IN THE COURT OF APPEALS OF IOWA

No. 4-050 / 93-377

FILED
MAR 24 1994
CLERK SUPREME COURT

IN RE THE MARRIAGE OF BARBARA A. GOODSELL AND RUSSELL L. GOODSELL

Upon the Petition of
BARBARA A. GOODSELL,

Appellee,

And Concerning
RUSSELL L. GOODSELL,

Appellant.

Appeal from the Iowa District Court for Polk County, Gene L. Needles, Judge.

Russell Goodsell appeals the alimony and attorney fees provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Kolleen K. Samek, Des Moines, for appellant.

Harlan M. Hockett, Des Moines, for appellee.

Heard by Schlegel, P.J., and Habhab and Cady, JJ., but decided by Habhab, P.J., Cady, J., and Schlegel, S.J.*

*Senior judge from the Iowa Court of Appeals serving by order of the Iowa Supreme Court.

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SCHLEGEL, S.J.

Russell Goodsell appeals the alimony and attorney fees provisions of the parties' dissolution decree. He contends the district court erred in (1) awarding Barbara $1000 per month alimony until Russell reaches age sixty-five and (2) awarding petitioner $6500 in attorney fees. Barbara requests attorney fees on appeal.

Russell and Barbara Goodsell were married on July 27, 1958. At the time of trial, Russell was fifty-three years of age, and Barbara was fifty-two. The parties have two children who have attained the age of emancipation who are not a subject of the present action.

Russell has been employed in the food and grocery business all of his working life. Russell is currently employed with the John Morrell Company as a sales manager; he earned a gross income of $53,383 in 1992. Barbara stayed at home with the children until the youngest reached school age, at which time she earned approximately $4.50 per hour at a part-time job in a catering business. Barbara later changed employers and began working at the Sheldon Christian School as a hot lunch clerk, earning approximately five dollars per hour. Barbara continued this job for about thirteen years.

After the family moved to Des Moines, Barbara obtained a job with Maurice's in the distribution center. Barbara also obtained employment as a cook for Holy Trinity School. Barbara currently earns a gross income of $11,000 per year from these two jobs.

Barbara filed the petition for dissolution on April 13, 1992. Pursuant to a temporary order, Russell was ordered to pay the house mortgage payment in the amount of $820.75 per month plus utilities. Barbara was to pay the balance of the homestead expenses, including cable and telephone. At trial, the district court determined that Russell had been deliberately hiding information regarding his income, noting that despite Russell's relatively high income, he only reported net monthly income of $900 per month and attempted to explain away a $7000 bonus.

The district court awarded Barbara marital assets totaling $55,000, of which $30,000 could be easily liquidated. Russell was awarded $49,000 in assets, only $7000 of which could be easily liquidated. Russell was also ordered to pay Barbara the sum of $1000 per month as alimony until he reaches the age of sixty-five, either party dies, or Barbara remarries or cohabits with another adult. Russell was additionally ordered to pay $6500 towards Barbara's attorney fees. Russell appeals. We affirm as modified.

Russell first contends the district court erred in determining the amount and duration of his alimony obligation to Barbara. 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).

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).

Having applied these factors to the present case, we conclude the district court properly ordered Russell to pay alimony in the amount of $1000 per month. This alimony award shall continue until Russell reaches the age of sixty-five or retires with Social Security benefits, whichever occurs first. The alimony award shall further terminate upon the death of either party or the remarriage or cohabitation of Barbara.

Next, Russell argues the district court erred in awarding Barbara $6500 in trial attorney fees. Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). To overturn an award the complaining party must show the trial court abused its discretion. Id. Awards of attorney fees must be for fair and reasonable amounts, In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977), and must be based on the parties' respective

abilities to pay. In re Marriage of Lattig, 318 N.W.2d 811, 817 (Iowa App. 1982).

Russell contends the trial court was merely punishing him for not providing certain financial documents pursuant to discovery orders. He argues the trial court in essence punished him twice for the same conduct thereby abusing its discretion. It is undisputed that Russell was sanctioned twice for failing to produce financial documents and was ordered to pay a total of $650 in sanctions and attorney fees. At the first hearing on Barbara's motion to compel, Russell was ordered to pay $150, which he did. He was further ordered to pay an additional $500 upon a second motion to compel, which he did. Russell contends, however, that the trial court once again punished him for failing to provide Barbara with information concerning his salary in its final award of $6500 in attorney fees to Barbara.

We do not find this argument to be persuasive. The initial $650 in sanctions and attorney fees which Russell was required to pay constituted both sanctions and compensation to Barbara's counsel for filing two motions to compel and for attending the resulting hearings on these motions. The district court's final award of $6500 in attorney fees to Barbara constituted payment to her attorney for the extra time and expense necessary in preparing to address the issues of property distribution and alimony at trial--without the required financial documents. We cannot say the district court abused its

discretion in ordering Russell to pay an additional $6500 toward Barbara's trial attorney fees, in addition to the $650 previously paid by him in sanctions and towards Barbara's attorney fees.

Finally, Barbara 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).

Applying these principles to the present case, we order Russell to pay $1000 toward Barbara's appellate attorney fees. Russell shall pay the costs of this appeal.

AFFIRMED AS MODIFIED.