

IN THE COURT OF APPEALS OF IOWA

FILED

APR 25 1989

CLERK SUPREME COURT

IN RE THE MARRIAGE OF SUZAN E. LAU AND JEFFREY D. LAU

Upon the Petition of)

SUZAN E. LAU,)

Petitioner-Appellee,)

And Concerning)

JEFFREY D. LAU,)

Respondent-Appellant.)

204

8-504
88-175

Appeal from the Iowa District Court for Clayton County
(No. 3020), John Bauercamper, Judge.

Respondent appeals from a dissolution decree,
challenging various economic provisions. **AFFIRMED AS
MODIFIED.**

Kathleen Neylan of Neylan Law Office, Elkader, for
respondent-appellant.

Kevin H. Clefisch of Clefisch & Saunders, Elkader, for
petitioner-appellee.

Considered en banc.

PER CURIAM

205

Jeffrey Lau appeals various economic provisions of the district court's decree dissolving his marriage to Suzan. He contends: 1) the trial court erred in awarding alimony; 2) the child support amount fixed by the court is inequitable; 3) the trial court erred in failing to modify temporary support; 4) the trial court did not adequately address income tax consequences; and 5) the trial court erred in assigning the debts to the respondent. We affirm as modified.

Jeffrey and Suzan Lau were married on December 6, 1969. They have three children: Charles, born May 26, 1970; Michelle, born August 15, 1974; and Justin, born January 16, 1980. Their marriage was dissolved on January 8, 1988. Both parties were awarded joint custody of all three children. Charles joined his father in Georgia in July of 1987. Suzan retains primary physical care of Michelle and Justin.

We review de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of fact, but we are not bound by them. Iowa R. App. P. 14(f)(7).

Jeffrey argues the trial court erred in awarding Suzan temporary alimony in the amount of \$350 with certain conditions. He asserts Suzan is capable of working at a minimum wage and that she is derelict in her parental responsibilities by pursuing higher education. We disagree. We do agree that the payment of alimony is not

an absolute right; but its award does depend upon the circumstances of each case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976).

When we consider all the factors listed in Iowa Code section 598.21(3), we conclude, as the trial court did, that an award for temporary alimony (rehabilitative alimony) is justified. In reaching this decision, we have also considered the earning capacity of each party, their present standard of living, and the ability to pay, balanced against the relative needs of the other party. However, we believe the amount of \$350 as set forth in paragraph 10 of the decretal part of the court decree should be reduced to \$250 a month and should terminate upon her death. We reach this decision after taking into consideration the amount of spendable income the respondent actually has. We cannot ignore the fact that he must pay the debts incurred by the parties during the course of their marriage. Therefore, as to paragraph 10 of the court's decree, it is modified by reducing the amount of temporary alimony to \$250 per month beginning with the date of the decree and continuing on the same date each month to and including the month of May 1991 unless the petitioner dies sooner, in which event the payment shall terminate. In addition, we adopt as our own the following provision from paragraph 10 of the decretal part of the court's decree: "If Petitioner obtains full time employment, other

than Summer employment, before May 1991, temporary alimony payments shall cease."

As it relates to the alimony allowances in paragraph 11 of the court's decree, we are of the opinion that the amount must be reduced. The temporary alimony award as allowed by the trial court was to enable the petitioner to enhance her educational training in order to permit her to find appropriate employment. By 1991, if she pursues her course of study, she should have her degree and thus be able to enter the job market.

We recognize that the respondent has earned the possibility of a military pension. Once he completes twenty years of military service, his pension rights will vest. He has been in the service eighteen years; he was married to the petitioner all of this time.

The trial court did not actuarially value the respondent's military benefit nor did it order a portion of the military pension payable to Suzan when Jeffrey receives it. But then the petitioner does not challenge this result on appeal. Thus, we do not consider it.

From the record before us, we conclude that the alimony award in paragraph 11 of the decretal part of the court's decree should be reduced from \$250 per month to \$100 per month beginning, as the trial court describes "the month after temporary alimony ceases and continuing on the same date each month for a period of ten years or until the

petitioner dies, remarries, or cohabits with an adult male."

Jeffrey next argues that the child support award made by the trial court is excessive; that Suzan should contribute to the financial support of her children by working full time rather than attend college. An award of child support is determined by considering those factors listed in Iowa Code section 598.21(4). Jeffrey disputes his ability to pay. He directs to our attention that he has one child that petitioner does not contribute support to.

The statement of affairs filed by Jeffrey reveals a monthly income after taxes of \$1,849.91, and, after automatic debt¹ deductions of \$433.60, he has a present take-home pay of \$1,461.31. He documents that it costs him approximately \$950 each month to provide for his and Charles's living expenses. We determine that he is able to contribute \$400 monthly to the support of Michelle and Justin. Consequently, we modify paragraph 6 of the trial court's order concerning child support by reducing the amount from \$600 per month to \$400 per month. At such time

1. Included in the automatic debt deduction are the following: \$27.49 life insurance (Jeffrey and Suzan), \$45 Red Cross (debt)(four months), \$6.25 M bond, \$2 CFC, \$.50 Soldiers' Home (mandatory), \$7.86 dental insurance (children), \$4 SGLI (mandatory), \$8 laundry (uniforms). In addition, he has a \$110 debt to the U.S. Army Finance payable for twenty-eight months, and a \$225.43 trailer payment debt for 180 months.

as only one child is permanently residing with petitioner, the amount shall be reduced to \$300 per month. In addition, we adopt as our own the following from paragraph 6 of the decretal part of the court's decree: "Support payments shall continue during the time Respondent has the children living with him for visitation. Support payments shall continue until each child graduates from high school, marries, dies, becomes self-supporting, or reaches age 18 and drops out of high school." We also determine that Suzan does not have the present financial ability to contribute to the support of Charles.

Jeffrey argues the trial court inequitably divided the family debts. We disagree. Regardless of whether Suzan would work for minimum wage or continue her education, Jeffrey is still in a better position to pay these debts. The evidence supports the fact that the Red Cross loan and Army finance loan were paid off as of June of 1988. The debts assigned to him by the trial court do not act as an obstruction to his other financial responsibilities. For these reasons, we find the property settlement as proposed by the court to be equitable.

Jeffrey contends that the trial court erred in not crediting his future child support payments with a reduction due him regarding temporary support because Charles moved in with him in July of 1987. We affirm the trial court in this respect.

Finally, Jeffrey argues the district court erred in not requiring Suzan to complete IRS Form 8332 as written consent that Jeffrey rightfully claim the children as exemptions for federal tax purposes. In order to comply with the district court's order in this regard, the parties are to complete Form 8332.

AFFIRMED AS MODIFIED.

All judges concur, except Sackett, J., and Oxberger, C.J., who concur in part and dissent in part.

SACKETT, J. (concurring in part and dissenting in part)

The majority has recognized the trial court did not value or divide substantial retirement benefits accruing to the husband during an eighteen-year marriage, where the wife assumed the role of homemaker and stay at home parent accruing no retirement benefits. The majority did not look at this issue because the wife did not cross-appeal. The majority did, however, at the husband's request, modify the decree and substantially reduce the alimony the trial court ordered payable to the wife. The majority also has reduced child support ordered by the trial court. I find the majority's decision to be inequitable. I think we must strive for equitable results in dissolutions and not seek procedural reasons to do otherwise. Considering all aspects of this case, I find the trial court reached an equitable decision and I would affirm it on appeal.

The parties have been married since 1969 and have three children. The two children under age eighteen are in Susan's care. Jeffrey entered the military service in 1969 and was still in the military at the time of trial. After remaining in the military for twenty years he will have a vested interest in a substantial military pension. Susan had no education beyond high school when the parties married. She assumed until recently the traditional role as homemaker. As a result, she acquired no pension or social security rights in her own name.

At the time of trial Jeffrey showed a monthly income after tax deductions of \$1,845. He also has substantial medical benefits and is accruing pension benefits. Susan was pursuing a degree to enhance her employment opportunities.

The trial court awarded child support of \$600 monthly to be reduced forty percent (or to \$360) when the older child is no longer subject to support. The majority has determined Jeffrey can pay child support for the two children of \$400 a month. And then \$300 a month (less than \$10 a day) for one child when Jeffrey takes home over \$60 a day. I find the child support award made by the majority inadequate. I would affirm the trial court.

The trial court also ordered Jeffrey to pay alimony of \$350 per month from January 1988 until May 1991, or when Susan obtains full-time employment. In 1991 or when Susan obtains full-time employment the alimony was ordered reduced to \$250 per month for ten years or until Susan dies, remarries or cohabits with an adult male. The majority has modified this award. The majority has modified the trial court's decision so Susan is to receive \$250 from January 1988 to May 1989 or when she obtains full employment and then \$100 for the next ten years, to terminate on conditions specified in the trial court's decree.

Susan has spent nearly twenty years of her life making a home for Jeffrey and their family. They have acquired modest assets. Their financial position is substantially enhanced because Jeffrey during this period has been able to work toward the accrual of very substantial social security and pension rights. While I recognize he does not have an immediate right to draw either, those accruals all go to his benefit (save Susan's possible right to draw one-half the amount he does when he draws social security benefits).

No attempt was made in the trial court to actuarially value these benefits nor was a portion of the military pension ordered payable to Susan when Jeffrey receives it, as could have been done. The fact these benefits were not valued and the military pension not divided in the trial court should not mean Susan loses out on this issue. I consider them on the issue of alimony. When Susan enters the job market she is twenty years behind Jeffrey in accruing retirement benefits. The alimony awarded her is minimal compensation for his superior position.

I concur with the majority's decision to affirm the trial court on the other issues.

Oxberger, C.J., joins this partial concurrence and dissent.