FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-273 / 90-1562

IN RE THE MARRIAGE OF MONTY J. UNKRICH and LISA R. UNKRICH

Upon the Petition of

MONTY J. UNKRICH,

637

Appellee/Cross-Appellant,

And Concerning

LISA R. UNKRICH,

Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Jefferson County, Robert Bates, Judge.

Lisa appeals and Monty cross-appeals the economic provisions of a dissolution decree. **AFFIRMED AS MODIFIED.**

Sarah W. Cochran of Foss, Kuiken & Gookin, P.C., Fairfield, for appellant.

Timothy J. McKay of McKay & Moreland, P.C., Ottumwa, for appellee.

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

SCHLEGEL, P.J.

Monty and Lisa Unkrich were married on December 11, 1981. They had two children: Dustin Joe Unkrich, born May 13, 1982; and Jessica Renee Unkrich, born November 22, 1983. Since the time of the marriage until June 1988 the parties resided and were engaged in farming in Jefferson County, Iowa.

In 1987 the parties purchased 165 acres of farmland in Van Buren County from the Federal Land Bank. The district court found the value of this property to be $142,000. They purchased a seventy-acre tract of farmland in November 1988. This property was valued at $49,375. The parties also own farm machinery and vehicles worth $23,000. The parties' net equity in these assets is $77,172. Monty also owns some property which he received by inheritance or gift, which was not considered marital property by the district court.

Monty has been employed as a farm laborer by his father, who is also a farmer. The district court averaged Monty's income from his farming operation and his wages from his father over the past five years. Monty's average annual gross income is $25,422. His average monthly net income is $1,585.17.

The parties separated in June 1988 when Lisa moved with the children to Boulder, Colorado. Lisa and the children live in a house with Lisa's parents. Lisa did not work outside the home before she moved to Colorado. She now

works as a waitress. Her net annual income is $7,280, or about $607 per month. Lisa currently is only able to earn minimum wages. She expressed a desire for training in order to increase her earning capacity.

Lisa filed a petition for dissolution in Colorado. Monty did not answer the petition, but filed his own petition in Iowa. The Boulder County District Court entered a decree of dissolution for the parties on September 5, 1989. The court granted custody of the children to Lisa and gave Monty reasonable and liberal visitation rights. No other issues were decided by the Colorado court.

Lisa answered the Iowa petition after the Colorado decree had been entered. The Iowa district court gave full faith and credit to the Colorado decree and then proceeded to determine the remaining issues in the case. The court awarded Lisa a property settlement of $16,000, which was about twenty percent of the parties' net assets. Lisa was awarded alimony of $300 per month for thirty months. The court applied the child support guidelines and ordered Monty to pay $466 per month in child support. Monty must carry medical insurance for the children. Each party is responsible for one-half of medical expenses not paid for by insurance. Monty was ordered to pay $2,500 toward Lisa's attorney fees.

Lisa filed an appeal, and Monty filed a cross-appeal.

I. Our scope of review in dissolution cases is de novo. In re Marriage of Craig, 462 N.W.2d 692, 693 (Iowa App. 1990). While not bound by the trial court's determination of factual findings, we will give considerable weight to them, especially when considering the credibility of witnesses. Id.

II. Iowa recognizes the divisible divorce doctrine. In re Marriage of Kimura, 471 N.W.2d 869, 875 (Iowa 1991). This means a divorce may be granted in one forum, and the incidents to the marriage, such as alimony and property division, may be determined in another forum. Id. A state may alter the marriage status of a spouse domiciled there, even though the other spouse is absent, provided the nature of the substituted service on the absent spouse comports with due process. Id. at 876.

Here Monty was personally served notice of the Colorado petition. The Colorado court had jurisdiction to divorce the parties, and that decision is entitled to full faith and credit in Iowa. Because Iowa has jurisdiction over both parties, we may determine the other issues in this case, such as property division, child support, and alimony.

III. Lisa contends she should have received a greater amount of the parties' marital assets. She asks for $43,105.75.

The partners in a 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). The Iowa courts do not require an equal division or percentage distribution. Id. The determining factor is what is fair and equitable in each particular circumstance. Id. The property division should reflect uncompensated contributions to the marriage such as the raising and care of children. In re Marriage of Williams, 303 N.W.2d 160, 165 (Iowa 1981).

In this case we conclude twenty percent of the parties' net assets is not a sufficient reflection of Lisa's contributions to the marriage. We modify the property division to increase Lisa's cash award to $30,000. This amount is payable in a lump sum within thirty days after procedendo issues in this case.

IV. Lisa contends Monty's child support obligation should be increased. She believes the district court should have included Monty's interest income in its computations. She also believes the court should have based its award on Monty's 1989 income alone, instead of averaging his income over the past five years. Lisa asks for child support of $744.65 per month.

There is a rebuttable presumption that the amount of child support which would result from the application of the guidelines prescribed by the supreme court is the correct amount of child support to be awarded. In re Marriage of Bergfeld, 465 N.W.2d 865, 869 (Iowa 1991). The court must determine the parent's current monthly income

from the most reliable evidence presented. In re Marriage of Powell, 472 N.W.2d 250, 253 (Iowa 1991). This often requires the court to carefully consider all of the circumstances relating to the parent's income. Id. Where the parent's income is subject to substantial fluctuations, it may be necessary to average the income over a reasonable period when determining the current monthly income. Id.

In this case we find it was necessary to determine Monty's average income over the past five years. As a farmer, his income is subject to substantial fluctuations, not only from month to month, but from year to year.

We conclude the district court should have included Monty's interest income in its calculations. Although Monty received by gift or inheritance the funds which generated this interest, the income from the funds was available to the parties during the marriage. Monty had interest income of $3,540 in 1989, or $295 per month. This increases his net income to $1,880.17 per month. We apply the current child support guidelines. Bergfeld, 465 N.W.2d at 870. We find Monty's child support obligation should be $618 per month.

V. Lisa hired Richard Cornick to appraise Monty's property. Cornick testified at the trial. He charged Lisa $720 for these activities. Lisa asks that Monty be ordered to pay Cornick's fee as a court cost pursuant to Iowa Code section 622.72. The district court ordered each party to pay his or her own appraiser because Lisa hired an appraiser without Monty's consent or approval.

We agree with the district court that each party should pay his or her own appraiser's fee.

VI. Lisa contends the district court's award of $2,500 for her attorney fees was inadequate. She states it was due to Monty's failure to cooperate that she was forced to prosecute her case in two different states. Lisa asks for the full amount of her trial attorney fees, $5,054.02.

Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Schettler, 455 N.W.2d 686, 689 (Iowa App. 1990). To overturn an award the complaining party must show the trial court abused its discretion. Id. Awards of attorney fees must be for fair and reasonable amounts and based on the parties' respective abilities to pay. Id.

We believe the district court acted within its discretion in ordering Monty to pay about one-half of Lisa's trial attorney fees.

VII. Lisa also asks for attorney fees for this appeal. In determining whether appellate attorney fees should be awarded, 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 Imhoff, 461 N.W.2d 343, 345-46 (Iowa App. 1990).

In view of the parties' relative financial positions, we order Monty to pay the amount of $500 towards Lisa's appellate attorney fees.

VIII. In his cross-appeal Monty claims the district court overvalued his 165-acre tract of farmland. The court found the value of this tract to be $142,000. The parties paid $101,000 for this property in 1987, and Monty claims this should be considered its fair market value.

When we find the value placed on an asset by a trial court to be well within the permissible range of evidence, we will not disturb it on appeal. In re Marriage of Sell, 451 N.W.2d 28, 31 (Iowa App. 1989).

Monty's appraiser testified the property was currently worth about $101,000. Lisa's appraiser testified the property was worth about $149,000. We find the district court's valuation to be well within the permissible range of evidence.

IX. Monty asks the court to reduce his alimony obligation. He believes his present obligation is excessive. He seeks to have his alimony payments reduced to either $200 for thirty months, or $300 for twenty months.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. In re Marriage of Imhoff, 461 N.W.2d 343, 345 (Iowa App. 1990). When considering the appropriateness of alimony, the court must consider the earning capacity of each party, and their present standards of living and ability to pay balanced against their relative needs. Id.

In this case Monty's earning capacity is presently substantially greater than Lisa's. Lisa needs additional training in order to increase her earning capacity. We affirm the award of alimony made by the district court.

X. In summary, we have increased the cash property settlement to Lisa from $16,000 to $30,000. We have increased Monty's child support obligation to $618 per month. We have affirmed the district court on all other issues. We have ordered Monty to pay $500 towards Lisa's appellate attorney fees. Costs of this appeal are assessed to Monty.

AFFIRMED AS MODIFIED.