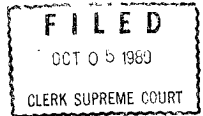


IN THE COURT OF APPEALS OF IOWA

9-396 / 88-1529



IN RE THE MARRIAGE OF BEVERLY J. LYNCH AND KENT W. LYNCH 302

Upon the Petition of

BEVERLY J. LYNCH,

Petitioner-Appellee,

And Concerning

KENT W. LYNCH,

Respondent-Appellant.

Appeal from the Iowa District Court for Marshall
County, Carl E. Peterson, Judge.

Respondent husband appeals the decree dissolving the
parties' marriage. **AFFIRMED.**

Patrick W. Brooks of Brooks, Ward & Trout,
Marshalltown, for appellant.

Charles F. Fairall of Fairall, Fairall, Kaplan, Hoglan
& Condon, Marshalltown, for appellee.

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

SCHLEGEL, J.

Appellant husband appeals the decree dissolving the parties' marriage. We affirm the trial court.

Appellant contends: (1) that the cash property settlement award to petitioner wife is excessive; (2) that the alimony award to petitioner wife is excessive; (3) that the trial court should have divided the parties' farms instead of awarding petitioner wife alimony; (4) that the trial court should have amended or enlarged the findings and conclusions in its decree to take into account the financial impact on the parties of the drought which began after trial but before the decree was entered; (5) that the trial court should have awarded him certain items of personal property; and (6) that the trial court should not have awarded petitioner wife attorney fees. Petitioner wife requests attorney fees on appeal.

Petitioner Beverly J. Lynch and respondent Kent W. Lynch were married in 1955. They have three children, all of whom are now grown. Beverly is now 51 years old. She has high blood pressure and rheumatoid arthritis. During the marriage, she took care of the parties' children and maintained the home; she was employed outside the home only sporadically. She is now employed as a motel clerk, earning \$3.65 gross per hour. Kent is now 53 years old. He is in good health. During the marriage, he farmed and also worked for various companies. He now farms and is

district manager for Dow Chemical Company. From the latter job, he earns \$2,938 gross per month.

Trial was held in April 1988. In July 1988, the trial court entered its dissolution decree. In the decree, the trial court awarded each party his or her life insurance and bank accounts, and the personal property in his or her possession except certain specified items. Beverly was awarded the parties' cemetery lots and car, and Kent was awarded the parties' van and trucks, real estate, farm machinery, farm income and rent, stock and dividends, his retirement account, a promissory note, and a tax refund. Beverly was directed to pay the debt she incurred to pay her income tax and Kent was directed to pay the parties' real estate and farm-related debts. Kent was also directed to pay Beverly a cash property settlement of \$17,500, attorney fees of \$5,000, alimony of \$1,000 per month for six months, and \$750 per month thereafter until she remarried or either party died.

After the decree was entered, Kent filed a combined motion for new trial and motion pursuant to Iowa Rule of Civil Procedure 179(b) in which he asserted, among other things: (1) that the trial court should take into account the financial impact of the drought which began after trial but before the decree was entered; and (2) that the trial court should award him certain items of personal property he asked for. After a hearing, the trial court entered an order denying these requests. Kent has appealed.

In this equity action, our review 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. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

Appellant contends the alimony and cash awards to the appellee were excessive. Alimony is not an absolute right; an award depends upon the circumstances of each particular case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3). See In re Marriage of Hayne, 334 N.W.2d 347 (Iowa App. 1983). An examination of the factors in Iowa Code section 598.21(3) shows that the trial court's decision was equitable. Appellant points out several inequities with the alimony and cash awards, but each of these alleged inequities is offset by appellant's receipt of a greater benefit than appellee on other items. When considering the decision as a whole it is clear the trial court acted equitably.

Appellant also contends the trial court should have divided the farm ground instead of awarding alimony. The equities of this situation require that appellant receive

the farm ground. He is far more qualified to run the farm successfully. And from appellant's own examples it is apparent the appellee has had very little success or experience in handling the farm operation. The trial court was correct in awarding appellee alimony in lieu of a portion of the farm ground.

Appellant contends the trial court should have granted his motion to enlarge or amend the decree to consider the effects of the drought in 1988. The trial court was correct in deciding that the effects of the drought might be a future basis for modification. The decree was entered on July 12, 1988, and the effects of the drought would certainly continue long after this date.

There is no reason to disturb the distribution of the personal property. The evidence suggesting that those items should be awarded to appellant goes both ways. There was also evidence that appellant did not want the items or had agreed to give them up. The trial court certainly did not err by failing to grant these items to the appellant.

Appellant finally contends that the award of \$5,000 in attorney fees to the appellee was excessive. Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). To overturn an award the complaining party must show that the trial court abused its discretion. Id. Awards of attorney fees must be for fair and reasonable

amounts, In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977), and based on the parties' respective abilities to pay. In re Marriage of Lattig, 318 N.W.2d 811, 817 (Iowa 1982). There is no evidence that the trial court abused its discretion in awarding attorney fees to the appellee.

Appellee requests attorney fees on this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). The appellee is not destitute but was required to defend this appeal. In addition, appellant is in a much better position to pay current expenses. Appellee is granted attorney fees in the amount of \$1,000.

AFFIRMED.