IN THE COURT OF APPEALS OF IOWA

No. 2-300 / 91-1524

FILED
FEB 2 1993
CLERK SUPREME COURT

IN RE THE MARRIAGE OF KAREN ILENE BRANDT AND GAYLORD WAYNE BRANDT

Upon the Petition of
KAREN ILENE BRANDT,

Appellant,

And Concerning
GAYLORD WAYNE BRANDT,

Appellee.

Appeal from the Iowa District Court for Washington County, Dan Morrison, Judge.

The wife appeals the alimony provision in the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Sally H. Peck of Peck Law Office, Iowa City, for appellant.

Michael R. Mullins of Morrison, Lloyd, McConnell & Mullins, Washington, for appellee.

Considered by Oxberger, C.J., and Schlegel and Sackett, JJ.

SCHLEGEL, J.

Karen and Gaylord Brandt were married on October 7, 1972. The parties have one child, Eric, born may 4, 1978.

Karen was born January 5, 1947, and is a high school graduate. By the agreement of the parties, Karen did not work outside the home during most of the marriage. She is currently employed part-time as a kitchen worker in a nursing home. She works about nineteen hours per week for $4.75 per hour. Her annual income is about $4,693.

Gaylord was born January 6, 1944, and is also a high school graduate. Since August 1967 Gaylord has been employed in the construction of water towers. He is a member of the boilermakers' union, and he receives work assignments in all parts of the country. Gaylord earns between $17 to $21 per hour, depending on which part of the county he is working in. The parties' federal income tax returns show Gaylord earned $23,184 in 1986, $23,615 in 1987, $47,264 in 1988, $33,546 in 1989, and $35,203 in 1990. His financial affidavit showed he was earning about $2,591 per month at the time of the hearing.

Karen filed a petition for dissolution in October 1990. The parties entered into a written stipulation on all issues except alimony. This stipulation was approved by the district court and incorporated into the dissolution decree, which was filed on September 4, 1991. The parties agreed to joint legal custody of Eric, with Karen having

primary physical care. Gaylord agreed to pay child support of $125 per week. The property was divided to give Karen net assets worth about $3,280 and Gaylord net assets worth about $2,078. Karen was also awarded a one- half interest in the portion of Gaylord's pension fund which accumulated during the marriage.

The district court found that Gaylord has a much higher earning capacity than does Karen. The court found it was unlikely Karen would ever earn more than minimum wage. The court also found that the parties' standard of living was very conservative. Based upon all these facts, the district court ordered Gaylord to pay alimony in the sum of $200 per month for thirty-six months to enable Karen to find a full-time job. Karen has appealed solely on the issue of alimony.

Our review of this equitable action is de novo. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992). 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. Id.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. In re Marriage of Whelchel, 476 N.W.2d 104, 110 (Iowa App. 1991). We consider property division and alimony together in evaluating their individual sufficiency. Id. When determining the appropriateness of alimony, the court

should consider the earning capacity of each party. In re Marriage of Olar, 451 N.W.2d 9,13 (Iowa App. 1989). Also the ability of the one spouse to pay should be balanced against the needs of the other spouse. Id.

We find that Karen's earning capacity is much less than that of Gaylord. If Karen were employed full-time at $4.75 per hour, her income would be $9,880. Based upon her age and the fact she was out of the job market for many years, it is doubtful Karen will ever be able to earn more than minimum wage. Over the last five years Gaylord has earned an average of $32,562. We believe Gaylord will be able to sustain this level of income in the future.

Taking all of these factors into consideration, we conclude the award of alimony for thirty-six months is insufficient to assure that Karen will be able to support herself at the end of that period. We modify the dissolution decree to award her alimony of $200 per month until she becomes sixty-five years old, remarries, or cohabits with a male who is not a relative, whichever occurs first.

Costs of this appeal are assessed to Gaylord.

AFFIRMED AS MODIFIED.

Oxberger, C.J., concurs; Sackett, J., concurs in part and dissents in part.

SACKETT, J. (concurring in part and dissenting in part)

I concur in part and dissent in part.

I concur with the majority in all respects except I would strike the provision the alimony automatically terminates on remarriage or cohabitation. We should not prejudge this woman's need for alimony should either of these events occur.