FILED
JAN 28 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF GRACE E. PRUSS
AND FRANCIS J. PRUSS

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Upon the Petition of)
GRACE E. PRUSS,)
Petitioner-Appellee,)
And Concerning)
FRANCIS J. PRUSS,)
Respondent-Appellant.)

Filed January 28, 1987

6-418
85-731

Appeal from the Iowa District Court for Linn County (No. DM 12579) - Paul J. Kilburg, Judge.

Respondent husband appeals from both the award of temporary support ordered by the trial court during the pendency of the parties' dissolution proceeding and from the trial court's denial of respondent's application to reconsider and modify the temporary support order contending the trial court erred in awarding petitioner wife an excessive amount of temporary alimony and in failing to consider whether petitioner wife's living expenses were necessary. Respondent also contends the trial court abused its discretion in overruling his motion for correction of errors and motion for new trial. **AFFIRMED.**

Francis J. Pruss for respondent-appellant, pro se.

T. Todd Becker of Tom Riley Law Firm, Cedar Rapids, for petitioner-appellee.

Considered by Oxberger, C.J., Snell and Hayden, JJ.

The parties to this appeal, Grace and Francis Pruss, were married in 1969. In 1973, the parties' only child, Sharon Renee, was born. On September 13, 1984, Grace filed a petition seeking dissolution of the marriage. She filed an application for temporary support on December 20, 1984. Both parties submitted affidavits of financial status to the district court. On January 16, 1985, the district court ordered Francis to pay $50.00 per week as temporary child support, and $200.00 per week as temporary alimony. Francis' motions for correction of errors and for new trial were overruled on April 10, 1985. This appeal followed.

As an initial matter, we address our standard of review. Precedent, in cases of this kind, holds that the amount of temporary support to be granted is largely within the sound discretion of the district court and will not be disturbed on appeal absent an apparent abuse of that discretion. E.g., Hanford v. Hanford, 214 Iowa 839, 843, 240 N.W. 732, 734 (1932). In ostensible tension with this line of precedent is the fact that cases of this type, sounding in equity, are reviewable de novo. Iowa R. App. P. 4. In Cole v. Cole, 259 Iowa 58, 143 N.W.2d 350 (1966), the Iowa Supreme Court was faced with a similar paradox with respect to permanent alimony. The court acknowledged previous holdings to the effect that such determinations are committed to the discretion of the trial court and will not be disturbed on appeal absent an abuse of that discretion. The court went on to say, however, that

> this does not mean this court is relieved of its duty to try the case de novo. It does not mean that we are bound by the findings and decree of the trial court if the record fairly shows it fails to do equity.

Id., 259 Iowa at 61; 143 N.W.2d at 352 (cites omitted).

We think, therefore, that in cases of this type the award determined by the district court should be given substantial weight in our review and affirmed

if within the broad parameters of equity. Cf. In re Marriage of Winegard, 257 N.W.2d 609, 518 (Iowa 1977) ("[a]lthough this is an equity action and this court accordingly reviews the record de novo, considerable discretion is assigned to the trial court in the allowance of attorney fees").

With these principles in mind, we proceed to Francis' contention that the district court erred in fixing an excessive amount of temporary alimony.

Iowa Code section 598.14(1985), our guide in the setting of temporary support awards, states in part as follows:

> In making temporary orders, the court shall take into consideration the age and sex of the applicant, the physical and pecuniary condition of the parties, and such other matters as are pertinent, which may be shown by affidavits, as the court may direct; however, the hearing on the application shall be limited to matters set forth in such application, the affidavits of the parties, and the required statements of income. The court shall not hear any other matter relating to the petition, respondent's answer, or any pleadings connected therewith.

Grace, at the time of the district court's order, was a forty-eight year old high school graduate who had not worked outside the home in seventeen years. The record does not demonstrate, nor does Francis argue, that she possesses any marketable skills. She has interest income of $185.00 per month and lists monthly expenses for herself and Sharon of $1,535.75. Francis was sixty-three years old at the time of the district court's order. He is a retired attorney who currently divides his time between farming, the management of substantial rental properties, most of which were owned by Francis prior to the parties' marriage, and attending classes at the University of Iowa. His financial affidavit lists the parties' net worth at $624,519.00. Grace's estimate is $1,436,240.00. Prior to the separation of the parties, Francis paid Grace $125.00 per week out of which she paid home operating expenses, exclusive of utility payments.

Given these figures, and the remainder of the parties' financial affidavits, we are in agreement with the district court that $250.00 per week is a reasonable accommodation of the financial statuses and obligations of the parties. Although Francis argues that the district court failed to consider his resistance to Grace's application for temporary support and his reply to her financial affidavit, he cites nothing in support of this claim save for the fact that the district court did not accept his contentions contained therein. We think this hardly a convincing showing of error. In addition, Francis contends that the district court "was required to consider the income of the parties." The statutory criterion for consideration, however, is the broader one of relative "pecuniary condition." With an eye to this factor, we agree with the district court that Francis' financial situation will enable him to meet his support obligation.

Francis next takes issue with the district court's order from a different angle: arguing not his inability to pay but, rather, the "unnecessary" character of Grace and Sharon's expenses. In particular Francis contends that, since the parties' residence can be made into two separate living areas, it is not necessary for Grace and Sharon to live at a separate address. We find this argument unconvincing, particularly given Grace's allegations that Francis had physically and verbally abused her. We think these allegations are among those pertinent matters that a court may consider in making an award of temporary support. See Iowa Code 598.14 (1985).

Finally, Francis contends that the district court abused its discretion when it overruled his motion for correction of errors and for new trial. In support of his argument on this point, Francis merely refers us back to the contentions which we have disposed of earlier. As we have found no district court error with respect to those contentions, we find no support for his argument on the issue of new trial.

AFFIRMED.