FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-643 / 90-358

87

IN RE THE MARRIAGE OF JACK L. COX AND SUSAN L. COX

Upon the Petition of

JACK L. COX,

Appellant,

And Concerning

SUSAN L. COX,

Appellee.

Appeal from the Iowa District Court for Cass County, J. C. Irvin, Judge.

Husband appeals the support provisions of a dissolution decree. **AFFIRMED.**

Robert Kohorst, Harlan, for appellant.

Joanne C. Lorence of Otto, Lorence & Barry, Atlantic, for appellee.

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

DONIELSON, P.J.

Jack and Susan Cox were married in 1968. They have three children: a daughter born in 1970, who is attending post-high school classes, and two sons born in 1974 and 1980. The dissolution decree placed the two minor sons in joint legal custody; the older son is in Jack's physical care, while the younger son is in a Susan's primary physical care during the school year. These custody provisions are not challenged in this appeal.

Jack is a Hy-Vee grocery store produce manager. He earned over $33,000 in 1988. He has worked at Hy-Vee for many years and has accumulated pension benefits of over $66,000.

Susan is a part-time beautician. She earned about $8,000 in 1988. She has a retirement fund valued at $1,800.

The dissolution decree awarded Susan the parties' house, which was valued at $25,000 but was subject to a debt of $22,500. The decree directed Jack to place $30,500 from his Hy-Vee pension fund in Susan's name. Each party was awarded a vehicle and personal effects. Jack was directed to assume unsecured debts of $2,350.

Jack was directed to pay Susan child support totaling $3,225 per year for the youngest child. (This child support is payable at the rate of $300 per month during the nine-month school year and $175 per month during the three summer months.) Jack was also ordered to pay $200 per

month to the adult daughter while she attends school. No support provision was made for the child who is in Jack's primary physical care.

Jack was ordered to pay Susan alimony totaling $12,000. He is to pay alimony of $100 per month until his obligation to pay support for the adult daughter terminates. Thereafter, he is to pay alimony of $200 per month until the total sum of $12,000 is paid in full.

Neither party was awarded attorney's fees.

Jack has appealed the support provisions of the dissolution decree. In view of the almost equal division of property, Jack contends the awards to Susan of child support and alimony are excessive.

Susan requests attorney's fees on appeal.

Standard of Review. Our review of this equity action is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

Child Support. It is well established that parents have a legal obligation to support their children. In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976). The obligation to support should be apportioned according to the ability of each parent to contribute. In re Marriage of Bornstein, 359 N.W.2d 500, 504 (Iowa App. 1984). Here, each parent is providing the primary home for one of their sons. Jack's income is more than four times that of

Susan's. Jack was ordered to pay child support for the youngest son in the amount of $300 per month during the school year and $175 per month during the summer months. Even though Susan will not be the primary care giver of either son in the summer months, she must still maintain a home for them. We find that the district court could have ordered Jack to pay a larger amount for the support of the youngest child. Apparently, the district court considered that Jack would also be providing for the parties' oldest son. We conclude the child support ordered is equitable and we affirm.

Jack and Susan stipulated that Jack is to deposit $200 per month into a bank account from which their daughter can draw funds necessary for her support during the period of her post-high school education. The trial court incorporated this agreement into the dissolution decree. We find no reason to interfere with this provision of the decree.

Alimony. Alimony is not an absolute right; an award depends upon the circumstances of each particular case. Fleener, 247 N.W.2d at 220. 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). Generally, when determining the appropriateness of alimony, the court must consider (1) the earning capacity of each party, and (2) their present standards of living and ability to pay

balanced against their relative needs. In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983). Alimony is an allowance to the ex-spouse in lieu of a legal obligation to support that person. See In re Marriage of Hitchcock, 309 N.W.2d 432 (Iowa 1981).

Jack first suggests Susan did not seek alimony and thus the award of alimony was erroneously entered. We reject this contention. In Susan's answer to Jack's petition for dissolution, she requested temporary support for herself. Additionally, during trial Susan clearly requested that the court award support for herself as well as child support. Whether alimony was appropriate, and in what amount, was properly before the trial court.

The trial court ordered Jack to pay Susan alimony in the amount of $12,000. This sum is to be paid over a period of time. Jack complains that because he is already ordered to pay child support, and because Susan might be capable of increasing her income, the award of alimony is unnecessary and excessive. We disagree.

Susan and Jack were married for more than twenty years. Throughout the marriage Susan worked part-time as a beautician; she also had the primary responsibility for the home and children. She testified full-time work with her present employer is not possible. Susan is not presently trained for other types of employment. Susan earns less than one-fourth the income of Jack. We recognize the property distribution was nearly equal. Susan was awarded

the family home but she also assumed the large indebtedness on the home and must maintain it on her limited income. Under these circumstances, we find the alimony award equitable and we will not disturb it.

Appellate Attorney Fees. 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). Applying the foregoing principles, we order Jack to pay $500 toward Susan's appellate attorney fees.

Costs of this appeal are taxed to Jack.

AFFIRMED.