IN THE COURT OF APPEALS OF IOWA

No. 0-678 / 90-833

IN RE THE MARRIAGE OF MARY JO GRAETTINGER AND VINCENT P. GRAETTINGER

FILED
JUN 25 1991
CLERK SUPREME COURT

Upon the Petition of

MARY JO GRAETTINGER,

Petitioner-Appellee/Cross-Appellant,

And Concerning

VINCENT P. GRAETTINGER,

Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Muscatine County, Edward B. deSilva, Jr., Judge.

Both parties appeal a dissolution decree, challenging its economic provisions. **AFFIRMED.**

David J. Dutton and Maureen C. Brown of Mosier, Thomas, Beatty, Dutton, Braun & Staack, Waterloo, for appellant/cross-appellee.

Stewart R. Winstein & Katherine A. Varlas of Winstein, Kavensky & Wallace, Rock Island, Illinois, for appellee/cross-appellant.

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

OXBERGER, C.J.

Vincent and Mary Jo Graettinger were married in 1957. Their four children are all adults.

Vincent is a dentist who owns and operates his own dental practice. In recent years his net annual earnings from his practice have ranged from $150,000 to $170,000. Mary Jo was not employed outside the home during the marriage, and she has not found employment since the parties' separation.

The dissolution decree awarded Vincent his dental practice, which the court found to have a net value of $137,000. In return, the decree directed Vincent to pay Mary Jo a cash property award equal to one-half the net value of the practice, or $68,500.

The decree made an essentially equal division of the parties' substantial investments, cash, and house equity. The decree required Vincent to assume marital debts of $37,194.

The decree, as amended following a motion, directed Vincent to pay Mary Jo alimony of $3,000 per month for three years, then $2,000 per month until Mary Jo reaches the age of sixty-two, then $1,500 per month thereafter.

The decree required Vincent to pay $3,000 toward Mary Jo's trial attorney fees and to pay a $7,895 accountant's fee incurred for an audit to determine the extent of the parties' assets.

Vincent has appealed the dissolution decree, and Mary Jo has cross-appealed.

Vincent contends his alimony obligation is excessive. He also challenges the requirement that he pay Mary Jo a cash award equal to half the net value of his dental practice. In addition, he challenges the requirement that he assume over $37,000 in marital debts. Finally, he challenges the requirement that he pay the entire amount of the $7,895 accountant's fee.

In her cross-appeal, Mary Jo requests a larger alimony award. Mary Jo also contends that Vincent's dental practice should have been valued at $157,000 rather than $137,000, and that her cash property award should be equal to half the larger amount. (The valuation dispute concerns whether a $20,000 claim by a dental insurer should or should not be deducted from the net value of the practice.) Finally, Mary Jo requests attorney's fees on appeal.

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 48, 452 (Iowa 1981). We give weight to the fact findings of the trial court, but are not bound by them. Iowa R. App. P 14(f)(7).

Vincent claims the alimony award is excessive. When awarding support payments in a divorce proceeding, the trial court must consider the factors set forth in Section 598.21 of the Code of Iowa. These factors include the length of the marriage, age of the parties, education level and earning capacity of the party to be supported, and the likelihood that the supported party will become self supporting to the degree enjoyed during the marriage. Iowa Code § 598.21 (1991). The Graettinger's marriage lasted thirty-two years and Mary Jo lacks the education and skills necessary to obtain employment with a salary that will maintain the quality of life she enjoyed during the marriage. Under these circumstances, we find the alimony award equitable.

In her cross-appeal, Mary Jo requests a larger alimony award. Alimony is not an absolute right; an award depends on 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, 350 (Iowa Ct. App. 1983). The trial judge weighed those factors when making the judgment entry and again as a result of Mary Jo's 179(b) motion to enlarge the findings of the court. We, however, consider property division and alimony together in evaluating their individual sufficiency. In re Marriage of

Dahl,418 N.W.2d 358, 359 (Iowa Ct. App. 1987); In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa Ct. App. 1984). The trial court ordered a revised alimony award that is adequate to maintain Mary Jo's lifestyle in light of the decreed property settlement. The alimony award shall stand as ordered.

Division of property is based on each party's right to a just and equitable share of the property accumulated as a result of their joint efforts. In re Marriage of Havran, 406 N.W.2d 450, 452 (Iowa Ct. App. 1987). Vincent did not establish his dental practice until five years after marriage, making it marital property. To allow Vincent to finish his dental education, Mary Jo quit school to care for the couple's children. The record indicates the couple agreed, at least tacitly, to manage the family in this manner. Therefore, an equal division of the dental practice is equitable.

Vincent also contests the immediacy with which Mary Jo's share of the dental practice is to be paid. We find the trial court's schedule of five years to complete payment, with no interest accruing during the first six months is not unreasonable and it shall not be disturbed on appeal.

Mary Jo cross-appeals on the issue of a dental insurance claim against respondent. During the original trial, Vincent was involved in a dispute with his insurance

company for alleged overbilling. Mary Jo asserts that the claim of $20,000 should not have been factored against the value of the business. Her one-half share of the business is unfairly devalued, she argues, due to Vincent's improprieties. Given the fact that any payments improperly obtained from the insurance company were enjoyed by the marriage and were equally divided in the marital assets, we are not persuaded by this argument. We find the value placed on the dental practice to be within the range of evidence and will not disturb it on appeal. Cf. In re Marriage of Wiedemann, 402 N.W.2d 744, 748 (Iowa 1987)(trial court valuation of corporate stock).

Vincent challenges the trial court's ruling that he assume the marital debts totaling $37,194. The allocation of marital debts is as integral a part of property division as allocation of assets. In re Marriage of Johnson, 299 N.W.2d 466, 467 (Iowa 1980). The criteria for making an equitable division of property are set forth in the Code of Iowa, Section 598.21(1). Equity need not be precise, however, and is dependent on the circumstances of each case. In re Marriage of Vrban, 293 N.W.2d 198, 204 (Iowa 1980).

Vincent agreed to assume responsibility for First National Bank of Muscatine loan number 31539 at the time of its acquisition. The Central Bank of Muscatine loan for Mary Jo's Mercedes was allocated to Mary Jo. The three

remaining loans, acquired for purposes of income tax, were allocated to Vincent. Upon review we find this determination of the trial court to be equitable under section 598.21(1) and will not disturb it on appeal.

Vincent submits that the trial court order requiring him to pay accounting fees incurred by Mary Jo is overburdensome and that such payment must be for necessary services only. We have clearly noted our displeasure with the failure of a party to a dissolution to account for property under his or her control during the divorcing process. In re Marriage of Williams, 421 N.W.2d 160, 164 (Iowa Ct. App. 1988). We find that Vincent's failure to disclose, under oath, a postseparation withdrawal of marital assets, created ample necessity for accounting services. Therefore, we affirm the trial court's order requiring Vincent to pay the fee for these services.

Mary Jo requests that respondent be required to pay her attorney's fees on appeal. In making such a determination 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 Ct. App. 1981). Given that Mary Jo is supported only by alimony payments, we order Vincent to pay $4,500 toward Mary Jo's appellate attorney fees.

AFFIRMED.