IN THE COURT OF APPEALS OF IOWA

No. 8-048 / 97-1038
Filed September 30, 1998

FILED
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CLERK SUPREME COURT

IN RE THE MARRIAGE OF MARY M. PARKER AND DOUGLAS C. PARKER

Upon the Petition of
MARY M. PARKER,
Appellee,

And Concerning
DOUGLAS C. PARKER,
Appellant.

Appeal from the Iowa District Court for Clinton County, Edward B. de Silva, Judge.

Douglas Parker appeals, and Mary Parker cross-appeals, from the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Jeffrey L. Farwell of Farwell & Bruhn, Clinton, for appellant.

Robert J. McGee, Clinton, for appellee.

Considered by Cady, C.J., and Streit and Mahan, JJ.

STREIT, J.

Douglas Parker appeals the trial court's award of rehabilitative and permanent alimony to Mary Parker and the division of the parties' marital debts. Mary cross-appeals for a greater alimony award and challenges the division of a capital accumulation trust account. We affirm the trial court's award of rehabilitative alimony, but reverse the award of permanent alimony. We modify the division of the capital accumulation account and affirm the trial court's division of debt.

I. Background Facts & Proceedings.

Mary and Doug Parker were married for twelve years. They divorced in March 1997. Mary was thirty-six and Doug was thirty-seven at the time of trial. The couple has one child, Michael, born in 1987.

Mary is not a high school graduate, but has obtained her GED. During the marriage she did not work outside the home. When the couple separated, Mary worked at Ralston Purina, but quit due to her working conditions. At the time of trial she was obtaining her license to drive a school bus. The court found she could earn a gross annual income of $9400 per year driving a school bus. Mary also has plans to go back to school.

Doug has worked for Waldorf Corporation since 1978. His gross salary is $60,000 per year. Doug has a pension plan through Waldorf. He also has a Waldorf Capital Trust Fund which is worth approximately $52,000.

After trial, the court assigned Mary $7426 of debt and approximately $40,570 worth of assets, including a vehicle and the family home. Doug was assigned $19,432 of debt and $55,805 worth of assets. The court ordered Doug to pay Mary rehabilitative alimony of $500 per month for four years and permanent alimony of $250 per month thereafter. The parties agreed Doug would pay $775 per month child support and the court included that amount in the decree. Douglas appeals the division of debts and alimony award. Mary cross-appeals, contending she is entitled to more alimony.

II. Standard of Review.

Dissolutions are equitable in nature and reviewed de novo. *See* Iowa R. App. P. 4. This requires an examination of the entire record to adjudicate anew the rights of the parties. *In re Marriage of Ruter*, 564 N.W.2d 849, 851 (Iowa App. 1997). Weight is given to the findings of the trial court, although they are not binding. *Id.* Iowa R. App. P. 14(f)(7).

III. Division of Assets & Debt.

Doug argues the court erred in ordering him to pay one-half of the MasterCard credit card debt and to assume $1440 of outstanding medical bills.

The allocation of marital debts is an integral part of a property division. *In re Marriage of Erickson*, 553 N.W.2d 905, 908 (Iowa App. 1996) Both the division of property and the division of debts should be equitable. *Id.* Division of debt accumulated during the marriage is divided by applying the factors set out in Iowa

Code section 598.21(1)[1]. *In re Marriage of Cooper*, 451 N.W.2d 507, 509 (Iowa App. 1989).

Review of these factors convinces this court the trial court equitably divided the debt between Mary and Doug. Mary contributed to the family by staying home

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[1]
a. The length of the marriage.
b. The property brought to the marriage by each party.
c. The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services.
d. The age and physical and emotional health of the parties.
e. The contribution by one party to the education, training or increased earning power of the other.
f. The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.
g. The desirability of awarding the family home or the right to live in the family home for a reasonable period to the party having custody of the children, or if the parties have joint legal custody, to the party having physical care of the children.
h. The amount and duration of an order granting support payments to either party pursuant to subsection 3 and whether the property division should be in lieu of such payments.
I. Other economic circumstances of each party, including pension benefits, vested or unvested, and future interests.
j. The tax consequences to each party.
k. Any written agreement made by the parties concerning property distribution.
l. The provisions of an antenuptial agreement.
m. Other factors the court may determine to be relevant in an individual case.

Iowa Code § 598.21(1) (1997).

and taking care of the couple's child. By doing so, she removed herself from the workforce and now has a much lower earning capacity than she would otherwise. Doug has a substantial income and can absorb the impact of additional debt better than Mary can. Not only is his earning capacity greater, but so is his overall financial condition. Under these circumstances, the trial court correctly assigned one-half of the MasterCard debt and the medical bills to Doug. Doug argued the MasterCard debt was used to make improvements to the house, which Mary was awarded, and to repair the Volvo, which Mary was awarded. Those assets were property of the marriage when the debt was incurred. The division of debts is affirmed.

Mary argues the court erred in its division of the Waldorf trust fund. The court divided the capital accumulation plan in the same manner it did Douglas' pension, awarding Mary one-half of 13/19ths of the pension and capital plan. The couple agreed, however, unlike the pension fund, the entire capital accumulation plan was acquired during the marriage.

Mary was entitled to an equitable share of the capital accumulation plan, which was marital property. *See In re Marriage of Muelhaupt*, 439 N.W.2d 656, 659 (Iowa 1989). Douglas was awarded 65.8% of the capital account and Mary was awarded 34.2 percent of the account. Considering the parties' circumstances, this division was not equitable. Mary does not have the earning capacity nor the financial where-withal of Douglas. Even if she educates herself and becomes self-supporting, the chances of her building a sufficient retirement fund is minimal. In contrast, Douglas will

continue to earn a substantial income and reap the benefits of his vested pension and capital accumulation plan, both of which will continue to increase after the divorce. We reverse the trial court's division of the capital accumulation plan. Mary is awarded one-half the Waldorf trust fund. After this modification, Mary has been awarded approximately $39,000 of the marital assets and Douglas has been awarded $29,000 of the marital assets.

IV. Alimony.

Douglas argues the rehabilitative alimony was excessive and the court erred in awarding permanent alimony after the rehabilitative alimony ceases. Mary argues she is entitled to a larger permanent alimony payment.

Alimony is not a right, rather, an award depends upon the circumstances of each case. *In re Marriage of Miller*, 532 N.W.2d at 162. It is sometimes used to remedy the inequities in a marriage and to compensate a spouse who leaves the marriage at a financial disadvantage. *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993); *In re Marriage of Earsa*, 480 N.W.2d 84, 86 (Iowa App. 1991). The discretionary award of alimony is made after considering the factors listed in Iowa Code section 598.21(3).[2] *See In re Marriage of Hayne*, 334 N.W.2d 347, 350 (Iowa

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[2] Among those factors are the length of the marriage; the property brought to the marriage by each party; the contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services; the age and physical and emotional health of the parties; the contribution by one party to the education or increased earning power of the other; and the earning capacity of each party. The court may also consider "other factors the court . . . determine[s] . . . relevant in an individual case." Iowa Code § 598.21(3)(1997).

App. 1983). Alimony may be used to remedy the inequities in a marriage and to compensate a spouse who leaves the marriage at a financial disadvantage. *In re Marriage of Gonzalez*, 561 N.W.2d 94, 99 (Iowa App. 1997).

Alimony and property distribution are considered together in assessing their individual sufficiency. They are neither made nor subject to evaluation in isolation from one another. *In re Marriage of McLaughlin*, 526 N.W.2d 342, 345 (Iowa App. 1994). Following a marriage of long duration, we have affirmed awards of both alimony and substantially equal property distribution, especially where the disparity in earning capacity has been great. *In re Marriage of Geil*, 509 N.W.2d at 742; *In re Marriage of Hitchcock*, 309 N.W.2d 432, 438 (Iowa 1981).

There are three types of alimony awarded by the courts.

Rehabilitative alimony serves to support an economically dependent spouse through a limited period of education and retraining. *In re Marriage of O'Rouke,* 547 N.W.2d 864, 866 (Iowa App. 1996). Its objective is self-sufficiency. *Id.* Cases in which rehabilitative alimony is awarded are those where the spouse to receive alimony needs to redevelop previous skills, receive new training, or develop potential supportive skills. *In re Marriage of Peterson,* 491 N.W.2d 535, 538 (Iowa App. 1992).

The court may also consider "other factors the court . . . determine[s] . . . relevant in an individual case." Iowa Code § 598.21(3)(1997).

Reimbursement alimony is predicated upon economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the *adhered.* In considering whether reimbursement alimony is appropriate, the courts consider the employment opportunities that have been embraced by both parties during the marriage. *In re Marriage of Mouw*, 561 N.W.2d 100, 102 (Iowa App. 1997). The fact one party has chosen an occupation which generates more income than the field of the other is not the controlling factor in the alimony award where both have the education and potential to supply for themselves a very adequate living. *Id.*

Traditional alimony is payable for life or for so long as a dependent spouse is incapable of self-support. *Id.* Traditional alimony is awarded when "[t]he feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage." Iowa Code § 598.21(3)(f)(1997); *In re Marriage of Debbler,* 459 N.W.2d 267, 270 (1990).

Traditional alimony is typically awarded when a spouse is financially dependent on the other, there is little prospect of self-sufficiency, and the marriage was of long duration. *See In re Marriage of Eastman*, 538 N.W.2d 874, 876 (Iowa App. 1995).

The record in this case supports the court's award of rehabilitative alimony to Mary in the amount of $500 per month for four years. During the marriage Mary was economically dependent upon Douglas. Now that the marriage has ended, she will

need to support herself. Although she may not be self-supporting now, she is capable of becoming self-supporting. Mary is thirty-seven years old and in good health. She intends to go back to school and develop new skills. The four-year award of $500 per month alimony is sufficient to help Mary rehabilitate to a self-supporting individual. The trial court's award of rehabilitative alimony is affirmed.

The record does not support an award of permanent alimony to Mary. The couple's marriage was twelve years. The asset and debt division between the couple will make it possible for Mary to live a lifestyle reasonably comparable to the lifestyle she lived when the couple was married. Most important, Mary will become self-supporting. She is thirty-seven years old, has some experience in the workforce, and is planning to obtain an education. Permanent alimony should not be awarded unless a dependant spouse will continue to be incapable of self-support. For these reasons, the trial court's award of permanent alimony is reversed. Douglas's obligation to pay alimony will cease the first day of April, 2001.

AFFIRMED AS MODIFIED.