IN THE COURT OF APPEALS OF IOWA

No. 3-452 / 93-378

FILED
JUN 28 1994
CLERK SUPREME COURT

IN RE THE MARRIAGE OF ROBERT SCOTT BEMER AND CHRISTINE ANN BEMER

Upon the Petition of
ROBERT SCOTT BEMER,

Appellant,

And Concerning
CHRISTINE ANN BEMER,

Appellee.

Appeal from the Iowa District Court for Linn County, Thomas M. Horan, Judge.

Robert Scott Bemer appeals the economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Sharon McMulin of Johnston, Larson, Potterfield, Zimmermann & Nathanson, Cedar Rapids, for appellant.

Karen A. Volz of Ackley, Kopecky & Kingery, Cedar Rapids, for appellee.

Considered by Donielson, C.J., and Sackett and Huitink, JJ.

DONIELSON, C.J.

Christine and Scott Bemer were married in 1978. They have two children: Jennifer, born in 1979, and Matthew, born in 1981. Scott is thirty-five, has a high school education plus two years of college, and works as a firefighter. Christine is thirty-three, has a high school education plus one semester of college, and works part-time serving school lunches and cleaning.

The parties were divorced in 1993. The district court found Scott had a net monthly income of $1,746.00, and Christine had a net monthly income of $320. As part of the property division the district court awarded Scott his "pension" and gave Christine the parties' joint savings account which contained a nearly identical amount. Scott was ordered to pay $300 for thirty-six months of rehabilitative alimony and $611 per month for child support.

Scott appeals. We affirm the decision of the district court as modified.

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).

First, Scott argues the district court erred in its division of marital property. We disagree. The partners in the marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. In re Marriage of Russell, 473 N.W.2d 244, 246 (Iowa App. 1991). We have long recognized the value of the contribution of a spouse who does not work outside the home, but contributes to the accumulation of marital assets by working as a homemaker or caregiver for the parties' children. See In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980); In re Marriage of Hoffman, 493 N.W.2d 84, 88 (Iowa App. 1992). Iowa courts do not require an equal division or percentage distribution. Id. The determining factor is what is fair and equitable in each circumstance. Id. The distribution of the property should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1991). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983).

Scott asserts the retirement system for firefighters is in place of social security and his contribution to the fund is equivalent to contributing to OASDI and Medicare. He argues his pension contribution of $11,994.70 should not be subject to property division and set off against the parties' savings account, valued at $11,935. In addition, he contends the savings account should be divided equally. We find In re Marriage of Branstetter, 508 N.W.2d 638 (Iowa 1993), dispositive of this issue. In Branstetter, as here,

the issue was whether the statutory pension for firemen was divisible as marital property. The court stated the general rule to be pensions are marital assets subject to division in dissolution proceedings. Id. at 640.

> The general rule is that rights and benefits under public pension and retirement plans, such as those administered for civil servants and other state or municipal employees, are treated no differently that rights and benefits under private pension plans, that is, they are treated as marital property insofar as they relate to employment during the marriage.

Id. at 641-42 (quoting 24 Am. Jur.2d Divorce and Separation § 907 at 892 (1983)). In this case, rather than dividing the value of the pension accumulated during the marriage, the district court awarded Christine an amount in a savings account approximately equal to half the accumulated pension and awarded Scott the entire pension. See Branstetter, 508 N.W.2d at 642. We find this division reasonable and equitable under the circumstances of this case and affirm the district court.

Scott also argues his child support payments need to be reduced to comply with the child support guidelines. He disputes Christine's assessment of his income. The record contains the affidavits of financial status of the parties. Christine's, dated September 11, 1992, estimates Scott's income at $1058 gross biweekly, with a monthly net income of $1663. Scott's, dated December 17, 1992, lists his biweekly gross as $1016, with a biweekly net of $746.71. Christine's, dated December 3, 1992, estimates

Scott's income as $1153 biweekly, with a monthly net of $1746. The record also contains a copy of Scott's pay stub from October 23, 1992. The biweekly gross pay for a ninety-six hour pay period was $1016, with a net of $746.71. Calculated on a monthly basis, this biweekly net is $1618. We find the evidence in the record best supports a finding Scott's monthly net income for determining child support is $1618. Applying the child support guidelines, we determine Scott should be paying thirty-five percent of his net monthly income, which is $566, as child support. We modify the dissolution decree accordingly.

Scott further argues his alimony obligation should be eliminated because Christine is capable of paying for her own college education. Alternatively, he argues the amount and duration of the alimony should be reduced. Christine argues, among other things, her thirteen years as a homemaker have left her at a disadvantage financially and professionally. She asserts it was equitable for the court to determine Scott should help her pay for her college education. Alimony is an allowance to the ex-spouse in lieu of a legal obligation of support. In re Marriage of Steele, 502 N.W.2d 18, 22 (Iowa App. 1993). Rehabilitative alimony is:

> a way of supporting an economically dependent spouse through a limited period of re-education or retraining following divorce, thereby creating an incentive and opportunity for that spouse to become self-supporting.

In re Marriage of Francis, 442 N.W.2d 59, 63 (Iowa 1989). Christine wants to pursue a career as an x-ray technician. The basic program is two years, with a third year to specialize. The rehabilitative alimony will enable Christine to obtain her education without having to work full-time to support herself and the children. Our review of the record convinces us the district court's award of rehabilitative alimony was equitable. We affirm the alimony award.

Finally, Christine asks for 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). Since Scott has a much greater ability to pay and Christine was obligated to defend this appeal, we award Christine $750 in attorney fees on appeal. Costs of this appeal shall be equally divided between the parties.

AFFIRMED AS MODIFIED.