IN THE COURT OF APPEALS OF IOWA

No. 1999-318 (9-571) / 98-1129
Filed March 15, 2000

IN RE THE MARRIAGE OF LORI ANN AUESTAD AND TODD JAY AUESTAD

Upon the Petition of
LORI ANN AUESTAD,
Petitioner-Appellee,

And Concerning
TODD JAY AUESTAD,
Respondent-Appellant

FILED
MAR 15 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Hamilton County, William J. Pattison, Judge.

Todd Auestad appeals a court order that refused to award him attorney's fees and investigatory costs incurred in the parties' dissolution proceedings. **AFFIRMED.**

Charles Deppe and Douglas Cook, Brekken, Deppe, Wynia, Cook & Hyland, P.C., Jewell, for appellant.

Robert A. Wright, Jr., Wright & Wright, Des Moines, for appellee.

Considered by Sackett, C.J., and Vogel and Hecht, JJ.

PER CURIAM

Todd Auestad appeals a court order that refused to award him attorney's fees and investigation costs incurred in the parties' dissolution proceedings. Todd asks to be reimbursed for these costs, and also to receive attorney fees on appeal. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Lori and Todd Auestad were married and they have two children. Lori is employed as an account executive for a software company. In 1997, she earned $33,500. Todd is employed by a company as a production coordinator, and he earned $29,500 in 1997.

After dissolution proceedings were initiated, Lori testified both in a deposition and at the temporary custody hearing she had not been involved in any sexual relationship with another man while married to Todd. Prior to the dissolution hearing, Todd hired a private investigator who found evidence Lori had an affair during the marriage.

The district court entered a dissolution decree for the parties. The court determined Todd was slightly, and only slightly, more able to minister to the children's long-range best interests, and placed the children in Todd's primary physical care.

Todd asked to have Lori pay for his attorney fees, including the fees for the private investigator. He claimed his costs had increased because Lori had not told the truth initially in the proceedings. The district court denied his request.

Lori appealed the custody decision. Todd cross-appealed the denial of his request for attorney fees and investigatory costs. Lori later dismissed her appeal. Todd's cross-appeal became the appeal we are presently addressing.

An award of attorney fees rests in the sound discretion of the trial court and will not be disturbed on appeal in the absence of an abuse of discretion. *In re Marriage of Romanelli,* 570 N.W.2d 761, 765 (Iowa 1997). The court should make an attorney fees award which is fair and reasonable in light of the parties' financial positions. *In re Marriage of Grady-Woods,* 577 N.W.2d 851, 854 (Iowa App. 1998).

We find the district court did not abuse its discretion in denying Todd's request for trial attorney fees. The court found Lori was only slightly more capable than Todd of paying attorney fees and related litigation expenses. The court noted it was not especially helped in making a custody decision by the parties' efforts to "get the goods" on the other.

Todd requests attorney fees for this appeal. We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. *In re Marriage of Dieger,* 584 N.W.2d 567, 570 (Iowa App. 1998). In view of the fact Todd's attorney spent some time preparing for an appeal which was dismissed, we determine Lori should pay Todd $500 toward his attorney fees for this appeal.

We affirm the decision of the district court. Costs of this appeal are assessed one-half to each party.

AFFIRMED.