IN THE COURT OF APPEALS OF IOWA

No. 0-170 / 99-893
Filed July 12, 2000

IN RE MARRIAGE OF SHIRLEY K. ARMSTRONG AND WILLIAM R. ARMSTRONG

FILED
JUL 12 2000
CLERK SUPREME COURT

Upon the Petition of
SHIRLEY K. ARMSTRONG,
Petitioner-Appellant/Cross-Appellee,

And concerning
WILLIAM R. ARMSTRONG,
Respondent-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Dubuque County, John Bauercamper, Judge.

The petitioner appeals, and respondent cross-appeals, from various economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Robert L. Day, Jr., Dubuque, for appellant.

Stuart G. Hoover of Naylor, Hoover, Peters & Blair, P.C., Dubuque, for appellee.

Considered by Streit, P.J., and Zimmer and Hecht, JJ.

ZIMMER, J.

Petitioner Shirley Armstrong appeals, and respondent William Armstrong cross-appeals, from various economic provisions of their dissolution decree. We affirm with modification.

Shirley and William married in October 1975. They had two sons: Philip, born in March of 1980, and Nicholas, born in March of 1983. Philip is enrolled in Kirkwood Community College. Nicholas still lives with his mother. Shirley has been employed in the office of the Dubuque County Clerk of District Court for approximately eighteen years. She earned a gross annual income of $29,900 in 1998. Shirley always maintained the children's health insurance through her job. William works as an engine room mechanic at the Dubuque Diamond Jo Casino and earns a gross annual income of $27,662.

The parties separated in August of 1998 and Shirley petitioned for dissolution in September of that year. Trial was held on April 1, 1999. The marriage was dissolved on April 2, 1999. Five days later, the district court entered a supplemental decree, which decided the remaining issues. Pursuant to the couple's agreement, the district court gave Shirley primary physical care of Nicholas. The court ordered William to pay $411.64 monthly in child support to Shirley and $100 per month to Philip as a postsecondary education support subsidy. Shirley was ordered to continue to provide the medical insurance for both children, but the parties would split equally the cost of any medical expenses not covered by the insurance. Shirley received the encumbered home, valued at $95,000, as part of the property settlement. Finally, the district court required William to pay $500 of Shirley's attorney fees.

Shirley appeals and William cross-appeals. Shirley's sole contention is that the trial court erred in requiring her to maintain health insurance for the children. In his cross-appeal, William claims the trial court erred in assessing the value of the home at $95,000, requiring him to pay a monthly postsecondary education subsidy for Philip, and awarding Shirley $500 in trial attorney fees.

I. Scope of Review. We review dissolution decrees de novo. *See In re Marriage of Knickerbocker,* 601 N.W.2d 48, 50-51 (Iowa 1999) (citations omitted). We examine the entire record and adjudicate anew the parties' rights on the issues properly presented. *Id.* (citation omitted). In doing so, we give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. *Id.* (citations omitted).

II. Health Insurance. Shirley maintains it was inequitable for the trial court to require her to pay for the children's health insurance when comparable insurance is available through William's employment at about half the cost. She argues Iowa Code Chapter 252E and Iowa Code section 598.21(4)(a) (1997) require the parent paying child support to also pay for health insurance. Shirley asks us to modify the decree either to provide that William obtain the children's health insurance through his employment or contribute half of the cost of her insurance.

These statutes do not support Shirley's position. Section 598.21(4)(a) provides:

> a. Upon every judgment of annulment, dissolution or separate maintenance, the court may order either parent or both parents to pay an amount reasonable and necessary for supporting a child. . . . The court shall order as child medical support a health benefit plan as defined in chapter 252E if available to either parent at a reasonable cost. A health benefit plan is considered

> reasonable in cost if it is employment-related or other group health insurance, regardless of the service delivery mechanism. The premium cost of the health benefit plan may be considered by the court as a reason for varying from the child support guidelines.

This code section simply requires that in the event of a dissolution, some provision must be made for the child's medical support. Iowa Code section 252E.1(7) defines 'medical support' as

> the provision of a health benefit plan . . . to meet the medical needs of a dependent and the cost of any premium required by a health benefit plan, or the payment to the obligee of a monetary amount in lieu of a health benefit plan, either of which is an obligation separate from any monetary amount of child support ordered to be paid.

An 'obligee' is a parent or other person entitled to receive a support payment on behalf of a child. Iowa Code § 252E.1(8). Section 252E.1(7) by no means suggests that the parent responsible for child support payments, the 'obligor,' is required in *all* cases to maintain the child's health insurance. These statutes simply require some medical support be provided for a child in the event of a dissolution of marriage.

The trial court's order regarding health insurance was equitable. This is a case where health insurance was available to both parents through their employment. The cost to Shirley is $90 every two weeks. The trial court found health insurance is also available to William at a cost of between $87 and $107 per month. However, the parties have always maintained health insurance through Shirley's employment with the State, presumably because it is better insurance. The trial court gave her credit for the premiums in the calculation of net income for purposes of applying the child support guidelines. Furthermore, William earns less than Shirley and is required to pay over $500 per month for

the boys' support. Finally, as the district court pointed out, maintaining continuity of insurance will alleviate any problems with waiting periods and pre-existing conditions that can accompany a change of insurance providers. We affirm the health insurance provision of the dissolution decree.

III. William's Cross-Appeal. A. Valuation of the Home. At the time the parties separated in August of 1998, there were two mortgages on the marital home totaling $73,437.22. The home was refinanced in January of 1999 and the bank appraised the home at $108,000. During refinancing, the two mortgages were paid off, as was an automobile loan debt of $9,001.09 on William's truck. William was also removed from the mortgage at that time. At trial, a realtor testified on Shirley's behalf that the home was worth $95,000. The trial court accepted this valuation. It is not clear on appeal what William would have us do, even if we believed the value of the home was higher, although presumably he would like some reciprocal cash settlement if Shirley received, but was not entitled to, some greater share of the equity.

We conclude Shirley did not receive a greater share of the equity. The appraiser who valued the home for the purpose of refinancing did not testify at trial. Instead, William presented the testimony of Rogene Faulkner, the bank's lending officer who dealt with the refinancing. She did not offer a personal opinion regarding the home's value, instead she merely provided a foundation for the refinancing documents. Shirley, on the other hand, offered the testimony of a local realtor. He had recently inspected the Armstrong home and two comparable, neighboring properties that had recently been sold. He assessed the Armstrong home's value at $95,000. The realtor pointed out, and Faulkner

conceded, that refinancing appraisals are often higher than appraisals done for other purposes. William himself admitted that before the refinancing, he thought the house was worth between $90,000 and $100,000. The district court's valuation was well within the permissible range of evidence, and we will not disturb it upon appeal. *See In re Marriage of Driscoll,* 563 N.W.2d 640, 643 (Iowa App. 1997).

B. Postsecondary Subsidy. The trial court required William to pay $100 per month to Philip to help with his postsecondary education expenses. William does not argue that this subsidy was contrary to law, only that he cannot afford it.

We find no proof of hardship in the record. In the past during the marriage, William has taken on part-time work and earned an extra $2,000 to $3,000 per year. We see no reason why he could not do so again. This $100 provision was also part of the temporary order in this case, and William proved capable of paying it. William fails to present sufficient reason why we should disturb this portion of the district court's order. Both parents must provide for the support and welfare of their children to their full capacities. *See* Iowa Code § 598.21(4); *In re Marriage of Swan,* 526 N.W.2d 320, 326 (Iowa 1995).

C. Trial Attorney Fees. William's final contention is he should not have been ordered to pay $500 toward Shirley's trial attorney fees. Iowa trial courts have considerable discretion in awarding attorney fees. *In re Marriage of Okonkwo,* 525 N.W.2d 870, 874 (Iowa App. 1994) (citation omitted). To overturn an award, the complaining party must show that 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.* (citations omitted).

In the decree, the trial court gave no reason for the attorney fee award. No disparity in income justifies the award. In fact, Shirley earns slightly more than William. Shirley suggests the trial court awarded her attorney fees because William's attorney engaged in conduct which unduly lengthened the trial. The trial court made no such finding. We modify the trial court's decree to eliminate the award of attorney fees to Shirley.

Costs are taxed one half to each party.

AFFIRMED AS MODIFIED.