IN THE COURT OF APPEALS OF IOWA

No. 1-531 / 00-1312
Filed December 28, 2001

IN RE THE MARRIAGE OF JOHN RALPH HULETT
And LOIS CHRISTINE HULETT

Upon the Petition of
JOHN RALPH HULETT,
Petitioner-Appellant/Cross-Appellee,

And Concerning
LOIS CHRISTINE HULETT,
Respondent-Appellee/Cross-Appellant.

FILED
DEC 28 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge.

The petitioner appeals, and the respondent cross-appeals from the visitation and alimony provisions of the parties' dissolution decree. **AFFIRMED.**

John Ralph Hulett, Johnston, pro se appellant.

Matthew S. Sheeley, West Des Moines, for appellee.

Heard by Huitink P.J., and Zimmer and Vaitheswaran, JJ.

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VAITHESWARAN, J.

John Hulett appeals those portions of a divorce decree requiring him to pay half the costs of supervised visitation and awarding his wife alimony. We affirm.

I. Background Facts and Proceedings

John and Lois married in 1975. The parties have two children: Jason, born in 1981 and Chelsea, born in 1988. During the marriage, both parties attended college. John satisfied the requirements to obtain a degree in political science and received a certificate in computer science. Lois obtained a two-year degree in English and a bachelor's degree in journalism, both with honors.

Both parties were employed in a variety of jobs through most of their marriage. At the time of trial, John worked as a telecommunications coordinator for the United States district court, earning $55,487 per year and Lois worked as a telemarketer, earning less than $20,000 per year.

John filed a dissolution petition in 1999. He attested that Lois had physically assaulted him and physically and emotionally abused the children, resulting in the filing of criminal and child abuse complaints against her. Each party sought and obtained a domestic abuse protective order against the other. The district court continued the protective orders, awarded John temporary care of the children and occupancy of the parties' home, and ordered John to pay Lois $1000 per month in temporary support.

Before trial, the parties stipulated they would have joint legal custody of Chelsea, the only remaining minor child, with John assuming her physical care. They further agreed Lois' visitation with Chelsea would be supervised by a

psychologist for an indefinite period of time as determined by the psychologist. Although Jason was eighteen years old at the time of trial, he suffered from severe attention deficit disorder and required ongoing adult supervision and care. The stipulation did not address his care. However, John testified he would continue to care for Jason.

At trial, the parties focused on the financial components of the dissolution. After considering the evidence, the district court ordered Lois to pay child support of $527.80 per month for both children as long as Jason was eligible for support and $360.93 per month for Chelsea until she was no longer eligible for support, as prescribed by the child support guidelines. The court also ordered the parties to split the costs of supervised visitation and ordered John to pay Lois $500 per month in alimony for seventy-two months.

John filed a motion pursuant to Iowa Rule of Civil Procedure 179(b) for enlarged findings and conclusions, contending the court's order to split supervised visitation costs was contrary to the parties' stipulation. The court overruled the motion and this appeal followed. The sole issues on appeal are the propriety of the court's order concerning visitation costs and the need for alimony. We review these issues de novo. *In re Marriage of Maher*, 596 N.W.2d 561, 564 (Iowa 1999).

II. Supervised Visitation Costs

John contends the parties stipulated Lois would bear all the costs of supervised visitation and, consequently, the court's ruling to the contrary was inequitable. We find his argument unpersuasive. First, we find no mention of visitation costs in the parties' agreement on custody and visitation. Therefore,

the court's ruling does not contravene any express intent of the parties. Second, even if the pre-trial stipulation had addressed the cost issue, the district court was not bound to abide by its terms, particularly where the terms had direct bearing on unstipulated financial issues. *See In re Marriage of Hansen*, 465 N.W.2d 906, 909 (Iowa Ct. App. 1990); *In re Marriage of Lovetinsky*, 418 N.W.2d 88, 90 (Iowa Ct. App. 1987). As our highest court has stated, costs of transportation, child support, alimony, and property distribution "can neither be made nor evaluated in a vacuum." *In re Marriage of Behn*, 385 N.W.2d 540, 543-4 (Iowa 1986) (quoting *In re Marriage of Campbell*, 204 N.W.2d 638, 639 (Iowa 1973)). The visitation costs, therefore, had to be evaluated in conjunction with the financial circumstances of the parties.

The district court explained that it considered the visitation costs in conjunction with Lois' child support obligation. In balancing the two, the court "decided to give Lois relief on the supervision cost rather than reducing her child support obligation by variance from the guidelines." Lois' economic circumstances at the time of trial support this rationale for splitting the visitation costs. Accordingly, we affirm this portion of the court's ruling.

III. Alimony

John next challenges the district court's alimony award, contending: (1) Lois' educational background and work experience do not justify an award; (2) Lois deliberately chose to work below her earning capacity; (3) the award was in effect an offset against the child support order; (4) the award was inequitable in light of the heavy debt burden John assumed; (5) Lois was better off with the alimony than she was before the marriage deteriorated; and (6) the district court

erroneously tied the award to the prospect John might saddle Lois with joint debts after discharging his liability in bankruptcy. Lois responds that the length of the marriage and the discrepancy in the parties' income militates in favor of an award. We agree with Lois.

Our legislature has set forth a number of factors to consider in awarding alimony. Iowa Code § 598.21.[1] After considering those factors, it is apparent that, despite her advanced degrees, Lois never was able to earn as much as John. Although John ascribes these lower earnings to Lois' desire to stay home and write a novel, the district court gave more credence to Lois' testimony that John urged her to cut back her employment hours for the sake of the home and children. We defer to this credibility finding. *In re Marriage of Moore*, 526 N.W.2d 335, 337 (Iowa Ct. App., 1994). Additionally, we note that, at the time of trial, Lois was in fact working full time and had been for close to a year, lending further credence to her claim that the job cut-backs during the marriage were not voluntary.

Given the length of the marriage and the discrepancy in the parties' income resulting in part from Lois' sacrifices for the family, we agree with the district court that she is entitled to alimony. Whether we characterize this alimony as reimbursement, rehabilitative or transitional alimony makes little difference. *See In re Marriage of Smith*, 573 N.W.2d 924, 927 (Iowa 1998). The

[1] These factors include: the marriage length; the age and health of the parties; property distribution; education of the parties; the earning capacity of the spouse seeking alimony; feasibility of attaining self-sufficiency; tax consequences; mutual agreements by the parties regarding financial or service contributions; terms of a prenuptial agreement and any other factors deemed relevant by the court. Iowa Code § 598.21(3).

key fact warranting an award is that Lois requires assistance in the short-term to become self-sustaining in the long-term.

As Lois has independently established her entitlement to alimony based on the statutory factors and the unique circumstances of this case, we reject John's argument that the district court awarded Lois alimony merely to offset her child support obligation. *See In re Marriage of Craig*, 462 N.W.2d 692, 694 (Iowa Ct. App. 1990). We also reject his argument that the alimony award is inequitable given the heavy debt-load he assumed. In awarding alimony, the district court expressly noted it was requiring Lois to assume a larger debt obligation. Additionally, the court essentially discounted $17,000 of John's undocumented debts to family members, a decision with which we do not quarrel. We are equally unpersuaded by John's contention that the district court's alimony award of $500 per month will place Lois in a better position than she was before the marriage ended. Her limited earnings combined with her child-support and visitation costs render this prospect unlikely. *See In re Marriage of Wiedemann*, 402 N.W.2d 744, 749 (Iowa 1987) (alimony should provide standard of living reasonably comparable to that enjoyed during marriage).

Finally, we need not consider John's argument that the district court impermissibly based the alimony award on the likelihood John would file for bankruptcy, as we give no weight to this consideration on our de novo review. *Cf. In re Marriage of Geil*, 509 N.W.2d 738, 743 (Iowa 1993) (striking finding authorizing increase in alimony payments in event payor filed for bankruptcy); *In re Marriage of Trickey*, 589 N.W.2d 753, 758 (Iowa Ct. App. 1998) (holding

discharge of property settlement in bankruptcy furnished no basis to modify alimony award where movant failed to show substantial change in circumstances not contemplated when decree entered).

We conclude the district court acted equitably in awarding Lois alimony of $500 per month for seventy-two months.

IV. Attorney Fees

On cross-appeal, Lois seeks trial and appellate attorney fees. An award rests within the sound discretion of the court. *In re Marriage of Benson*, 545 N.W.2d 252, 258 (Iowa 1996). After considering the factors set forth in *Benson*, we conclude the trial court did not abuse its discretion in denying Lois' request for attorney fees. We decline an award of fees on appeal.

AFFIRMED.