IN THE COURT OF APPEALS OF IOWA

No. 7-206 / 96-0317

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IN RE THE MARRIAGE OF DOUGLAS G. FEEKES and LINDA K. FEEKES

Upon the Petition of DOUGLAS G. FEEKES,

Petitioner-Appellant,

And Concerning LINDA K. FEEKES,

Respondent- Appellee.

FILED
NOV 25 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Sioux County, John P. Duffy, Judge.

Douglas Feekes appeals from the provisions of the parties' dissolution decree.

AFFIRMED AS MODIFIED.

Lisa M. Zimmerman and G. Daniel Gildemeister of Gildemeister, Willia & Keane, Sioux City, for appellant.

Curtis R. Puetz and Randall A. Roos of Roos Law Office, P.C., Sioux Center, for appellee.

Heard by Sackett, P.J., and Vogel and Mahan, JJ.

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MAHAN, J.

Douglas Feekes appeals from the provisions of the parties' dissolution decree. He contends the district court erred in: (1) awarding Linda Feekes alimony; (2) improperly calculating his child support obligation; (3) improperly valuing his businesses; and (4) awarding Linda the parties' homestead. We affirm as modified.

The district court dissolved Douglas and Linda Feekes' twenty-two year marriage in February 1996. Douglas is thirty-eight and Linda thirty-seven. They have three children. The youngest, twins, were born on June 20, 1979. Douglas is owner of an incorporated trucking company and a leasing company. Linda works as a production worker. The court ordered Douglas to pay Linda $1098 per month child support. There was a dispute over Douglas's income, but the court determined his net monthly income to be $3721.73. The court also ordered Douglas to pay Linda $750 per month alimony. The court awarded Linda the family homestead, where Douglas ran the trucking company, in the division of the assets.

I. SCOPE OF REVIEW. Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. We give weight to the fact findings of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. ALIMONY. The trial court ordered Douglas to pay Linda $750 per month until she dies or remarries or until Douglas dies or reaches the age of 65 years,

whichever event shall occur first. Douglas contends the evidence presented does not support any award of alimony to Linda. In the alternative, he contends if an award of alimony is supported by the record, the award of $750 permanent alimony is excessive. Finally, he contends the alimony award should also terminate if Linda cohabitates with a significant other.

A. *Award of Alimony And Appropriate Amount.* Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Eastman*, 538 N.W.2d 874, 876 (Iowa App. 1995). We attempt to achieve an equitable and just result under the circumstances. *In re Marriage of Hass*, 502 N.W.2d 286, 287 (Iowa App. 1993). When determining the appropriateness of alimony, the court must consider "(1) the earning capacity of each party, and (2) the present standards of living and ability to pay balanced against relative needs of the other." *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa App. 1994) We consider property division and alimony together in evaluating their individual sufficiency. *In re Marriage of O'Rourke*, 547 N.W.2d 864, 866 (Iowa App. 1996). The court may consider the amount of child support ordered under the decree when determining if spousal support is to be awarded, and, if so, the appropriate amount of the award. *In re Marriage of Will*, 489 N.W.2d 394, 400.

Having considered the above factors in light of the evidence presented at trial, we find the alimony award of the trial court to be fair and equitable and will not disturb it on appeal.

B. ***Termination Upon Cohabitation.*** Douglas claims the trial court should have placed further restrictions upon the alimony payments such that they would terminate upon cohabitation with a significant other. Douglas cites no support for this proposition. Trial courts have placed such provisions in decrees in the past. *See In re Marriage of Harvey*, 466 N.W.2d 916 (Iowa 1991). However, we see no reason to do so in this case. We find it is sufficient that Douglas will be able to use cohabitation as a factor in a future request for modification of the alimony award. *See In re Marriage of Schober*, 379 N.W.2d 46, 48 (Iowa App. 1985); *In re Marriage of Orgren*, 375 N.W.2d 710, 713 (Iowa App. 1985).

III. CHILD SUPPORT. Douglas claims the trial court erred in its determination of Douglas's monthly net income. He claims the trial court arbitrarily set the amount. He also claims the trial court erred in failing to deduct his alimony obligation to Linda from his income and add it to Linda's income when determining child support obligation.

The child support guidelines are strictly followed in determining a parent's child support obligation. *State ex rel. Miles v. Minar*, 540 N.W.2d 462, 464 (Iowa App. 1995). "In applying the child support guidelines, the court must determine the parents' current monthly income from most reliable evidence presented." *In re Marriage of Hart*, 547 N.W.2d 612, 615 (Iowa App. 1996). "This often requires the court to carefully consider all of the circumstances relating to parents' income." *Id.*

All income that is not anomalous, uncertain, or speculative should be included when determining a party's child support obligation. *In re Marriage of Russell*, 511 N.W.2d 890, 893 (Iowa App. 1993). Deduction of alimony payments from monthly income for the purposes of computation of child support is within the discretion of the court. *Id* at 892.

The trial court found Douglas's annual income is $65,000 and his net monthly income is $3721.73. The court ordered Douglas to pay child support of $1098 per month. The parties were able to agree on Linda's net monthly income of $781.94. Douglas contends his average annual gross income is $49,171 and his average net monthly income is $2809.22. Linda contends the trial correctly determined Douglas's income.

Linda contends checks representing income for the businesses were cashed by Douglas and used for personal expenses. She also contends deposits were made to their personal checking account from the trucking business. She testified their income tax returns understated their income. The court found deposits to the joint checking account for the months of January through March 1995 equaled $30,172. These amounts came from the trucking business. The trial court found it was difficult to believe Douglas's contention his income would be only $18,000. Also, the trial court found these deposits were consistent with the deposits for the preceding eleven months, but stopped shortly after the parties separated. The court found Douglas's

stated gross income on his federal income tax Form 1040 for the years 1991 through 1994 totaled $245,971. This equals an average of $61,493. The court then found Douglas's annual gross income is $65,000 and his monthly net income is $3,721.23.

We find the district court was correct in setting Douglas's monthly income amounts. We also find Douglas should be allowed to deduct the alimony award prior to figuring child support. Douglas shall pay $927.10 per month child support.

IV. VALUATION OF BUSINESS ASSETS. The trial court valued the business assets of Feekes Trucking, Inc. and FDF Trucking at $85,973 with $40,000 of this amount representing the "going concern." Douglas contends this determination was arbitrary and not supported by the evidence.

Douglas purchased Feekes Trucking, Inc. from his father in 1991 for $84,480.50. The company employs six individuals. Douglas also owns and operates FDF Trucking. FDF leases equipment to Feekes Trucking, Inc. As of August 31, 1995, the fair market value of the equipment collectively owned by Feekes Trucking, Inc. was approximately $293,000. Douglas contends the liquidation value of this property is $45,973. Douglas was willing to concede the businesses had a value as a going concern and was willing to add $10,000 to the liquidation value to arrive at a fair market value of $55,973. The balance sheets for the two businesses show they both have a negative net worth. There was no opinion evidence by either side to establish a value of the trucking business as a going concern. Linda, a former

bookkeeper for Feekes Trucking, testified to irregularities in the handling of cash. Linda alleged some of the income generated by Feekes Trucking would not be reported. Also, large deposits were made into Douglas and Linda's bank accounts over a fifteen-month period averaging approximately $7000. Neither side offered testimony on capitalization of income. We find the value placed on the assets by the trial court to be within the permissible range of evidence and will not disturb them on appeal. *See In re Marriage of McKamey*, 522 N.W.2d 95, 97 (Iowa App. 1994).

V. OWNERSHIP OF THE HOMESTEAD. Douglas contends the court erred in awarding the homestead to Linda because the property was used for conducting the trucking business and the value of the house causes the property settlement to heavily favor Linda. The parties agree the value of the house is $55,000.

The partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Gonzalez*, 561 N.W.2d 94, 98 (Iowa App. 1997). The courts are not bound to achieve a precisely equal division in awards of marital property. *In re Marriage of Kurtt*, 561 N.W.2d 385, 388 (Iowa App. 1997). The determining factor is what is fair and equitable in each circumstance. *Id.* The distribution should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1995). *Id.* The existence of a business in the home is a consideration in dividing the property. *In re Marriage of Lovetinsky*, 418 N.W.2d 88 (Iowa App. 1987).

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We find the court was proper in awarding Linda the homestead. Douglas's counsel admitted the property is not crucial to running the trucking business. Douglas's contention the property award is inequitable fails to take into account the $40,000 going concern value placed on the businesses by the court and the 180 head of cattle he received. We affirm the property settlement as determined by the court.

AFFIRMED AS MODIFIED.