IN THE COURT OF APPEALS OF IOWA

No. 1-522 / 91-294

IN RE THE MARRIAGE OF JAMES R. THOMSON AND SUSAN E. THOMSON

Upon the Petition of

JAMES R. THOMSON,

Appellee,

And Concerning

SUSAN E. THOMSON,

Appellant.

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FILED
APR 28 1992
CLERK SUPREME COURT

Appeal from the Iowa District Court for Clinton County, L.D. Carstensen, Judge.

The wife appeals certain economic provisions in a decree of dissolution entered by the district court. **AFFIRMED AS MODIFIED.**

Robert J. McGee, Clinton, for appellant.

Thomas D. Lonergan and Gary J. Rolfes of Mayer, Mayer, Lonergan & Rolfes, Clinton, for appellee.

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

PER CURIAM.

James and Susan Thomson were married in 1974. They have four minor sons, ranging in age from eight to fifteen at trial time. The dissolution decree placed the children in joint legal custody and in James' primary physical care. These custody provisions are not challenged on appeal.

James, thirty-eight years old at trial time, is employed as a maintenance mechanic at Quantum Chemical in Clinton, Iowa. His gross income is about $41,652 per year, and his net income about $2739 per month.

Susan, thirty-nine years old at trial time, is employed as a nurses' aid trainee by Clinton Retirement Village. She earns $3.85 per hour for a thirty-hour week. Susan's gross income is about $6000 per year, and her net income about $424 per month. Throughout the marriage, she has held a succession of jobs at or near the minimum wage. She is licensed as a cosmetologist but states she has been unable to find employment in that field.

The district court awarded James most of the parties' assets, including the marital residence, and all of the parties' debts. Included in the assets awarded to James was his 401K plan, worth $14,700. After computing the assets and liabilities of the parties, it appears that James was awarded net property worth $6602 and Susan net property worth $2000. Included in Susan's award is a 1981

Pontiac worth $1500 and her personal property, worth $500. The court did not award any spousal or child support. James was ordered to pay $500 towards Susan's attorney fees. Susan has appealed.

I. Our scope of review in dissolution cases is de novo. In re Marriage of Craig, 462 N.W.2d 692, 693 (Iowa App. 1990). While not bound by the trial court's determination of factual findings, we will give them considerable weight, especially when considering the credibility of witnesses. Id.

II. Susan contends the district court's property distribution is inequitable. She believes the court should have divided James' pension fund. She also states that the court failed to consider that she took out a student loan for $5000 while attending cosmetology school during the marriage.

Furthermore, Susan claims James could discharge in bankruptcy a debt in the amount of $17,315 to the Veteran's Administration (VA). This debt arose when the VA foreclosed upon the parties' previous residence. She believes James will be able to discharge the debt in bankruptcy, yet keep the assets which the district court awarded to him to offset this debt.

The partners in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. In re Marriage of Russell, 473 N.W.2d 244,

246 (Iowa App. 1991). We do not require an equal division or percentage distribution. Id. The determining factor is what is fair and equitable in each particular circumstance. Id.

We find Susan's student loan of $5000 should be considered a debt of the marriage. We find no evidence James plans to file for bankruptcy. We cannot make the assumption that James would be able to retain all of the assets awarded to him if he did file for bankruptcy. We find the district court properly awarded James' pension plan to him in view of the debts assigned to him.

We find the debt for Susan's student loan should be assigned to her. We conclude James should be required to pay a lump-sum property settlement of $3600 to Susan in order to help offset this debt. We affirm the property distribution as set forth by the district court, except for these two modifications.

III. Susan asks for short-term rehabilitative alimony of $150 per week for four years. She argues that James has substantial income and that she is unable to support herself. Susan points out that she does not even have sufficient income to rent an apartment, but must live with friends. She would like better accommodations in order to facilitate visitation with the children.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. In re Marriage

of Whelchel, 476 N.W.2d 104, 110 (Iowa App. 1991). When determining the appropriateness of alimony, the court should consider the earning capacity of each party. In re Marriage of Oler, 451 N.W.2d 9, 13 (Iowa App. 1989). Also, the ability of the one spouse to pay should be balanced against the needs of the other spouse. Id.

We find Susan's request for alimony of $150 per week for four years is excessive, particularly given the fact that she is not presently required to pay child support. We also find that she received training in a new career, cosmetology, during the marriage, but that she does not work in this area. We determine, however, that Susan should be awarded rehabilitative alimony of $150 per month for one year in order to allow her to find full-time employment and better accommodations. This should allow her sufficient time to become self-supporting. We note that James may later seek a modification of the dissolution decree to require Susan to pay child support.

We modify the dissolution decree to require James to pay Susan rehabilitative alimony of $150 per month for one year.

IV. Finally, Susan seeks attorney fees for this appeal. Her attorney filed an affidavit indicating he plans to charge her $1360 for services rendered on appeal.

An award of attorney fees is not a matter of right, but rests within our discretion and the parties' financial

positions. In re Marriage of Hunt, 476 N.W.2d 99, 103 (Iowa App. 1991). We determine James should pay the amount of $500 towards Susan's attorney fees for this appeal. Costs of this appeal are assessed to James.

AFFIRMED AS MODIFIED.