IN THE COURT OF APPEALS OF IOWA

No. 1-189 / 00-0944
Filed May 9, 2001

IN RE THE MARRIAGE OF LANA LAREE HOFFMAN AND MICHAEL WILLIAM HOFFMAN

Upon the Petition of
LANA LAREE HOFFMAN,
Petitioner-Appellee,

And Concerning
MICHAEL WILLIAM HOFFMAN,
Respondent-Appellant.

FILED
MAY 0 9 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Des Moines County, Cynthia H. Danielson, Judge.

The respondent appeals from the alimony and child support provisions of the parties' dissolution decree. Respondent argues that: (1) the district court erred in awarding petitioner traditional alimony of $1000 per month until age sixty-five; and (2) if petitioner is entitled to alimony, then these payments should be included in her income and deducted from his income for purposes of calculating child support. Petitioner requests an award of appellate attorney fees. **AFFIRMED AS MODIFIED.**

Chad A. Kepros of Bray & Klockau, P.L.C., Iowa City, for appellant.

J. Bryan Schulte of Bauer, Schulte, Hahn, Swanson & Brown, Burlington, for appellee.

Considered by Sackett, C.J., Huitink and Streit, JJ.

SACKETT, C.J.

Respondent-Appellant Michael William Hoffman appeals challenging the alimony and child support provision of the decree dissolving his twenty-seven year marriage to Petitioner-Appellee Lana Laree Hoffman. We affirm as modified.

Michael and Lana married in 1972. At the time they both were in college. Michael, who was twenty-three years of age, was a junior, and Lana, who was twenty years of age, was a sophomore. They both received college degrees, and Lana earned an additional thirty graduate hours. In 1973, following Michael's college graduation, the couple moved to Burlington. Michael went to work for a family business, Keystone Products Company. Lana then finished her education at the University of Iowa and began teaching school. At the time of the dissolution Michael was president of Keystone Products Company and Lana was in her twenty-seventh year of teaching at New London High School.

Two daughters were born to the marriage, Andrea, in 1981, and Meredith, in 1984. At the time of the dissolution hearing in January of 2000 Andrea had reached her eighteenth birthday and was a high school senior scheduled to graduate in the spring of 2000. Following graduation Andrea planned to attend the University of Iowa. Meredith was fifteen years old at this time and a sophomore in high school.

Prior to trial Michael and Lana agreed on a number of issues. Meredith was to be in the parties' joint custody with Lana having primary physical care and Michael visitation. The child support for Meredith was to be fixed solely on the parties' earned income, meaning passive or investment income was not to be

included. For that purpose Michael's income was set at $86,747 and Lana's at $35,399. This resulted in child support being fixed at $1,308 for two children and $884 for one. Lana was to provide Meredith's medical insurance, and Michael was to provide her dental insurance and pay one hundred percent of any medical expenses not paid for by insurance. The premiums for the dental and medical insurance were to be included in the child support calculations. Michael would claim Andrea and Lana Meredith until such time as Andrea could not be claimed, and then they would alternate Meredith's exemption. They also agreed that they would each pay one-third of Andrea's college expenses at the University of Iowa. They reserved the question of payment of Meredith's college expenses for a later date.

John and Lana, both industrious during the marriage, had accumulated property through their joint efforts that they agree is worth about $1,600,000. They further agreed that this is a marriage that calls for a nearly equal division of the accumulated assets, and they divided their assets and liabilities accordingly. We find this to be an equitable allocation of assets and liabilities. *See In re Marriage of McLaughlin*, 526 N.W.2d 342, 344 (Iowa Ct. App. 1994). The agreed division resulted in each party receiving approximately $800,000 in value. To accomplish the division it was agreed that certain property, including the personal residence, would be sold, although Lana was allowed to live there until the sale, and Michael would make the house payments but would receive a credit at the time of sale for the reduction in principal as a result of these payments.

In addition to the property accumulated through Michael and Lana's joint effort they each held stock in Keystone Products Company, Inc. Michael's

parents gifted the stock to them. The book value of Michael's stock was $230,920.49, and Lana's was $118,000. It is conceded that the book value may not represent the market value. A portion of Michael's stock and all of Lana's stock is non-voting stock. The fact the stock is non-voting and the fact that since the time it was gifted competition from other business has had an effect on Keystone's profits indicates that the stock does not have substantial value.

The parties agreed three unresolved issues would be submitted to the district court, namely: (1) whether Lana should receive alimony; (2) whether Michael should be required to contribute to Lana's attorney fees; and (3) how the shares of Keystone Products Company, Inc. gifted to the parties by Michael's parents should be allocated. Lana's argument on the third issue was that Michael should pay her for her stock at book value.

The district court granted Lana's request for alimony and ordered Michael to pay Lana alimony of $1,000 a month until she dies, remarries, or reaches the age of sixty-five, or Michael dies, whichever event first occurs. In awarding the alimony the district court reasoned that Lana did not have the earnings that Michael enjoyed. The court rejected in part Michael's contention that income on Lana's property settlement with her earnings would be sufficient to support her lifestyle, finding Michael did not provide evidence or expert testimony to that effect. The court determined Lana's monthly expenses to be $4,500 and found the record did not allow it to conclude that Lana's property award was sufficient to generate the income necessary to eliminate her need for alimony. The court further found that Lana's ability to support her pre-dissolution lifestyle was limited by her lower earning capacity while Michael's earned income after the dissolution

minus his child support obligation will allow him to continue his pre-dissolution lifestyle without touching the income or corpus of the property he was awarded. To obtain her same standard of living, Lana argues she would be required to use the corpus of her property settlement. The district court also considered the children's expenses in assessing the alimony award.

The district court provided that each party retains his or her ownership of their respective shares of Keystone. Each party was ordered to pay his or her own attorney fees, and the court costs were divided equally between the couple.

Our review in cases such as these is de novo. Iowa R. App. P. 4. We give weight to the fact-findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We are not bound by these determinations, however. *Id.; In re Marriage of Versluis*, 521 N.W.2d 760, 761 (Iowa Ct. App. 1994). Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983).

Michael first contends he should not have been required to pay Lana alimony, and that if he should have been, it should not be in the amount ordered.

Spousal support often referred to as alimony is provided for under Iowa Code section 598.21(3). We look to the factors set forth in this section in determining if alimony is warranted and in assessing if the amount of the award is equitable and justified. *See In re Marriage of Hayne,* 334 N.W.2d 347, 350 (Iowa Ct. App. 1983). Whether spousal support is justified is dependent on the facts of each case. *See In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa

1976). In assessing a claim for alimony we consider the property division and alimony together in determining their sufficiency. *See In re Marriage of Lattig*, 318 N.W.2d 811, 815 (Iowa Ct. App. 1982). Entitlement to spousal support is not an absolute right. *Fleener,* 247 N.W.2d at 220. An alimony award is justified when the distribution of the assets of the marriage do not equalize the inequities and economic disadvantages suffered in marriage by the party.

In assessing Michael's claim that Lana should not have been awarded alimony we look to the particular circumstances of this case. *In re Marriage of Bethke*, 484 N.W.2d 604, 609 (Iowa Ct. App. 1992). The mandate is to achieve an equitable and just result under the circumstances. *Id.; see In re Marriage of Webb,* 426 N.W.2d 402, 405 (Iowa 1988). Neither party leaves this marriage economically disadvantaged. They both finished their college education after marriage. They are well educated. Education is a factor to be considered with respect to a party's earning capacity, and this is true not only on the issue of an "equitable division of assets" but also as to whether "alimony should be awarded and, if so, the amount to be awarded." *In re Marriage of Janssen*, 348 N.W.2d 251, 253-54 (Iowa 1984); *In re Marriage of Horstmann*, 263 N.W.2d 885, 891 (Iowa 1978). Both Michael and Lana have good jobs with a certain amount of security, although Michael contends his income may decrease because of competition in the market place. Michael and Lana both are in good health. They worked hard and leave the marriage with a substantial net worth. While they both conceded the assets acquired by their joint efforts were divided nearly equally, they each attempt to argue that the other's financial position is better because of the nature of the assets the other person takes from the marriage.

We find no merit to the argument of either party on this issue. We consider alimony and property division together in assessing their individual sufficiency. *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa Ct. App.1984). They are neither made nor subject to evaluation in isolation from one another. *Id.* We determine Michael and Lana each leave the marriage in substantially the same financial position. We disagree with the district court's finding that Michael had some burden to present evidence showing the income that Lana would receive from this property. There is no presumption that Lana is entitled to alimony. How she allocates the assets she takes from the marriage between income and non-income producing property is her decision. The fact that Michael's earned income exceeds Lana's indicates that his future financial position should be better.

Alimony is an allowance to the ex-spouse in lieu of a legal obligation to support that person. *See In re Marriage of Hitchcock*, 309 N.W.2d 432, 437 (Iowa 1981). Consequently the two factors we consider in addressing the alimony issue in this case are (1) the future earning capacity of each party, and (2) their present standards of living and ability to pay balanced against their relative needs. *See In re Marriage of Estlund*, 344 N.W.2d 276, 281 (Iowa Ct. App. 1983). In doing so we also recognize that alimony is not an absolute right; rather an award depends upon the circumstances of each particular case. *Fleener*, 247 N.W.2d at 220 (Iowa 1976). We also address the issue of awarding alimony under a gender-neutral classification and are careful in our consideration to avoid sexual stereotypes. *See In re Marriage of Bethke*, 484 N.W.2d 604, 608 (Iowa Ct. App. 1992).

We also consider the availability of pension benefits. *In re Marriage of Howell*, 434 N.W.2d 629, 632 (Iowa 1989); *In re Marriage of Huffman*, 453 N.W.2d 246, 248 (Iowa Ct. App. 1990); *In re Marriage of Mott*, 444 N.W.2d 507, 510 (Iowa Ct. App. 1989). *See In re Marriage of Schissel*, 292 N.W.2d 421, 427 (Iowa 1980). Both parties have provision for retirement income.

Lana has an annual salary from teaching of $36,399 and a cafeteria plan worth $5286. Michael earns $86,774. Both Lana and Michael have adequate income to provide a high standard of living. We believe that an alimony award of $500 a month is sufficient to correct any inequities in salary, and we modify the decree to so provide.

The major difference in the parties' financial picture as they leave the marriage is that Michael currently has a higher annual income than does Lana. While they both made sacrifices for the marriage, it would be difficult to say that either was leaving at a substantial disadvantage. We consider, among other things, the parties' income potential. *In re Marriage of Stewart*, 356 N.W.2d 611, 613 (Iowa Ct. App. 1984). Yet, each party has chosen his or her respective field. Their entry into their chosen field was the result of certain personal aptitudes and abilities. The fact the field of one may generate more income than the field of the other is not the controlling factor in the alimony award where both parties have the education and potential to supply for themselves a very adequate living. *See In re Marriage of Mouw*, 561 N.W.2d 100, 102 (Iowa Ct. App. 1997).

Michael contends that his alimony should be deducted before child support is figured. In *In re Marriage of Lalone*, 469 N.W.2d 695, 697 (Iowa 1991), the court affirmed the trial court's computation of income for child support

purposes which was arrived at by subtracting alimony to be paid by the noncustodial parent and adding the alimony income to the custodial parent's income. In *In re Marriage of Miller*, 475 N.W.2d 675, 680 (Iowa Ct. App. 1991), the court found the trial court had not abused its discretion in not making such a computation where the alimony was in a lesser amount and for a shorter duration than in *Lalone*.

Lana contends that Michael is precluded from making this argument on appeal because the parties stipulated that only earned income would be used for child support purposes. Michael argues that at the time the stipulation was made he was not aware of what if any alimony he would be required to pay. We chose not to address the issue of error preservation. We deny Michael's request to have alimony deducted from his income and added to Lana's for purpose of computing child support. We have reduced his alimony obligation. His child support obligation will run for less than three years. Michael's child support obligation is based on his earned income only. Under these facts it is equitable not to make the child support adjustment Michael requests. We affirm on this issue.

Lana requests appellate attorney fees. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa Ct. App. 1998); *In re Marriage of Kern*, 408 N.W.2d 387, 390 (Iowa Ct. App. 1987). Neither Michael nor Lana were totally successful in this appeal. They both have the ability to pay their own attorney fees. We award no further attorney fees to either

party. *See In re Marriage of Dahl*, 418 N.W.2d 358, 361 (Iowa Ct. App. 1987). Costs on appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.