IN THE COURT OF APPEALS OF IOWA

No. 9-022 / 98-298
Filed July 23, 1999

IN RE THE MARRIAGE OF WILLIAM E. ANDREWS AND PEGGY ANDREWS

Upon the Petition of
WILLIAM E. ANDREWS,

Petitioner-Appellant\Cross-Appellee,

And Concerning
PEGGY L. ANDREWS,

Respondent-Appellee\Cross-Appellant.

FILED
JUL 23 1999

Appeal from the Iowa District Court for Hardin County, Timothy J. Finn, Judge.

William Andrews appeals from the alimony provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Lynn J. Wiese of Barker, McNeal, Wiese & Holt, Iowa Falls, for appellant.

Patrick L. Wilson of Wilson Law Office Marshalltown, for appellee.

Considered by Sackett, C.J., Streit, J., and Hayden, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

PER CURIAM

William Andrews appeals the alimony provisions of the parties' dissolution decree, claiming the amount awarded was excessive. Peggy Andrews cross-appeals, claiming the alimony award was inadequate. We affirm as modified.

William and Peggy Andrews were married in 1975. They have two children, Heather, who was born in March 1980, and Maggie, who was born in July 1982.

William is employed by Berry Iowa Corporation as a molding supervisor. He has gross annual income of $49,281. His net monthly income is $2763. During the marriage, Peggy was primarily responsible for the care of the children. Maggie had some health problems, and required constant attention as an infant. Peggy presently works part-time as a cashier at Hy-Vee. She has gross annual income of $8375, and net monthly income of $829. Peggy has some health concerns, including depression and problems with her stomach. At the time of the dissolution hearing William was forty-three and Peggy was forty-four years old.

The district court entered a dissolution decree for the parties on February 3, 1998. The court placed primary physical care of the children with Peggy. Heather reached the age of majority in March 1998. The court applied the child support guidelines and determined William should pay child support of $619 per month for Maggie.

The court divided the parties' assets to award William assets worth $5600. William was ordered to pay debts of $21,277, which means William received a negative award of $15,181. Peggy was awarded assets worth $6096 and ordered to

pay debts of $14,459, which gave her a negative award of $8363. William had a 401k plan which was valued at $26,422. Peggy received one-half of this asset, $13,211.

The court ordered William to pay alimony of $350 per month while he is paying child support for one child. The alimony will be increased to $500 per month when William no longer has a child support obligation. The alimony will terminate on the death of either party or Peggy's remarriage or cohabitation. William appealed and Peggy cross-appealed.

Appellate review of this equitable proceeding is de novo. Iowa R. App. P. 4. The court has a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Weinberger,* 507 N.W.2d 733, 735 (Iowa App. 1993). The appellate court gives weight to the fact findings of the district court, especially in determining the credibility of witnesses, but is not bound by them. Iowa R. App. P. 14(f)(7).

William contends Peggy is not entitled to traditional alimony. He claims Peggy has the ability to become self-supporting. William proposes to pay rehabilitative alimony of $200 per month for a period of five years after Maggie graduates from high school. In the alternative, if traditional alimony is affirmed, William asks to have the amount of the alimony award reduced. He points out he was required to assume most of the parties' debt. William asserts the alimony award of $500 per month was excessive.

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). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3). *In re Marriage of Sychra,* 552 N.W.2d 907, 908 (Iowa App. 1996). We consider the length of the parties' marriage, the age 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).

The district court considered traditional, rehabilitative, and reimbursement alimony. The court concluded traditional alimony was appropriate in this case. The parties had a relatively long-term marriage of twenty-three years. The court found William was able to improve his position and salary at work, due in part to the fact Peggy provided the greater share of responsibility for the care of the children and maintaining the house. The court noted Peggy's current position, at a job with a low salary and virtually no benefits, was due in part to the sacrifices she made for the care of the children and the maintenance of the household. The court concluded she would need alimony to live at a standard near what she enjoyed during the marriage.

We determine the district court properly analyzed the parties' circumstances. While Peggy may be able to increase her income, she will probably never be able to earn income on a level comparable to William. In addition, Peggy has health problems which may prevent her from greatly increasing her earning capability. Traditional alimony is appropriate in long-term marriages where the life patterns of the parties have largely been set and the earning potential of both parties can be

predicted with some reliability. *In re Marriage of Francis,* 442 N.W.2d 59, 62-63 (Iowa 1989). For these reasons, we find traditional alimony was appropriate in this case.

Assuming the parties' salaries remain the same, once William's child support obligation is completed and he is paying alimony of $500 per month, his net monthly income would be $2264 and Peggy's would be $1330. Given these facts, the amount of the alimony awarded is not excessive.

Under the parties' dissolution decree, alimony will terminate on the death of either party or Peggy's remarriage or cohabitation. We note cohabitation is no longer considered an appropriate event to automatically terminate alimony in an original dissolution decree. *In re Marriage of Wendell,* 581 N.W.2d 197, 200 (Iowa App. 1998). Cohabitation has too many variables to be a defined future event, like remarriage, in a dissolution decree. *Id.* We modify the parties' dissolution decree to eliminate the provision alimony will terminate upon Peggy's cohabitation.

Peggy has cross-appealed. She claims the amount of alimony is not sufficient. She is currently working only part-time and could increase her income by working full-time. The alimony awarded by the district court, $500 per month, is equitable to both parties.

Peggy asks for attorney fees for this appeal. An award of appellate attorney fees is not a matter of right, but rests in our discretion. *In re Marriage of Kurtt,* 561 N.W.2d 385, 389 (Iowa App. 1997). Considering the relative financial conditions of the parties, we conclude each party should pay his or her own appellate attorney fees.

We modify the parties' dissolution decree to eliminate the provision alimony will terminate upon Peggy's cohabitation. In all other respects we affirm the district court. Costs of this appeal are assessed one-half to each party.

AFFIRMED AS MODIFIED.

Streit, J., concurs; Sackett, C.J., concurs specially without opinion.