IN THE COURT OF APPEALS OF IOWA

No. 4-116 / 93-0788

FILED
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CLERK SUPREME COURT
030855

IN RE THE MARRIAGE OF DEBORAH SUE BEITZ AND ARLO GENE BEITZ

Upon the Petition of
DEBORAH SUE BEITZ,

Petitioner-Appellee/Cross-Appellant,

And Concerning
ARLO GENE BEITZ,

Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Webster County, Kurt L. Wilke, Judge.

Arlo Beitz appeals from the provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Dan T. McGrevey, Fort Dodge, for appellant.

Blake Parker of Parker and Fors, Fort Dodge, for appellee.

Considered by Donielson, C.J., and Sackett and Huitink, JJ. Cady, J., takes no part.

SACKETT, J.

Respondent-appellant/cross-appellee Arlo Gene Beitz appeals and petitioner-appellee/cross-appellant Deborah Sue Beitz cross-appeals challenging the economic provisions of their dissolution decree. Deborah and Arlo were married in September 1982. They have one child, a son, Travis, born April 26, 1985. At the time of the dissolution hearing, Arlo was fifty years old and Deborah was thirty-one years old. The parties agreed to joint custody of their son with Deborah receiving physical care. The arrangement was approved by the trial court in the decree and no appeal is taken from this provision. The trial court decided the issues of child support, property division and alimony, all of which are issues on appeal. We affirm as modified.

Arlo challenges the child support award contending, in setting the award, the trial court considered overtime wages where there was no certainty he earned overtime pay and overtime pay was speculative. The trial court found Deborah's net monthly earnings were $851.97 and Arlo's net monthly earnings were $2038.11. Deborah was awarded child support of 23.2 percent of Arlo's earnings, or $472.84 a month. In arriving at Arlo's net monthly income, the trial court considered his overtime pay. Arlo asks we recalculate the support based on a forty-hour work week and he pay a percentage of any overtime pay he actually receives.

Arlo asks we adopt a scheme similar to the one the

trial court adopted in In re Marriage of Allen, 493 N.W.2d 273, 276 (Iowa App. 1992), and we affirmed. The trial court in Allen decided a noncustodial parent who received bonuses should pay, as additional child support, a percentage of the bonus income if and when received. We deny Arlo's request. To determine Arlo's overtime income in each pay check demands a number of mathematical computations. Determining a percentage of an occasional bonus[1] is not the same as identifying overtime pay in each pay check.

The next question is whether the trial court properly considered Arlo's overtime pay in fixing child support. Arlo testified his overtime pay will be reduced. We find Arlo's overtime is not speculative; he has received it over a long period and, because Arlo is a foreman, there is not a reasonable likelihood overtime will be reduced. The trial court's determination to include overtime pay in computing Arlo's income for child support purposes is equitable. See generally State Dep't of Human Servs. ex rel. Hammons v. Burge, 503 N.W.2d 413, 415 (Iowa 1993); In re Marriage of Brown, 487 N.W.2d 331, 333-34 (Iowa 1992); In re Marriage of Elbert, 492 N.W.2d 733, 735 (Iowa App. 1992). We affirm the child support award.

Both Arlo and Deborah challenge the economic provisions

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1. We simplified the computation in Allen by decreasing the percentage from what the trial court awarded to a lesser percentage of the total bonus so as to avoid complex tax computations to arrive at an amount after taxes.

of the decree. The trial court divided the property, denied Deborah's claim for alimony, and ordered Arlo to contribute toward Deborah's attorney fees.

Arlo challenges the property division. He advances he was nearly twenty years older than Deborah when they were married, he had been in the work force longer, and had accumulated more property than she. He contends the trial court divided the property to apportion about $81,500 in assets to him and about $70,000 in assets to Deborah. Deborah contends the division resulted in Arlo receiving $83,500 in assets and her receiving $70,000. Arlo, additionally, was ordered to pay $2650 to Deborah's attorney. Arlo contends his net worth at the time of the marriage was about $37,000. He asks we modify to provide the Fort Dodge house, which the trial court divided, be awarded solely to him. The trial court recognized Arlo owned the house at the time of the marriage but ordered it divided because of Deborah's contribution to the home during the marriage.

Deborah recognizes when they were married Arlo had property. She advances their accumulations are from earnings during the marriage and from lottery winnings. Deborah contends, in arriving at Arlo's premarital property figure, he valued the house at its current value rather than its value at the time of marriage. She contends, if

the property division is modified to give Arlo more property, she should receive alimony.

Whether the award was equitable depends on the facts of this particular case. See In re Marriage of Vrban, 359 N.W.2d 420, 427 (Iowa 1984). A justified property division is one that is equitable under the circumstances. In re Marriage of Stewart, 356 N.W.2d 611, 612 (Iowa App. 1984). We consider the property division and alimony together in evaluating their individual sufficiency; they are neither made nor subject to evaluation in isolation from one another. See In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984).

Arlo had the home at the time of the marriage. He should receive the home, and we modify to award it to him.

We next address Deborah's claim that if Arlo gets more property, she should have alimony. The right to alimony depends on the circumstances of each case.

Spousal support may be granted in a dissolution. Iowa Code § 598.21(3). A purpose of spousal support or alimony is to rectify the inequities of a marriage and to compensate a spouse who leaves the marriage at a disadvantage.

Under Iowa Code section 598.21(3)(a-j), the court is directed to consider all of a series of factors. In assessing this issue, we look to these factors and applicable case law. See In re Marriage of Sell, 451 N.W.2d 28, 31 (Iowa App. 1989); In re Marriage of Hogeland,

448 N.W.2d 678, 680-82 (Iowa App. 1989); In re Marriage of Dahl, 418 N.W.2d 358, 361 (Iowa App. 1987); Griffin, 356 N.W.2d at 608-09; In re Marriage of Estlund, 344 N.W.2d 276, 280-81 (Iowa App. 1983). Deborah is not a spouse who is a candidate for alimony. Deborah has been employed outside the home throughout most of the marriage. She has, therefore, during the marriage, made FICA contributions. Deborah has social security coverage for both disability and retirement. She has a retirement plan. She is considerably younger than Arlo and has sufficient time to save for retirement. The fact Arlo is older than Deborah creates a greater possibility he will suffer a disease related to aging sooner than Deborah. The physical health of the parties is one of the factors required to be considered under Iowa Code section 598.21(3)(b). Deborah is receiving a substantial property settlement. She has made no contributions to Arlo's education or career. She is currently employed with job security. Arlo's job pays more than does Deborah's but that fact alone does not support an alimony award.

Each party shall pay his or her own attorney fees. Costs on appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.