IN THE COURT OF APPEALS OF IOWA

No. 6-168 / 95-672

IN RE THE MARRIAGE OF LORETTA J. WELCHER AND LARRY JOE WELCHER

FILED
SEP 30 1996
CLERK SUPREME COURT

Upon the Petition of
LORETTA J. WELCHER,

Petitioner-Appellee,

And Concerning
LARRY JOE WELCHER,

Respondent-Appellant.

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

Larry Welcher appeals from the provisions of the parties' dissolution decree.

AFFIRMED.

John S. Pieters of Pieters, Pieters & Corzine, Waterloo, for appellant.

Ann M. McDonough, Dubuque, for appellee.

Considered by Sackett, C.J., Vogel, J., and McCartney, S.J.*

*Senior judge from the Second Judicial District serving on this court by order of the Iowa Supreme Court.

McCARTNEY, S.J.

The respondent, Larry Joe Welcher (Larry), appeals from the district court decree entered in the dissolution of marriage. He appeals from certain provisions contending the court erred in (1) making an inequitable debt and property division; (2) improperly considering certain overtime pay in calculating child support; (3) awarding the petitioner trial attorney fees; and (4) failing to grant him sufficient visitation with the minor children of the marriage. The petitioner, Loretta J. Welcher (Loretta), requests attorney fees for this appeal. We affirm.

The parties were married in 1977 and had six minor children at the time of the dissolution of marriage on December 2, 1994. A supplemental decree was filed later on January 19, 1995.

Both parties are employed. Larry was employed by the United States Postal Service. At the time of trial, Larry was working as a night clerk for the postal service from 5:30 in the afternoon until 2:30 the following morning, Thursday through Monday. Loretta worked as a police department radio dispatcher. Her employment was full-time.

Our review is de novo but we give deference to the findings of fact made by the district court in view of its opportunity to observe the witnesses first-hand. *In re Marriage of Steele*, 502 N.W.2d 18, 20 (Iowa App. 1993).

Turning to the issue of whether or not the trial court made a fair and equitable division of the debts and property of the parties, the trial court awarded Loretta

$43,300 and Larry $38,670. Included in the award to Loretta was the homestead where the children reside with her. She received two vehicles worth $800, her IPERS account, a vacant lot of $3500, and miscellaneous items, including jewelry and household goods, of $2000. Larry received two vehicles worth $25,000, a boat and trailer worth approximately $2000, his own retirement account valued at $4000, jewelry and a cabinet worth approximately $1500.

Against those assets, the trial court assigned the homestead mortgage debt to Loretta and certain other family debts which totaled $21,000. Larry was obligated under the decree to pay some $29,600 in debts, including the loan on one of his motor vehicles, a boat loan, and certain other miscellaneous hospital and doctor bills.

It is this apparent disparity between what Larry receives in the way of assets and what he is obligated to pay in the way of debts compared to the assets and debts assigned to Loretta that Larry asserts is inequitable.

In his brief, Larry assigns the value of $1895 to a certain boat, trailer, and motors in arriving at the $38,670 distribution of property given him. He states that such is the net value remaining after payment of a boat loan of $4180. He then includes the boat loan in the amount of debt assigned to him. However, the trial court found the value of this property to be $6175. The difference between the gross value and the net equity is $4180, which should be added back to the value of property received by Larry. Using Larry's other figures, he therefore receives $42,850 in

assets. This is sufficiently close to the gross value of the property received by Loretta.

Larry does have approximately $8600 more debt to pay than Loretta. The trial court, however, did not place a value on the considerable sporting equipment and collections passing to Larry as being too difficult to value. It is apparent that throughout the marriage Larry invested considerable sums of money in sporting equipment, fishing gear, boats, and the like.

This disposition takes into account the fact that the trial court could not attribute any value to the said collections, fishing gear, and the like, which passed to Larry. In like fashion although the trial court found the house awarded to Loretta to be worth $36,000, it also found that it was in a "poor state of repair and needs substantial improvements." There was testimony that the home might be worth only $28,000 given its condition. These factors justify the distribution as made by the trial court. Absolute equality is not required. *In re Marriage of Stewart*, 356 N.W.2d 611, 612 (Iowa App. 1984). To paraphrase *Steele* we find this distribution to be fair and equitable under the peculiar circumstances of this matter.

The trial court established child support to be paid by Larry at $1184 per month. In doing so, the trial court took into account certain premiums paid by the postal service for night and weekend work, and also took into account certain overtime. We agree that the "shift bonuses" for working nights and weekend shifts should be included in determining wages upon which child support is based. While

overtime pay may be included in determining child support, generally it is excluded if it is uncertain. *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993). Here the trial court used the wages earned by Larry over a considerable period of time and then extrapolated to determine monthly wages upon which to base child support. Regardless of how described, the night and weekend premiums are part of Larry's base salary, i.e. what he receives regularly for his normal work week. Any changes in this compensation may be brought to the attention of the trial court at that time.

Larry appeals the award of attorney fees to Loretta in the sum of $1500. Attorney fees are discretionary with the trial court. *In re Marriage Giles*, 338 N.W.2d 544, 546 (Iowa App. 1983).

We look at the relative ability to pay, and unless we find that such discretion has been abused, we do not "generally disturb the award." *Geil*, 509 N.W.2d at 743. We do not find that the amount under the circumstances is so shocking as to reflect an abuse of discretion.

Finally, Larry requests more extensive visitation with the children than that allowed by the trial court in its decree. The trial court ordered visitation to Larry of all children as follows: alternate weekends from Saturday morning until Sunday evening and one weekday per week from 8 a.m. until 7 p.m. The trial court further alternated various holidays between the petitioner and the respondent, and finally provided visitation during the summer months for fourteen consecutive days. The trial court indicated visitations had not always gone well with Larry and the trial court

did direct that the parties attempt to increase visitation. If visitations improved, the respondent could seek further direction from the court vis-a-vis increased visitation. We find this visitation sufficient to allow Larry and the children to continue to develop good relationships.

Loretta seeks attorney fees on this appeal which are granted only within the sound discretion of the court. We believe both parties have adequate funds for these expenses; therefore, each is required to pay his or her own attorney fees without contribution from the other.

Based upon the foregoing, the judgment and decree of the trial court is affirmed.

AFFIRMED.