

FILED

APR 24 1984

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA**174****IN RE THE MARRIAGE OF MARVIN G. BRUNE AND RUTH LINDA BRUNE**

Upon the Petition of)

MARVIN G. BRUNE,)

Petitioner-Appellant,)

Filed April 24, 1984

And Concerning)

RUTH LINDA BRUNE,)4-30
83-858

Respondent-Appellee.)

Appeal from the Iowa District Court for Black Hawk County - L. John Degnan, Judge.

Petitioner husband appeals from the decree dissolving the parties' marriage, asserting that respondent wife's alimony award should be reduced and the requirement that petitioner husband pay respondent wife's hospital expenses should be eliminated or at least limited by a ceiling amount. **AFFIRMED AS MODIFIED.**

James L. Beeghly and James R. Donner of Gartelos, Wagner, Beeghly & Mattson, Waterloo, for petitioner-appellant.

David L. Riley of Lindeman & Yaglia, Waterloo, for respondent-appellee.

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

Marvin G. Brune appeals from the 1983 decree which dissolved his marriage to Ruth Linda Brune, challenging the excessiveness of the alimony award and the requirement that Marvin pay all of Ruth's medical expenses.

Marvin and Ruth were married in 1967. At that time Marvin was 32 and Ruth was 39. Ruth had been married three times before. No children were born of the marriage between Marvin and Ruth, but Ruth had five children from a previous marriage, four of whom lived with the parties at various times. Marvin adopted the youngest child, a boy, at age five. The boy is now 20 and is institutionalized for mental health problems. Marvin has had one year of college and has been employed as a truck driver since before the marriage. Ruth has a fourth grade education. She did not work outside the home during the marriage but helped Marvin with bookkeeping for his trucking business. Before the marriage she had held jobs as a dispatcher for a taxi company and as a maid in a hotel. Since the separation, she has been plagued with physical and emotional health problems and has been unable to find work.

In 1977, the parties, who were then living in Pennsylvania, separated. Shortly thereafter, Ruth retained an attorney, who drafted a separation agreement. The agreement provided that Marvin would pay Ruth support of \$800 per month, plus any hospital expenses she incurred which were not covered by insurance. Marvin appeared at the office of Ruth's attorney and signed the agreement; he was not represented by an attorney.

Marvin apparently made most of the payments required by the separation agreement. In 1981, he brought this dissolution action. The trial court found that the separation agreement "continues in force," and that Marvin was to make the support payments required by the separation agreement. Marvin claims the trial court was not bound by the separation agreement and that his alimony and medical expense support obligations under the decree are excessive.

Our review is de novo. Iowa R. App. P. 4. We are not bound by the trial court's findings of fact, but we give them weight, especially with regard to the credibility of witnesses. Iowa R. App. P. 14(f)(7). The trial court had jurisdiction to consider the separation agreement and to ignore or approve it in whole or in part. See Britven v. Britven, 259 Iowa 650, 656, 145 N.W.2d 450, 454 (1966) (consideration of prenuptial agreement approved). Although the terms of the agreement could be considered in determining the appropriate property division and alimony, the court was not bound by the separation agreement. See Bamesberger v. Bamesberger, 238 Iowa 492, 496, 28 N.W.2d 28, 31 (1947) (property settlement entered into before trial between parties is not binding on trial court).

Alimony is an allowance awarded to the ex-spouse in lieu of the other spouse's legal obligation of support. Knipfer v. Knipfer, 259 Iowa 347, 352, 144 N.W.2d 140, 143 (1966). "When determining the appropriateness of alimony, the trial court must consider: (1) the earning capacity of each party, and (2) present standards of living and ability to pay balanced against relative needs of the other." In re Marriage of Hitchcock, 309 N.W.2d 432, 436-37 (Iowa 1981).

In the instant case, Marvin should be able to earn approximately \$35,000 per year until he retires. Ruth essentially has no earning capacity. Ruth has greater need for support because of her poor health. Marvin is in good health. Therefore, we find that an award of alimony to Ruth was appropriate in this case.

The parties were married sixteen years. They were separated the last six years of the marriage, during which time Marvin apparently paid Ruth what he had agreed to pay her under the separation agreement, i.e., \$800 per month. The trial court was not bound by that figure, however. Upon review of the record, we find that figure to be excessive and reduce the alimony award to \$500 per month, until such time as Marvin retires or becomes disabled, or until Ruth remarries.

We further limit Marvin's liability for Ruth's medical expenses to \$3000 per year, until Marvin retires or becomes disabled. This amount seems to be approxi-

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mately what Marvin has been paying for Ruth's medical expenses. We do not feel this burdens him substantially, yet it provides Ruth with the medical care she needs. This will prevent Marvin from being liable for unlimited medical expenses, should Ruth's medical condition deteriorate.

Marvin will pay \$750 of Ruth's appellate attorney's fees because he is better able to do so.

AFFIRMED AS MODIFIED.