FILED
MAR 31 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF GARNET MARVIN AND WILLIAM J. MARVIN, JR.

Upon the Petition of)
GARNET MARVIN,)
Petitioner-Appellant,) Filed March 31, 1986
And Concerning)
WILLIAM J. MARVIN, JR.,) 5-653 / 85-455
Respondent-Appellee.)

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Appeal from the Iowa District Court for Johnson County (No. 6098) - Larry J Conmey, Judge.

Petitioner appeals the economic provisions of the decree dissolving the parties' marriage, asserting that the trial court erred in awarding insufficient alimony to petitioner to include "lost opportunity" compensation. **AFFIRMED AS MODIFIED.**

John W. Hayek of Hayek, Hayek, Hayek & Holland, Iowa City, for petitioner-appellant.

William Meardon of Meardon, Sueppel, Downer & Hayes, Iowa City, for respondent-appellee.

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

PER CURIAM

Petitioner Garnet Marvin and respondent William Marvin, Jr. were married in 1969. Neither brought substantial assets to the marriage. Four children, aged 11, 9, 7, and 5 at time of trial, were born to the marriage. At the time of marriage, William was in medical school and Garnet was teaching second grade. From 1972, at the time the first child was born, until 1983, Garnet was not employed outside the home. William finished his medical education in 1972 and at the time of trial was an assistant professor in pediatrics at the University of Iowa College of Medicine earning, including benefits, approximately $68,500 annually. At the time of trial, Garnet was thirty-seven years old and returned to full-time teaching as of August 1984. She had also begun taking classes to obtain her Master's Decree.

The trial court awarded joint custody of the children with physical care in Garnet. The trial court approved the division of personal property assets stipulated by the parties. It also ordered the sale of the family house to pay joint debts, the proceeds over and above the debts to be divided equally. The district court divided William's TIAA/CREF retirement benefits equally between the parties. Garnet was awarded $300 per month alimony for three years to terminate upon her earlier remarriage or death. William was ordered to pay $900 per month child support, which decreases by 19% when each child graduates from high school. In addition, he was ordered to pay medical insurance for the children, 65% of their unreimbursed medical and dental expenses, 50% of the costs of school enrollment, extracurricular activity expenses, and an extra $75 per child every August for school clothes and supplies.

On appeal, Garnet contends that the trial court erred: 1) in awarding insufficient alimony to recompense her for her "lost opportunity" for increased earnings, 2) in awarding insufficient child support, and 3) in failing to provide

inflation protection by way of an automatic cost-of-living clause in the alimony and child support provisions. Garnet also requests appellate attorney fees.

Our review is de novo. Iowa R. App. P. 4 (1985). We are not bound by the findings of the trial court, but we give them weight. Iowa R. App. P. 14(f)(7) (1985).

Alimony. Garnet requests that we increase her alimony award to $500 per month for her lifetime, with payments reduced to $250 per month in the event of her remarriage and ceasing totally upon her death. Garnet bases her request on a certified public accountant's calculation of the future earnings which Garnet lost as a result of her twelve-year absence from the teaching profession. The accountant testified at trial that Garnet's so-called opportunity cost totals $108,955. The discounted present value of those lost earnings is $75,957 and, using a 4% interest figure, a monthly payment of $376.15 would amortize the discounted present value of the lost earnings over twenty-eight years (or until Garnet's assumed retirement at sixty-five). Garnet labels this amount as "lost opportunity" compensation.

The criteria to be considered in awarding alimony have been codified in Iowa Code section 598.21(3) (1985). While payment of alimony is not an absolute right, it is awarded out of fairness, according to the peculiar circumstances of each case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). Alimony is awarded based on the earning capacity of the parties and present standards of living balanced against the relative needs of the parties. In re Marriage of Hitchcock, 309 N.W.2d 432, 436-37 (Iowa 1981). The spouse with the lesser earning capacity is entitled to be supported, for a reasonable time, in a manner as closely resembling the standards existing during the marriage as possible. In re Marriage of Hayne, 334 N.W.2d 347, 351 (Iowa Ct. App. 1983). Two of the factors to be given great weight in such a determination are the

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duration of the marriage and the ability of the supported spouse to engage in gainful employment. In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972). In addition, where a spouse has sacrificed her earning ability in order to make a home for the family and the other spouse has profited thereby, alimony is justified. In re Marriage of Sanders, 255 N.W.2d 109, 111 (Iowa 1977). However, once the dependent spouse's standard of living is assured, there is no reason, in equity, for the supporting spouse to provide still more. In re Marriage of Hayne, 334 N.W.2d 347, 351 (Iowa Ct. App. 1983).

We recognize that Garnet gave up a teaching career in 1972 to become a full-time mother of four children and homemaker. Garnet only returned to teaching in 1984. The division of labor that the parties agreed upon allowed William to actively pursue a medical career while the family was well cared for at home. We also realize that teaching salaries are keyed to seniority and therefore the twelve-year interruption of Garnet's career set her back on the pay schedule. However, we disagree with Garnet's argument that the trial court did not take these considerations into account in making its alimony award. In fact, these considerations are the primary reasons for alimony being awarded at all in this case.

Garnet is only thirty-seven years old, she is in good health, has a college education, and is capable of earning a good salary as a teacher. All of these factors weigh against awarding alimony to Garnet at all. Notwithstanding, Garnet did sacrifice twelve of her earning years and an opportunity to pursue graduate training in order to take care of the family while William furthered his education and thereby greatly increased his earning capacity. At this point, the disparity between the parties' earning capacities is great. Now, Garnet desires the same opportunity to further her education and increase her earning capacity.

We agree with the trial court that Garnet is entitled to rehabilitative alimony to compensate her for the years she remained out of the work force and to enable her to pursue graduate schooling. However, this is clearly not a case where a permanent alimony award is appropriate.

We find that the trial court's award of $300 per month for three years is reasonable in amount and duration. However, because this award has a rehabilitative purpose, William's alimony obligation shall not terminate upon Garnet's remarriage.

Cost-of-Living Adjustment. Garnet also requests that the trial court erred in failing to protect the child support and alimony payments from inflation by an automatic cost-of-living adjustment provision. Garnet relies on In re Marriage of Stamp, 300 N.W.2d 275 (Iowa 1980).

In Stamp, the Iowa Supreme Court approved of an automatic cost-of-living adjustment formula tied to the lesser of the amount of inflation occurring or the increase in the payor's income. Id. at 279. The court determined that, even though the parties had not stipulated to a COLA formula for child support, their situation was well-suited for imposition of such a clause. Id. Both parties were employed by the University of Iowa and their employment history was stable with gradual salary increases instead of wide fluctuations. The payor's gross salary was readily obtainable.

Likewise, in the present case we find that both parties' salaries are readily obtainable and subject to gradual increase. The insertion of a COLA clause in this case will diminish the risks of yearly resistance to increased support with attendant legal expense and animosity. See Stamp, 300 N.W.2d at 279.

The trial court shall include a COLA provision in the decree as requested by Garnet. Child support and alimony payments shall be increased or decreased by the same percentage as the percentage change in the National Consumer

Price Index as published by the United States Department of Labor for the most recent twelve-month period for which data is available, provided that William's actual gross salary for the like period has increased by at least the same percentage. If his actual gross salary increased by a lesser percentage, then the payments to Garnet shall increase by this lesser percentage.

Child Support. Garnet contends that the trial court erred in ordering child support of only $900 per month. We must consider the factors enumerated in Iowa Code section 598.21(4) (1985) to determine the propriety of an award of child support. Both parties have an obligation to support their children, but this obligation is not necessarily to be borne equally by them. It should be apportioned according to the fair ability of each to contribute. In re Marriage of Heineman, 309 N.W.2d 151, 153 (Iowa Ct. App. 1981).

The disparity between the financial positions of Garnet and William indicates that William should definitely provide the greater portion of support necessary for the children. However, Garnet's request of more than $900 per month is not reasonable or necessary for the support of the children.

Furthermore, William is already ordered to contribute more than $900 per month toward the support of his children. Additionally, he must pay $300 per year for clothing allowance, health insurance (approximately $60 per month), and 50 to 65% of other expenses for the children. We conclude that the trial court's child support award is reasonable and appropriate.

Attorney Fees. In evaluating a request for attorney fees on appeal, the court must consider the needs of the party making the request and the ability of the other to pay. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981). We order each party to pay their own attorney fees incurred on appeal. Costs are assessed to William.

AFFIRMED AS MODIFIED.