parties' marriage, Diane's age, Diane's physical and emotional health, Diane's educational level, Diane's current earning capacity, and the length of time and additional education necessary for Diane to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, we firmly believe a modification of the district court's alimony award is necessary.

Accordingly, we order Robert to pay rehabilitative alimony to Diane in the amount of $800 per month for forty-eight months after which time the award shall be decreased to $500 per month for an additional twenty-four months. In addition, Robert shall pay Diane's medical insurance premium which will entitle Diane to the maximum amount of medical insurance under the COBRA provisions as applied to Alternative Services, Inc. This payment of medical insurance premiums shall continue for a length of seventy-two months.

This spousal support award is designed to afford Diane the opportunity to regain control of her physical and

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emotional health and to obtain the necessary training, education, and credentials to become self-supporting and to secure appropriate employment.

Next, Diane contends the district court erred in ordering Robert to pay only $500 toward her trial attorney fees and requests attorney fees on 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 Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to 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).

To overturn the trial court's award of attorney fees, the complaining party must show the trial court abused its discretion. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). Having applied these principles to the facts of the present case, we conclude the trial court did not abuse its discretion in awarding Diane $500 in attorney fees. Robert shall pay $1000 toward Diane's appellate attorney fees, and Robert shall pay all the costs of this appeal.

Finally, we direct our attention to Diane's contention that the district court erred in dividing the parties' property. Having reviewed the court's distribution of the parties' property in consideration of the criteria codified

in Iowa Code section 598.21(1) (1991), we conclude the court's division is fair and equitable, and we decline to disturb it on appeal. To clarify the trial court's division of property, however, it should be noted that Diane is responsible for payment of the mortgage on the homestead.

In accordance with the preceding discussion we affirm the district court's dissolution decree as modified.

AFFIRMED AS MODIFIED.

All judges concur except Hayden and Donielson, JJ., who dissent.

HAYDEN, J. (dissenting)

I respectfully dissent. I would affirm the trial court.

Donielson, J., joins this dissent.