IN THE COURT OF APPEALS OF IOWA

No. 1999-493 (9-750) / 99-201
Filed April 28, 2000

FILED
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CLERK SUPREME COURT

IN RE MARRIAGE OF MABEL E. ALLEN AND ROBERT G. ALLEN

Upon the Petition of
MABEL E. ALLEN,
Petitioner-Appellant,

And Concerning
ROBERT E. ALLEN,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, D.J. Stovall, Judge.

Petitioner appeals various economic provisions of the parties' dissolution decree. **AFFIRMED.**

Leslie Babich of Babich, McConnell & Renzo, P.C., Des Moines, for appellant.

Charles A. Coppola of Coppola, Sandre, McConville & Carroll, P.C., West Des Moines, for appellee.

Considered by Mahan, P.J., and Zimmer and Vaitheswaran, JJ.

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PER CURIAM

[redacted] Allen appeals the alimony provision of the parties' dissolution decree. She asks to be awarded lifetime alimony and to be named the beneficiary of Robert Allen's life insurance policy. We affirm on appeal.

Mabel and Robert were married in 1940. They have two adult children, Madeline and Gerald. Mabel was eighty-nine years old at the time of the dissolution hearing, and in poor health. Robert was eighty-two years old and in relatively good health.

Robert is retired. He receives social security payments of $1305 per month, an employment-related pension of $695 per month, and a veteran's disability pension of $444 per month. Mabel did not work outside the home during the marriage. She receives social security payments of $590 per month.

Throughout most of the marriage, Mabel was in charge of the parties' finances. In 1993, Mabel became concerned because she and Robert were no longer listed as the owners of a farm in Nebraska. Through the mistake of a real estate agent, Gerald and his wife were listed as the only owners. Mabel sought the help of Madeline and gave her power of attorney. The real estate mistake was quickly remedied, and Mabel and Robert lost no money because of it.

Because of the problem with the Nebraska farm, however, Mabel no longer trusted Robert or Gerald. She came to rely on Madeline. Mabel moved some of the parties' funds to accounts under the names of Mabel and Madeline. In April 1995, Madeline removed more than $22,000 from one of these accounts. It is unknown what happened to these funds. Also, Mabel purchased a condominium for Madeline which cost $53,000.

In May 1996, Robert discovered there were little funds left in the parties' joint account. He decided to take over the family's finances. He arranged to have his three monthly checks sent to a separate account. The parties entered into an arrangement to split their income and expenses on a fifty-fifty basis. Mabel still had the use of the accounts which were no longer in Robert's name, and this money has been dissipated.

Mabel filed a petition for dissolution of marriage in January 1998. The district court divided the parties' property to award Mabel assets worth $92,532, which included the marital residence. Robert was awarded assets worth $74,033. He was ordered to pay alimony of $600 per month, to terminate on Mabel's death or when she no longer resides in the marital home, whichever occurs first. After a motion pursuant to Iowa Rule of Civil Procedure 179(b), the district court increased Robert's alimony obligation to $927 per month.

I. Mabel contends the alimony payments should not terminate if she no longer resides in the marital home. She points out her age and health may require her to leave the marital home.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Kurtt,* 561 N.W.2d 385, 387 (Iowa App. 1997). We consider the length of the parties' marriage, the ages and health of the parties, the parties' earning capacities, the levels of education, and the likelihood the party seeking alimony will be self-supporting at a standard of living comparable to the one enjoyed during the marriage. *In re Marriage of Clinton,* 579 N.W.2d 835, 839 (Iowa App. 1998).

We determine the provisions of the dissolution decree should not be changed. The evidence shows Mabel has a long-term nursing care insurance policy. Thus, if she is required to leave the marital home, at least some of her costs will be covered by the policy. Plus, if she were no longer living in the home, which was worth about $49,000, she could sell or rent it and use the proceeds to help finance her living expenses. We affirm the decision of the district court granting Mabel alimony in the amount of $927 per month until such time as she leaves the marital home or dies, whichever occurs first.

II. Mabel asks us to require Robert to name her as the beneficiary of his life insurance policy. Mabel admits the record is unclear as to the death benefit under Robert's life insurance policy, but she seeks to receive the first $50,000 of any death benefit paid from the policy. We deny this request. We find no reason in the record to require Robert to name Mabel as the beneficiary of his life insurance policy.

III. Robert asks for attorney fees for 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 Daniels,* 568 N.W.2d 51, 56 (Iowa App. 1997). We determine each party should pay his or her own attorney fees for this appeal.

We affirm the decision of the district court. Costs of this appeal are assessed to Mabel.

AFFIRMED.

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