FILED
APR 23 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MICHAEL R. HIGGINS AND DEBRA J. HIGGINS

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Upon the Petition of	)	
MICHAEL R. HIGGINS,	)	Filed April 23, 1986
Petitioner-Appellant,	)	
And Concerning	)	5-672 / 85-783
DEBRA J. HIGGINS,	)	
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Scott County (35553) - J. Hobart Darbyshire, Judge.

Petitioner appeals certain provisions of the trial court's dissolution decree.

AFFIRMED.

David A. Millage, Bettendorf, Iowa, for petitioner-appellant.

William E. Davis, Davenport, Iowa, for respondent-appellee.

Considered by Donielson, P.J., Snell, and Schlegel, JJ.

SCHLEGEL, J.

Petitioner appeals certain provisions of the trial court's dissolution decree. We affirm.

Michael and Debra Higgins were married for approximately six years. They had no children from this marriage and their only substantial marital asset is their residence which has approximately $11,000 worth of equity. Neither party brought into the marriage any substantial assets. Michael was 32 years old at the time of the dissolution decree and Debra was 26 years old.

Michael earned $30,036.60 in 1984, has a stable employment future, and is in good physical health except for a back injury. He sustained this injury during the marriage and has received a settlement of $5,000. Of this settlement amount, $3,800 was used to repay a loan obtained from Debra's parents for a downpayment on their residence. The balance of the settlement proceeds was placed in an account by Debra and has been consumed to pay for car payments and other bills. Debra has a 1983 automobile with an outstanding balance of $4,000 and Michael has a 1981 auto with a balance still owed of $1,800. The remainder of the personal assets were divided to the satisfaction of each party and are not at issue here.

Throughout their marriage Debra has been employed part-time as a waitress earning slightly over $10.00 per hour. Her physical health is good, and she has received her Associate Arts degree from Blackhawk College. At trial she stated that she would like to attain her Bachelor's degree in business or marketing.

In its decree, the district court evenly divided all of the parties' real and personal property. The decree also required Michael to pay Debra rehabilitative alimony in the amount of $150 per month for twenty-four months and directed the parties to pay their own attorney fees.

Michael appeals the decision requiring him to pay Debra alimony. Debra, in turn, asks this court to award her attorney fees.

In this equity action, our review is de novo. Iowa R. App. P. 4; In re Marriage of Estlund, 344 N.W.2d 276, 279 (Iowa App. 1983). The criteria for granting alimony are codified in Iowa Code section 598.21 (1985). When determining the appropriateness of alimony, the trial court must consider (1) the earning capacity of each party, and (2) present standards of living and ability to pay balanced against relative needs of the other. Estlund, at 281.

In our de novo review, we conclude the trial court properly considered the statutory criteria, in particular section 598.21(e) and (f). We are convinced the alimony award was proper both in the amount and the duration.

Michael alleges on appeal that the trial court should have awarded him the remaining $1,200 from the personal injury settlement because the money was received as a result of an injury to his back. Debra, however, argues that the money constituted marital assets that were rightfully considered by the court in its division of assets.

Neither party has found any Iowa authority that specifically states that a personal injury award is or is not a marital asset as opposed to a personal asset. The applicable statute calls for the division of"... all property except inherited property or gifts received by one party." Iowa Code § 598.21(1). We decline to say, based upon the record before us, whether the remaining balance of the personal injury settlement is a personal or marital asset. We note, however, that a large portion of this settlement was applied to a loan for their residence. It appears, therefore, the general intent of the parties was to use this money as a marital asset because it was "made available to the marital unit for its unrestricted use and benefit." In re Marriage of Butler, 346 N.W.2d 45, 47 (Iowa App. 1984). The ultimate test is whether, considering

all of the circumstances, the division is fair and just." In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). The record shows that the trial court simply incorporated any unused portion of the settlement in with the rest of the marital assets that were subsequently divided between the parties. Considering the circumstances of this case, we conclude this was a fair and just method of distributing the property. Therefore, we affirm the trial court's decision.

Debra has requested attorney fees be awarded to her in this matter. Such an award may be granted depending upon the parties' respective abilities to pay. Id. at 546. Considering the respective financial condition of both parties, we order Michael to pay Debra the sum of $500 towards her attorney fees.

Our de novo review of this action reveals no error on the part of the trial court. Therefore, its decree is affirmed.

AFFIRMED.