# IN THE COURT OF APPEALS OF IOWA

No. 1999-28 (9-138) / 98-1380
Filed July 23, 1999

**IN RE THE MARRIAGE OF LORY LOU BAETHKE AND CALVIN MARK BAETHKE**

**Upon the Petition of LORY LOU BAETHKE,**

Petitioner-Appellant,

**And Concerning CALVIN MARK BAETHKE,**

Respondent-Appellee.

FILED
JUL 23 1999
CLERK SUPREME COURT

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Appeal from the Iowa District Court for Polk County, Robert D. Wilson, Judge.

Petitioner appeals from various economic provisions of the parties' dissolution decree. **AFFIRMED.**

Lee M. Walker of Walker, Knopf & Billingsley, Newton, for appellant.

Timothy A. Lynch of Van Ordsel, Lynch & Rouse, L.C., Des Moines, for appellee.

Considered by Sackett, C.J., and Vogel and Zimmer, JJ.

**SACKETT, C.J.**

Petitioner-appellant Lory Lou Baethke appeals challenging the economic provisions of a decree dissolving her nineteen-year marriage to respondent-appellee Calvin Mark Baethke. We affirm.

Our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Hardy*, 539 N.W.2d 729, 730 (Iowa App. 1995). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

At the time of marriage, Lory was sixteen and had finished her sophomore year of high school. She has not furthered her education. For a period of time, she did not work outside the home, but most recently has been employed in food service jobs and earns about $11,000 a year. Mark, twenty-one at the time of marriage, had just completed college and was certified as a teacher. He has taught throughout the marriage. At the time of the dissolution, Mark was earning about $36,000 annually. He had college loans that were paid during the marriage. Neither party's brief has identified the amount of these loans.

The parties have two children. The older child is now an adult, and neither the support nor custody of that child is at issue. However, Mark agreed he would continue making payments on that child's vehicle.

The physical care of the parties' younger child, Autumn, born in 1983, was awarded to Lory. Mark was ordered to pay child support of $470 a month. These provisions of the decree are not challenged.

Lory contends the other economic provisions of the decree are not equitable and (1) she should have been awarded rehabilitative alimony; (2) the alimony awarded by way of education expenses was not sufficient; and (3) she should not have been ordered to assume a second mortgage on the family home. Lory also requested she be awarded $1000 in appellate attorney fees.

The parties stipulated to the division of certain of their property. They agreed Lory would receive all the household furnishings and appliances. It was further agreed Lory should receive the home subject to her paying the first mortgage of $76,000. The issue of responsibility to pay the second mortgage of $18,000 was submitted to the district court, which found Lory should also be responsible for the second mortgage. The house was worth about $96,000, making her equity in the house to be no more than $2000.

It was also agreed Lory should receive the only family vehicle; Lory also assumed the debt on that vehicle.

Lory's parents either loaned or gifted the couple $10,000 during the marriage. Lory was held responsible for any repayment expected by her parents. The parties agreed Lory should receive one-half of Mark's IPERS account.

The issue of Lory's claim for alimony was submitted to the district court. The court awarded Lory what it termed "alimony for educational assistance." Specifically, the district court ordered Mark in the five years following the dissolution to be responsible for one-half of Lory's monthly expenses for tuition and books, not to exceed $250 a month. The obligation was to end if Lory died or failed to receive a high school diploma in the three years following the dissolution.

Mark was awarded one-half of his IPERS account and was ordered to pay $8000 in accumulated debts.

Though the record is vague on the value of the personal property Lory received, we conclude the property division favored Lory by no more than $10,000.

We first address Lory's contention she should be awarded additional alimony. She advances this is a marriage of nearly twenty years and Mark's income is higher than hers. Lory claims she will not be able to better herself without additional education. She contends the alimony awarded by the district court is not sufficient to allow her to obtain additional education. She asks for sufficient alimony to allow her to complete two years of high school and two years at the area community college. She advances only then will she be able to be employed at a level that allows her to maintain her standard of living. The record does not reflect what job Lory intends to qualify for or what the job market shows would be available wages should she complete the education she contends Mark should help her attain.

The district court, in making the alimony award, found (1) both parties are in good health; (2) the property division favored Lory; (3) neither party improved his or her education during the marriage; (4) while Lory's employment opportunities were less because of her lack of education, she had considerable experience working in the restaurant industry and her skills were such she can continue this employment; (5) Lory's lack of earning capacity is not limited by lack of work experience, absence from the job market, or responsibilities for children; (6) despite encouragement during the marriage from her family and Mark, Lory took no steps to further her education nor had she at the time of the dissolution hearing.

Mark advances the award made was fair and specifically points out Lory received a larger share of the parties' property and less debt. Lory has also challenged the allocation of the property and the debt.

Spousal support is provided for under Iowa Code section 598.21(3). Whether spousal support is justified is dependent on the facts of each case. *See in re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976). In assessing a claim for alimony, we consider the property division and alimony together in determining their sufficiency. *See In re Marriage of Lattig*, 318 N.W.2d 811, 815 (Iowa App. 1982). Entitlement to spousal support is not an absolute right. *In re Marriage of McFarland*, 239 N.W.2d 175, 179 (Iowa 1976). An alimony award is justified when the distribution of the assets of the marriage does not equalize the inequities and economic disadvantages

suffered in marriage by the party seeking the alimony who also has a need for support. *In re Marriage of Weiss*, 496 N.W.2d 785, 787-88.

Among the factors considered are the length of the marriage; the property brought to the marriage by each party; the contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services; the age and physical and emotional health of the parties; the contribution by one party to the education or increased earning power of the other; and the earning capacity of each party. *In re Marriage of Grady-Woods*, 577 N.W.2d 851, 854 n. 1 (Iowa App. 1998). The court may also consider "other factors the court . . . determine[s] . . . relevant in an individual case." Iowa Code § 598.21(3) (1997).

Considering the economic provisions as a whole, we find the alimony award and property division equitable and affirm. We award no attorney fees.

**AFFIRMED.**