IN THE COURT OF APPEALS OF IOWA

FILED
APR 25 1989
CLERK SUPREME COURT

IN RE THE MARRIAGE OF THOMAS MARK WINKLER AND MARY LOUISE WINKLER

Upon the petition of **THOMAS MARK WINKLER,**	)	348
Petitioner-Appellant,	)	
And Concerning **MARY LOUISE WINKLER,**	)	8-707 88-734
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Pottawattamie County (Equity 1144), Leo F. Connolly, Judge.

Husband appeals from a dissolution decree, challenging various economic provisions. **AFFIRMED AS MODIFIED.**

Maynard S. Telpner, of Telpner, Smith, Sawatzke & Ruesch, Council Bluffs, for the petitioner-appellant.

Deborah L. Petersen, of Perkins, Sacks, Hannan, Reilly & Petersen, Council Bluffs, for the respondent-appellee.

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

Tom and Mary were married in 1971. They are the parents of three children, a boy born in 1977 and twin girls born in 1979. The dissolution decree placed the three children in joint legal custody and in Mary's physical care. The custody arrangement is not challenged in this appeal.

Tom, who was thirty-eight years old at the time of trial, is an electrical engineer and superintendent for Iowa Power and Light. In 1987 he earned a salary of over $46,000 per year.

Mary, who was thirty-seven years old at the time of trial, has been a full-time homemaker during most of the marriage. She has some employment experience and she has earned some junior college credits.

I.

The first question on appeal is whether the trial court erred by signing the decree prepared by Mary's attorney. The court, after asking both sides to prepare proposed decrees, used Mary's decree verbatim, filling in the blanks left for child support and alimony.

The verbatim adoption of one side's proposed decree is not per se in error. Kroblin v. RDR Motels, Inc., 347 N.W.2d 430, 435 (Iowa 1984). Where both sides are given an equal opportunity to be heard and the party's substantive rights are not adversely affected, no reversible error is committed. Id. at 436.

In this case both parties were asked to and did submit proposed decrees. However, more important to this case is our standard of review. We review this matter de novo. Iowa R. App. P. 4. We give weight to the fact-findings of the trial court especially when considering the credibility of the witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7). While we do not encourage the verbatim adoption of one party's proposed decree, any failure by the trial court to achieve an equitable result will be corrected by our de novo review.

II.

Tom claims the division of the assets made by the court was inequitable. He argues that Mary received 55 percent of the net assets and 57.5 percent of his net monthly income. Further, he claims that he was left with substantial financial obligations and nonliquid tax deferred assets. He contends this distribution is not equitable given his financial contribution to the marriage.

Of the assets divided by the court, we find a dispute exists as to the value of two assets: the value of Tom's car and Mary's share of the joint savings account. Averaging the values for these two assets and then adding them to the agreed upon values of the rest of the assets, we find that Mary received approximately 51.2 percent of the assets and Tom was awarded 48.8 percent.

	Tom	Mary
Vehicles	$ 5,800	$11,163
Life Ins. Policies	334	672
Household goods/tools	equal	equal
Individual checking accounts	200	1,000
Jewelry	3,361	-0-
Home Equity	-36,209	-0-
Grandfather clock	-0-	400
PAYSOP Trust	-0-	10,327
401K/IRA accounts	475	12,409
Retirement certificate	-0-	753
Joint savings	7,283	13,250
Mutual funds	6,585	6,585
Iowa Resources Stock	13,776	13,756
Utilicorp Stock	5,264	5,264
Total	$79,287	$75,579

The court is to divide all property except inherited or gifted property, equitably between the parties after considering the factors listed at Iowa Code section 598.21(1)(a)-(m). In Winklers' case, the parties were married for sixteen years. Neither party brought significant assets to the marriage. Mary worked early in the marriage but she stayed home after the first child was born. Both have had mental problems but both are in good physical health and young enough that they will be able to reestablish themselves. Tom has the greater earning capacity while it will take some education and training before Mary will become self-supporting at a standard of living reasonably comparable to that enjoyed during marriage.

Tom specifically challenges the inclusion of $2,436 in the joint assets. He claims this amount was gifted to him by his father. However, the money was treated as a joint

asset by the parties and was deposited in a joint account. There is no evidence to indicate that the money was given solely to Tom. See In re Marriage of Weidner, 338 N.W.2d 351, 360 (Iowa 1983). Therefore, the money was properly considered in the marital property.

Given the circumstances of the parties, we find an equitable distribution of the property has been made. The debts Tom has been ordered to pay are justified by his greater earning capacity. Mary, on the other hand, needs to establish herself and become self-supporting. An equitable division need not be achieved with mathematical exactness. In re Manager of Conley, 284 N.W.2d 220, 223 (Iowa 1979). We find the property distribution is equitable.

III.

Tom was ordered to pay $3,200 in attorney fees to Mary, even though she requested only $1,000. This amount was in addition to the $1,250 he paid ahead of trial.

Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). 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, In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977), and based on the parties' respective abilities to pay. In re Marriage of Lattig, 318

N.W.2d 811, 817 (Iowa App. 1982). We find no abuse of discretion by the trial court in requiring Tom to pay Mary's trial attorney fees. However, based on their respective abilities to pay, we modify the award to $1,000 as originally requested.

Also, we find that Tom should pay Mary reasonable attorney fees on appeal. This decision is based on the parties' respective financial resources, In re Marriage of Pittman, 346 N.W.2d 33, 37 (Iowa 1984), and the fact that Mary has been forced to defend the decree on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). Therefore, we order Tom to pay Mary $1,000 for her attorney fees on appeal.

IV.

The court also ordered Tom to pay child support in the amount of $1,000 per month. Tom challenges the requirement that he pay this amount until the youngest children are age twenty-two if involved in post-high school education as defined by Iowa Code chapter 598. The parties' children were ten and eight at the time of trial.

"Under our law support must end when a child reaches eighteen unless the evidence establishes that a statutory provision, such as 598.1(2) applies." In re Marriage of Rohlfsen, 398 N.W.2d 197, 199 (Iowa App. 1986). Iowa Code section 598.1(2) says the court "may" order support "for a child who is between the ages of eighteen and twenty-two

years" provided the children meet the statutory guidelines concerning school. Such support is not required but may be ordered under the proper circumstances. In re Marriage of Vrban, 293 N.W.2d 198, 203 (Iowa 1980). We find that the decision of the trial court has prematurely assessed the circumstances regarding college. Rohlfsen, 398 N.W.2d at 199. Therefore, we find it necessary to modify the child support order as follows. The child support obligation of the petitioner shall continue until both of the youngest children of the parties, Lisa Marie and Rebecca Jane, reach the age of eighteen, marry or become self-supporting, whichever occurs first. However, the support shall continue in any event, until each child completes his or her high school education.

V.

With regard to the amount of child support and alimony, Tom complains that the award was unfair and inequitable. In addition to the $1,000 per month in child support, Tom was ordered to pay $400 per month in permanent alimony. He contends that in light of the other economic provisions of the decree, alimony should be rehabilitative for five years and child support should be reduced as each child becomes ineligible.

We consider the economic provisions of the dissolution as a whole. In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984). The court may order support payments for

a limited or indefinite length of time depending on the factors listed in Iowa Code section 598.21(3). Mary is currently without a salary because she quit working approximately twelve years ago when their son was born. She needs time to train to find employment. However, equitable principles require that Tom only be required to support her for a reasonable amount of time. In re Marriage of Hayne, 334 N.W.2d 347, 351 (Iowa App. 1983). Therefore, we modify the alimony award of $400 per month to continue until respondent's death, remarriage or cohabitation with a member of the opposite sex or until petitioner's death or for ten years, whichever occurs first.

The child support order of $1,000 per month covers three children, the youngest two being twins. There is no requirement that an amount be designated per child. See Iowa Code § 598.2, and 598.21(4). We look to the children's needs and to the parties' respective ability to pay. In re Marriage of Anderson, 400 N.W.2d 84, 85 (Iowa App. 1986). We find that the child support order is equitable.

Finally, Tom requests that he be allowed to reduce the face amount of his $184,000 life insurance policy to $125,000 as the premium rises. The trial court order requires that $184,000 in life insurance be maintained so long as petitioner has an obligation of child support

and/or alimony. Life insurance provisions are intended to secure the payment of support obligations. Accordingly, Tom should be required to maintain insurance only in an amount equal to that which may come due under the decree.

In conclusion, the dissolution decree is affirmed as modified. The costs of this appeal are to be born by petitioner. He will also pay his own attorney fees and $1,000 toward Mary's appellate fees as discussed previously.

AFFIRMED AS MODIFIED.