IN THE COURT OF APPEALS OF IOWA

No. 0-044 / 99-0679
Filed March 29, 2000

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CLERK SUPREME COURT

IN RE THE MARRIAGE OF MONTY A. MEEKS AND ABBIE L. MEEKS

Upon the Petition of
MONTY A. MEEKS,
Petitioner-Appellant,

And Concerning,
ABBIE L. MEEKS,
Respondent-Appellee.

Appeal from the Iowa District Court for Linn County, William R. Eads, Judge.

Monty Meeks appeals the property and alimony provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Jon M. McCright of Fisher, Ehrhart, McCright & Turner, Cedar Rapids, for appellant.

Anne E.H. Hoskins of Fishel and Hoskins, Marion, for appellee.

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

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ZIMMER, J.

Monty Meeks appeals from the property and alimony provisions of the parties' dissolution decree. We affirm with modifications.

Monty and Abbie Meeks were married in 1981. They separated in 1997. The marriage was dissolved in 1999. At the time of the dissolution, Monty was forty-three years old and Abbie was forty-one. They have no children.

Each of the parties worked throughout the marriage. Monty is employed at Alliant Industries where he has an annual income of about $48,000. Monty also owns and operates a business called Meeks Brothers Siding. Abbie was employed as a salesperson for Seifert's, a woman's clothing store, for nearly twenty-two years. She earned $24,676 at Seifert's in 1996. Abbie lost that job when the company ceased doing business. After Seifert's closed, Abbie began working in the women's clothing department of Von Maur, a department store. She currently earns a base salary of $18,200 per year plus a two percent commission on sales. It appears her income at her new job will be slightly less than she was making when Seifert's closed.

Abbie testified that she suffers from depressive and anxiety disorders and from a painful physical condition called "vestibulitus." Abbie's conditions have not affected her ability to work; however, she contends they have prevented her from pursuing advancement at her places of employment. Monty is in good health.

The parties enjoyed a fairly good living during the marriage; however, they spent far more than they earned. During the separation, Abbie and Monty filed a

joint bankruptcy petition and discharged $225,618 in secured and unsecured debt.

The district court ordered Monty to pay alimony in the amount of $600 per month until Abbie reaches the age of sixty-two or remarries. The bulk of the property was divided by agreement. The trial court ordered Monty to pay Abbie one-half of a joint tax refund and $1300 in attorney fees.

On appeal, Monty contends the alimony award is excessive in amount and duration. He also asserts the trial court distributed the property inequitably and should not have awarded attorney fees to Abbie.

I. Standard of Review. Our review of this equitable matter is de novo. *See* Iowa R. App. P. 4. This standard requires us to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Ruter,* 564 N.W.2d 849, 851 (Iowa App. 1997). We recognize the value in listening to and observing the parties and witnesses. *See* Iowa R. App. P. 14(f)(7). Consequently, we give weight to the findings of the trial court, although they are not binding. *Id.*

II. Alimony. Alimony is an allowance to the former spouse in lieu of a legal obligation to support that person. *See In re Marriage of Gonzalez,* 561 N.W.2d 94, 99 (Iowa App. 1997). Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Kurtt,* 561 N.W.2d 385, 387 (Iowa App. 1997). We consider the length of the marriage, age, health, earning capacities, levels of education, and the likelihood the party seeking alimony will be self-supporting at a standard of living comparable to the

one enjoyed during the marriage. *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa App. 1998).

Alimony is generally awarded to accomplish one or more of three purposes. *In re Marriage of O'Rourke*, 547 N.W.2d 864, 866 (Iowa App. 1996) (citing *In re Marriage of Francis*, 442 N.W.2d 59, 63-64 (Iowa 1989)). Rehabilitative alimony serves to support an economically dependant spouse through a limited period of education and retraining. *Id.* Its objective is self-sufficiency. *Id.* Reimbursement alimony is predicated upon economic sacrifices made by one spouse during the marriage that directly enhanced the future earning capacity of the other. *Id.* Traditional alimony is payable for life or for so long as the dependant spouse is incapable of self-support. *Id.* The amount of alimony awarded and its duration will differ according to the purpose it is designed to serve. *Id.* at 866-67.

Monty maintains the trial court's award of alimony of $600 per month for twenty-one years is excessive and inequitable. He argues Abbie should not be awarded any alimony, or alternatively, that an award of rehabilitative alimony of $300 per month for two years would be sufficient for Abbie to enhance her earning capacity. At trial, Abbie requested an award of rehabilitative alimony of $1000 per month for five years, rather than an award of permanent alimony. On appeal, she contends the trial court's alimony award should be affirmed.

After carefully reviewing the record, we conclude the circumstances of this case do not warrant an award of twenty-one years of alimony. Abbie is bright, responsible, and capable of maintaining gainful employment. Although she has

some health complaints, she has been able to work full time during the entire seventeen years of the marriage. The trial court concluded Abbie's health problems would not prevent her from pursuing employment advancements or continuing education opportunities in the future.

Under the facts presented by this case, we find a period of rehabilitative alimony is warranted. A period of rehabilitative alimony will afford Abbie an opportunity to improve her work place skills and her financial position. We believe an award of $1000 per month for sixty months is appropriate for achieving the self-sufficiency goals of rehabilitative alimony without exceeding Monty's ability to pay.

With regard to Monty's ability to pay, the district court expressed frustration with Monty's refusal to provide information regarding the income from his business, Meeks Brothers Siding. The record supports the trial court's conclusion that Monty failed to make a full and fair disclosure of his business income. Any claim of financial hardship by Monty is considerably diminished by his failure to meet his obligation to make a complete financial disclosure at trial.

III. Property Distribution. The partners to a marriage are entitled to a just and equitable share of property accumulated through their joint efforts. *See Gonzalez*, 561 N.W.2d at 98. The Iowa courts do not require an equal division or a percentage division in determining and adjusting equitable share of property. *Id.* at 98. Each particular circumstance determines what is fair and equitable. *Id.* The property distribution should be made pursuant to the criteria codified in Iowa Code section 598.20(1). *Id.* Conduct of a spouse which results in loss or

disposal of property otherwise subject to division at the time of divorce may be considered in making an equitable distribution of property. *See In re Marriage of Cerven*, 335 N.W.2d 143, 146 (Iowa 1993).

Monty maintains the trial court erred in requiring him to pay Abbie a portion of income tax refunds received by the parties. He claims Abbie sold marital assets after separation, which entitled him to maintain the entire refund. The parties received a refund of $1942 for their 1998 federal return and $2245 for their 1998 state refund. Monty applied $1587 of the refunds to the mortgage and placed the remaining $2600 in a joint account. He used those funds to pay his living expenses. Abbie admits she sold some jewelry during the separation to meet her living expenses. She contends the jewelry which was sold was a gift to her from Monty and was, therefore, nonmarital property. After a de novo review of the record, we conclude the trial court's distribution of assets is equitable and just and is supported by the evidence. We affirm the trial court's distribution of marital assets.

IV. Attorney Fees. Abbie was awarded $1300 in attorney fees by the trial court. On appeal, Monty claims the trial court should not have awarded any attorney fees to Abbie. Abbie contends Monty has a greater ability to afford the costs of this action. She also maintains her attorney fees were increased unnecessarily by Monty's refusal to provide discovery. The record supports her contentions. Iowa trial courts have considerable discretion in awarding attorney fees. *Gonzalez*, 561 N.W.2d at 99. To overturn an award the complaining party must show the trial court abused its discretion. *Id.* We find no abuse of

discretion in the trial court's decision and accordingly, we affirm the award of $1300.

Abbie also requests an award of appellate attorney fees. An award of attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Wood,* 567 N.W.2d 680, 684 (Iowa App. 1997). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request is obligated to defend the trial court's decision on appeal. *Id.* We determine Abbie is entitled to $500 in appellate attorney fees. The costs of this appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.

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