FILED
JUN 29 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF MICHAEL G. HEYNS
AND KELLY T. HEYNS

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Upon the Petition of)

MICHAEL G. HEYNS,)

Petitioner-Appellant,)

And Concerning)

KELLY T. HEYNS,)

Respondent-Appellee.)

Filed June 29, 1988

8-209
87-866

Appeal from the Iowa District Court for Woodbury County (No. 10256), Michael S. Walsh, Judge.

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

Alice S. Horneber of Margolin, Gildemeister, Willia, Mugan & Keane, Sioux City, for the petitioner-appellant.

Bradford Kollars, Sioux City, for the respondent-appellee.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ.

PER CURIAM

Michael Heyns appeals the decree of the district court dissolving the parties' marriage. He asserts that the trial court erred: (1) in valuing his income and thus the amounts available to him to pay support; (2) in its award of alimony, child support and medical expenses; (3) in its division of property; and (4) in its award of attorney fees and court costs. We affirm as modified.

We review de novo. I. R. App. P. 4. We give weight to the findings of the trial court, especially where the credibility of witnesses is concerned, but we are not bound by them. I. R. App. P. 14(f)(7).

The parties were married for eighteen years and have two minor children, Angela (DOB October 12, 1972) and Garrett (DOB April 2, 1977). During the marriage Michael worked in management for Burlington Railroad. Kelly took care of the children and maintained the family home. Michael is forty-four years old and Kelly is forty-three.

Michael argues the trial court erred in valuing his yearly gross income at $60,000. He states that his gross income is $56,000 and that the $4,000 difference is a one-time bonus he received during 1986. He argues that his new position places him at the top pay of this position, therefore he will receive no pay increases in the future. He does not state he will not receive a bonus in the future. Kelly asserts that bonuses were regularly given in the past and will be in the future. Neither parties testified regarding the frequency of bonuses. Past tax returns reveal that Michael grossed $48,871 in 1981, $50,327 in 1982, $47,876 in 1983, $50,755 in 1984, and $57,695 in 1986. His November 1986 pay stub projects his total 1986 gross income of $60,649. The value the court set upon Michael's gross income is supported by the evidence. We see no reason to disturb the trial court's finding regarding this issue.

Michael contends that the trial court erred in its finding regarding the amount of spendable income he will have from his gross earnings. He states that the court should not have relied upon the testimony of the respondent's expert witness, Mr. William Sibley, Certified Public Accountant. Mr. Sibley testified regarding Michael's future spendable income after taxes if the court awarded alimony to Kelly in the amount of $1,500 per month and paid monthly child support of $1,000. Mr. Sibley testified that his projections were accurate within a range of $100 to $200 yearly. Michael had the opportunity to cross-examine this witness and rebut with his own expert. He chose not to do the latter. We find no problem with Mr. Sibley's testimony. The trial court properly relied upon this evidence in arriving at its decision regarding spendable income and attached whatever weight it deemed appropriate.

Michael objects to the amount of child support he has been ordered to pay because the trial court erred in its valuation of his gross and spendable income. Because this court finds no error in the trial court's valuation of his gross and spendable income, we find no merit in Michael's argument.

The award regarding health insurance benefits for the children is affirmed. The trial court awarded Kelly physical custody of the children and rehabilitative alimony for six years until she receives her B.A. and is gainfully employed. During this time Michael will be the only family member with an income. Support awards are made on an equitable basis considering those factors set out in the Iowa Code Section 598.21(4). See In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976). If the parties split the excess health costs above those covered by Michael's insurance as Michael suggests, the children's welfare will suffer.

Michael contends that the court should not have awarded Kelly alimony as she is presently able to work and support herself. The record reflects otherwise. When Kelly came to this country from Viet Nam to marry Michael, she

had graduated from high school and had taken several college courses. These credits did not transfer. Kelly maintained the family home and raised the children while Michael pursued his career. She requests alimony only as long as it takes her to be gainfully employed. The trial court granted her rehabilitative alimony which will be cut by one-half at the end of six years. The court stated that this should give Kelly time to receive her degree in business administration and become employed. Michael will no longer be obligated to pay alimony ten years after that date. Kelly should be allowed to pursue her career goals in order to better provide for herself and her two children. Kelly's earning capacity will be somewhat limited by the fact that she will be entering the job market during her late forties, and with little job experience. Her retirement and pension benefits will be likewise reduced.

We modify the alimony payments for the initial six-year period from $1,500 to the monthly amount of $1,000. Both parties are entitled to the standard of living enjoyed during the marriage. Where funds are inadequate to meet this goal, both should share the reduced amount. We repeat what we said in In re Marriage of Hayne, 344 N.W.2d 347, 351 (Iowa App. 1983):

> Those who possess valuable skills are recompensed by society for the efforts they put forth. The imposition of an onerous burden diminished the incentive of otherwise productive individuals to spend their time and energy in useful pursuits. Whether an individual is a neurosurgeon or in a high-paid profession, he is entitled to enjoy the rewards of his labors.

We further modify the alimony award to terminate upon Kelly's remarriage and upon Michael's death.

Further, the court ordered Michael to maintain his life insurance coverage, designating the children and Kelly as beneficiaries during the time he is required to pay support. Michael argues that should his death occur prior to that time, Kelly will receive alimony from the estate plus life insurance benefits. We

have modified the decree to terminate alimony payments upon Michael's death. Thus, there will not be duplicate award.

Michael argues that the trial court erred in not forcing the sale of the family home upon dissolution. In its enlarged order filed pursuant to I. R. Civ. P. 179(b), the court suggested the parties refinance their mortgage until such time as the home will be sold upon Angela's graduation from high school. Both Michael and Kelly agree this would be beneficial. It is this court's opinion that such efforts would benefit all parties involved, as well as the children, as opposed to selling the family home presently.

In its lengthy and detailed finding of facts and conclusions of law, the trial court fairly distributed the assets of the parties in keeping with 598.21. An equitable division of property does not imply an equal split of such assets. In re Martens, 406 N.W.2d 819, 821 (Iowa App. 1987). We therefore decline to disturb its findings regarding the equal division of 1986 joint federal and state income tax returns and personal property.

Regarding possession of the snowblower, there is conflicting testimony regarding whether it was intended as a gift to Michael alone or both parties jointly. There is no evidence in the record corroborating either party's position. Property received as a gift is normally set aside except where such disposition is inequitable. Iowa Code § 598.21(2). Kelly testified that she had some health problems upon manually removing snow. For that reason we affirm the trial court's award of snowblower to her.

The parties stipulated to fact that Kelly would receive the Burlington Northern stock and Michael would retain sole ownership in the thrift and profit-sharing plan. However, the trial court ordered both the stock and the thrift and profit-sharing plan divided equally between the parties in order to remedy Michael's cash flow problems. Michael argues on appeal that the tax consequences

will be adverse to him if he makes early withdrawals in order to comply with the district court's order. We agree. The parties' pretrial stipulation concerning disposition of these assets should control. We award Kelly the Burlington Northern Stock and Michael sole ownership in the thrift and profit-sharing plan.

We also find Michael has the ability to pay Kelly's attorney fees in the amount of $1,000 and costs as ordered by the trial court. The trial court did not abuse its discretion in so ordering. See In re Marriage of Stanley, 411 N.W.2d 698, 702 (Iowa App. 1987).

Kelly requests attorney fees for this appeal. Attorney fees are not a matter of right, but rest within the court's discretion and the parties' financial positions. In Re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). Because the trial court equitably divided the parties' assets, Kelly is presently unemployed, and Michael has the ability and should contribute to her attorney fees, we therefore order him to pay $2,000 of her appellate attorney fees. Costs are taxed to Michael.

AFFIRMED AS MODIFIED.