IN THE COURT OF APPEALS OF IOWA

No. 1999-150 (9-366) / 98-1934
Filed on October 27, 1999

FILED
OCT 27 1999
CLERK SUPREME COURT

IN RE THE MARRIAGE OF G. ALAN McDERMOTT AND NINA McDERMOTT

Upon the Petition of
G. ALAN McDERMOTT,

Appellant,

And Concerning
NINA McDERMOTT,

Appellee.

Appeal from the Iowa District Court for Scott County, Bobbie M. Alpers, Judge.

The appellant appeals various economic provisions of the parties' dissolution decree. **AFFIRMED.**

Donovan S. Robertson of Robertson & Conklin, Rock Island, Illinois, for appellant.

Morton A. Teitle and Justin A. Teitle of Teitle Law Offices, Davenport, for appellee.

Considered by Streit, P.J., and Vogel, and Vaitheswaran, JJ.

VAITHESWARAN, J.

In this appeal from a dissolution decree, Alan McDermott challenges a spousal support award and allocation of inherited property. We affirm.

Alan and Nina McDermott were married on August 26, 1965 at the ages of twenty-two. Their marriage ended approximately thirty-three years later. During their marriage, Alan worked for the federal government as an electrical engineer. He earned $71,503 per year at the time of trial. Nina briefly taught secondary school English, then stayed at home to raise their two children. In the final fourteen years of their marriage, Nina worked for the federal government as a clerk typist, contract procurement specialist, and finally as a budget analyst. Nina earned $45,024 per year at the time of trial. Alan was in good physical health. Nina survived breast cancer, following surgery in 1983. The district court ordered Alan to pay Nina spousal support of $250 per week. The support was to terminate upon Alan's retirement and receipt by Nina of her portion of Alan's pension. The district court also distributed the parties' property. Alan contests the support portion of the decree and that portion of the property award allocating to Nina items that he contends he inherited.

Our review of this equitable action is de novo. *In re Marriage of Eastman*, 538 N.W.2d 874, 876 (Iowa App. 1995). Although we are not bound by the district court's findings of fact, we give them deference. *Id.*

I. Spousal Support

Iowa Code section 598.21(3) sets forth the factors that a court must consider when faced with a request for spousal support. In awarding support, the district court reasoned that, although Alan was considering retirement, he would likely earn compensation as a consultant after retirement. The court noted that Nina, on the other hand, would likely work until she was sixty-two years old in order to supplement her pension with social security benefits. The court further stated that the parties had enjoyed a "pleasant, prosperous lifestyle," Alan's income had consistently been more than Nina's, he had amassed a larger pension than hers, and Nina had been out of the work force for a number of years.

Alan suggests that the district court's award was improper because Nina is self-supporting and has enjoyed and been compensated by a comfortable lifestyle. We reject this contention. We begin by noting that district courts are afforded wide latitude in making alimony determinations and their rulings will be disturbed only when there has been a failure to do equity. *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996). The district court here expressly considered the factors set forth in Iowa Code section 598.21(3), then concluded that "Nina's annual earnings from income will not continue to provide her with the same standard of living after the dissolution which she has enjoyed while married to Alan unless Alan provides her with monthly payments of spousal support." We find no reason to disturb this ruling.

The evidence summarized by the district court, together with the potentially short duration of the award suggest that the ruling was equitable.

We also reject Alan's remaining challenges to the spousal support ruling, including his contention that the district court inappropriately made the award to equalize the income of the parties, rather than to satisfy objective needs. The record suggests otherwise. Without spousal support, Nina would have had difficulty maintaining the standard of living she was used to. Nina also would have difficulty obtaining health insurance if she lost her job, in light of her pre-existing breast cancer. Accordingly, the support award was appropriate.

II. Allocation of Inherited Property

Alan next contends that the district court should not have allocated to Nina items he asserts he inherited. Iowa Code section 598.21(2) (1997) states, "[p]roperty inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or the children of the marriage." The district court here found that "any money or items inherited by the parties during the marriage, with the exception of several personal items, were received by the parties as a couple or were commingled and used by the parties as family possessions throughout their marriage." The court awarded Nina jewelry items she received as gifts or

bequests from Alan's mother. The court divided certain sterling silver, crystal and china equally between the parties. With respect to remaining household items and furnishings, the court required the parties to alternately select items from lists prepared by them, with Alan beginning the selection process.

At trial, Alan furnished the court with a list of items that he asserted were inherited. In addition to the silver, china and crystal listed in the district court's ruling, Alan claims entitlement to vases, fruit bowls, statues, a chandelier, two paintings, perfume bottles, a metal clock, a desk/library table, a dining room set, an antique sewing machine, finger bowls, a mirror, and spoons. The record reflects that all of these items were acquired over the course of the thirty-three year marriage and were used and enjoyed by both parties. Additionally, certain items such as the chandelier were selected by Nina at her mother-in-law's request, a woman with whom Nina had a close personal relationship. Further, Nina did not specially claim the household items she inherited from her father or items that were purchased with funds inherited from him, because those items were used by both parties. Under these circumstances, the district court acted equitably in distributing to Nina half of the disputed items on Alan's inheritance list.

III. Appellate Attorney Fees

Nina seeks an award of appellate attorney fees. Such an award rests within the discretion of the court. *In re Marriage of Benson*, 545 N.W.2d at 258. A court considers the financial position of the parties and whether the party making the

request was obligated to defend the trial court's decision on appeal. *Id.* We deny Nina's request for fees because her financial position has improved as a result of the district court's alimony and property rulings that we here affirm.

The judgment of the district court is affirmed. The costs of this appeal are assessed to Alan.

AFFIRMED.