IN THE COURT OF APPEALS OF IOWA

No. 8-098 / 97-0943

FILED
JUL 31 1998
CLERK SUPREME COURT

IN RE THE MARRIAGE OF DEBORAH ANN HALL AND DONALD DEAN HALL

Upon the Petition of
DEBORAH ANN HALL,

Petitioner-Appellee,

And Concerning
DONALD DEAN HALL,

Respondent-Appellant.

Appeal from the Iowa District Court for Clinton County, James R. Havercamp, Judge.

Respondent appeals from the economic provisions of the dissolution decree.

AFFIRMED.

Edward J. Kross of Van Scoy & Kross, P.C., Clinton, for appellant.

Lauren M. Phelps of Phelps & Phelps, Davenport, for appellee.

Considered by Sackett, P.J., and Huitink and Vogel, JJ.

SACKETT, P.J.

Respondent-appellant Donald Dean Hall appeals challenging the child support and other economic provisions of the decree dissolving his twenty-year marriage to petitioner-appellee Deborah Ann Hall. We affirm.

Our review of this equitable action is de novo. Iowa R. App. P. 4; *In re Marriage of Bergfeld*, 465 N.W.2d 865, 868 (Iowa 1991). We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. Iowa R. App. P. 14(f)(7).

The parties were married in 1976 and have children born in 1980, 1982, 1985, and 1989, who are in Deborah's physical care and subject to receive child support. Deborah, thirty-nine at the time of the dissolution, worked as a school bus driver and has begun taking classes at the Clinton Community College hoping to obtain a teaching degree in about five years. Donald, forty at the time of the dissolution, has been employed at Millenium Chemical Company since 1978. He earns $19.57 an hour. He has a base annual pay of $45,300. In 1992 he had an annual income of $56,407, and in 1996 he had an annual income of $65,168 due to overtime work. He has been treated for depression and has high blood pressure.

The trial court divided the assets so each party received approximately $70,000. Donald was ordered to pay child support, rehabilitative alimony, and permanent alimony.

Donald's first complaint is the district court should not have included overtime pay in calculating his net income for the purpose of applying the child support guidelines. Donald contends the trial court, in including $11,700 in wages in addition to his base pay in fixing child support, anticipated he would work 7.7 hours of overtime each week in addition to his normal 84-hour bi-weekly work schedule.

Overtime pay falls within the definition of monthly income as used in the child support guidelines. *See In re Marriage of Brown*, 487 N.W.2d 331, 333 (Iowa 1992). This does not necessarily mean a court must steadfastly adhere to the appropriate child support amount as determined by the guidelines using overtime pay if the amount results in injustice between the parties. *Id.* at 333-34.

In circumstances where overtime pay is uncertain or speculative, it may be appropriate not to count it as income for child support purposes. *See id.* at 334; *In re Marriage of Close*, 478 N.W.2d 852, 854 (Iowa App. 1991) (Sackett, J., concurring in part and dissenting in part). A parent's child support obligation should not be so burdensome the parent is required to work overtime to satisfy it. *Close*, 478 N.W.2d at 854.

Donald has consistently been paid for overtime work. The record supports a finding he will continue to have overtime work available to him. His overtime pay is not speculative. He is not required to work overtime to satisfy his child support obligation. Should Donald's income change substantially, it may be appropriate for

him to seek a modification of the decree. *See Brown*, 487 N.W.2d at 334; *see also In re Marriage of Lee*, 486 N.W.2d 302, 304 (Iowa 1992). We affirm on this issue.

The trial court awarded Deborah rehabilitative alimony of $700 a month for five years and then permanent alimony of $250 a month. Donald contends the award of $700 a month in rehabilitative alimony to Deborah is excessive, as is the award of permanent alimony.

Property division and alimony must be considered together in evaluating their individual sufficiency. *In re Marriage of Dahl*, 418 N.W.2d 358, 359 (Iowa App. 1987); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa App. 1984). They are neither made nor subject to evaluation in isolation from one another. *Dahl*, 418 N.W.2d at 359; *Griffin*, 356 N.W.2d at 608.

Iowa Code section 598.21(3) (1995) provides specific factors to be considered by a district court in making an award of spousal support. Alimony is not an absolute right and must be determined based on the facts and circumstances of each case. *See In re Marriage of Debler*, 459 N.W.2d 267, 269 (Iowa 1990). Alimony is an allowance to a spouse in lieu of a legal obligation to support that person. *Id.* The determination of an amount of spousal support may take into account the property division. Iowa Code § 598.21(3)(c). Considering Deborah's need for education, the extended time she was absent from the job market to render child care, and Donald's proven ability to provide for his family, we do not find the alimony award excessive and affirm on this issue.

Deborah requests attorney fees on appeal. Attorney fees are not recoverable as a matter of right, but rest within the trial court's discretion and depend upon one spouse's financial needs and the other spouse's ability to satisfy them. *In re Marriage of Orgren*, 375 N.W.2d 710, 714 (Iowa App. 1985); *In re Marriage of Estlund*, 344 N.W.2d 276, 281 (Iowa App. 1983).

Any award of attorney fees depends on the financial circumstances and earnings of each party. *In re Marriage of Burham*, 283 N.W.2d 269, 278 (Iowa 1979). We award Deborah $1000 in appellate attorney fees.

AFFIRMED.