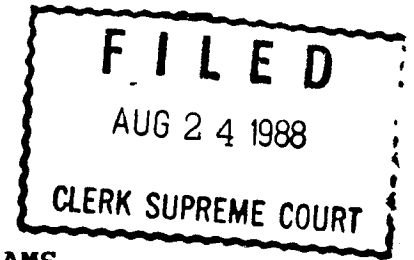


IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF DAVID HOWARD WILLIAMS
AND JOAN FULTON WILLIAMS



425

Upon the Petition of)

DAVID HOWARD WILLIAMS,)

Petitioner-Appellant,)

And Concerning)

JOAN FULTON WILLIAMS,)

Respondent-Appellee.)

8-381
87-1634

Appeal from the Iowa District Court for Marion County
(No. DM 7-125), George W. Bergeson, Judge.

Petitioner husband appeals from the decree dissolving
the parties' marriage. **AFFIRMED AS MODIFIED.**

Robert A. Hutchison, Jill Thompson Hansen, and
Patricia L. Leto of Brown, Winick, Graves, Donnelly,
Baskerville & Schoenebaum, Des Moines, for appellant.

Garold F. Heslinga of Heslinga, Heslinga, Dixon &
Grotewold, Oskaloosa, for appellee.

Considered by Donielson, P.J., and Schlegel and Hayden,
JJ.

DONIELSON, P.J.

Petitioner husband appeals from the decree dissolving the parties' marriage. He asserts that: (1) the property division is inequitable; (2) his child support award is excessive; (3) respondent wife's alimony award is excessive in amount and duration; and (4) the district court should not have awarded respondent wife attorney fees. Respondent requests attorney fees on appeal.

Petitioner, David H. Williams, and respondent, Joan F. Williams, were married in 1974. They have one child, Laura, born in 1976. David is a full-time college music professor. Joan is a secretary, working part-time. At the time of trial, David was forty-one years old and Joan was fifty-two.

The dissolution decree provided for joint custody of Laura with Joan responsible for physical care. David was directed to pay Joan child support of \$450 per month (to be increased each year by a percentage equal to the percentage of increase in David's income), alimony of \$400 per month (until Joan remarries or either party dies), and attorney fees of \$900. The district court awarded each party the cars and other personal property in their possession. The house is to be held as tenants in common and Joan has the right to live there until Laura reaches age twenty-two. Joan is to pay the insurance, taxes, and first mortgage on the house. David is to make the second mortgage payments.

Each party was assigned to pay other miscellaneous debts. David appeals this decree.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. We review the facts and law and determine the parties' rights anew where issues have properly been presented and preserved. In re Marriage of Phipps, 379 N.W.2d 26, 27 (Iowa App. 1985). This court gives considerable weight to the trial court's findings of fact, but is not bound by them. In re Marriage of Bornstein, 359 N.W.2d 500, 502 (Iowa App. 1984), Iowa R. App. P. 14(f)(7).

Upon dissolution, orders for disposition and support shall be made after consideration of the factors listed in Iowa Code section 598.21. Even though alimony, child support, and the property distribution are figured separately and with different Code subsections, all economic aspects are to be considered as an integrated whole. In re Marriage of Behn, 385 N.W.2d 540, 543 (Iowa 1986).

I. Property Distribution. The court shall divide all property, except inherited property, equitably between the parties after considering the relevant factors listed in Iowa Code section 598.21(1)(a)-(m). Neither party had any significant amount of property at the time of marriage nor has either received any gifts or inheritance of significant amounts. The trial court found David's doctorate degree to be the most valuable asset attained during the marriage. David continued to work while earning this

degree, but Joan did not. Loans and family assistance paid the additional expenses.

The only other major asset is the family home which was valued at \$43,000. However, there are two mortgages outstanding totaling approximately \$41,003. We find the property distribution to be equitable; therefore, we affirm the lower court's property division and related debt assignment.

In the trial court's assignment of other miscellaneous debts, it was ordered that petitioner pay certain debts and that petitioner contribute \$2,700 thereto by paying respondent \$75 per month. This is an evident error. Both sides agree that the decree should read "respondent shall contribute . . . paying the petitioner." We order this corrected.

II. Child Support. The court may order either or both parents to pay an amount reasonable and necessary for the support of a child. Iowa Code § 598.21(4). Petitioner argues that the trial court failed to establish the amount of actual expenses attributable to Laura before determining the amount necessary. Further, David contends that the court failed to consider his other contributions to Laura such as health insurance and expenses incurred when she visits.

Reviewing the facts before this court in light of Iowa Code section 598.21(4)(a)-(i), we conclude that the amount

of the trial court's order for child support is equitable despite David's assertions. Relevant here are the financial resources of both parents, id. § 598.21(4)(b), the standard of living the child would have enjoyed had there not been a dissolution, id. § 598.21(4)(c), and the child's educational needs, id. § 598.21(4)(g).

David is a professor at Central College, receiving a gross income of \$30,111. He also earned approximately \$600 giving private music lessons. Joan is a part-time secretary at Central College and works at the Christian Opportunity Center. Her annual gross salary is approximately \$5,920 based on thirty weeks at \$5.66 for fifteen hours and fifty-two weeks at \$3.60 for eighteen hours a week. Monthly needs were found to be \$1,361 for Joan and Laura combined. David's needs were estimated at \$470 a month even though the court found this figure "unrealistic."

The couple has not enjoyed a financially-prosperous lifestyle during their thirteen years of marriage. Nor do we expect great increases for David as a college professor at Central College. Even though David has earned his doctorate degree, we must accept his chosen profession. As we have said previously, one does not owe a duty to the marriage to attain the highest financial success of their profession. In re Marriage of Griffin, 356 N.W.2d 606, 609 (Iowa App. 1984).

Lastly, David has expressed his desire for Laura to continue taking music and dance lessons. This is a relevant consideration. However, it is too early to decide on the issue of college. Laura does have the possibility of attending Central with a tuition grant if her father remains there. However, this is too speculative at this point and the court has reserved jurisdiction on this point.

These factors plus consideration of the property distribution lead us to affirm the amount of the lower court's child support award. However, we must modify the award to exclude the escalation provision. Both parents have an obligation to support their children according to their ability and circumstances. See In re Marriage of Byall, 353 N.W.2d 103, 108 (Iowa App. 1984). As we anticipate that Joan's circumstances will improve, she will be able to take on some additional expenses for Laura. Therefore, we do not agree with the trial court and strike the clause requiring the amount of child support to be increased each September 15th by a percentage equal to petitioner's percentage increase in salary each year.

III. Support Payments. Upon a judgment of dissolution, the court may grant an order requiring support payments to either party after considering the factors of Iowa Code section 598.21(3)(a)-(j). David contends the trial court award is excessive in amount and duration. We agree with David.

The trial court awarded alimony to Joan in the amount of \$400 a month until death or remarriage. When determining the appropriateness of alimony, the court must consider (1) the earning capacity of the parties and (2) the present standard of living and ability to pay against relative needs of the other. In re Marriage of Hitchcock, 309 N.W.2d 432, 436-37 (Iowa 1981). Therefore, we need to consider Joan's earning capacity and compare it to David's.

At issue is the earning capacity of Joan. Iowa Code section 598.21(3)(e) states:

The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, responsibilities for the children under an award of custody or physical care, and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.

The trial court found that Joan has a high school degree and ordinary secretarial skills. She was fifty-two at the time of trial while her husband was forty-one. She has two jobs that bring in approximately \$410 per month of spendable funds. She has unsuccessfully attempted to find better work in Pella. Joan has physical custody of their one child, Laura, born January 29, 1976.

David challenges the figure of \$410 per month. He asserts the trial court arrived at this figure by prorating over twelve months the earnings Joan makes working thirty weeks at Central College. David contends this figure is distorted as Joan nets approximately \$535 per month for the

thirty weeks she works at Central and at the Christian Opportunity Center working just over thirty-three hours per week.

David also contends the court compared his gross income to Joan's net figure. A valid comparison requires us to consider either net incomes for both parties or gross incomes of both. David asserts his net income is \$1,772.28 and that this figure should be compared against Joan's net earning capacity.

The trial court recognized that David has summers available for outside work such as private music lessons. However, the court did not consider that Joan also has time available to do additional work. A better approximation of her earning capacity is the net figure of \$535 per month that she earns when working both jobs. This figure is still low, as it reflects only thirty-three hours a week. Working full time in her chosen profession would allow Joan to increase her take-home pay.

Joan has the capacity to work full time. Although she has sought psychiatric care and requires antidepressant medication, Joan testified that she is emotionally able to handle a full time secretarial job. Joan has secretarial skills and experience. She has not expressed a desire for additional training. Therefore, Joan's earning capacity should include consideration of full time employment, after allowing time to secure a full time position.

Considering all the relevant factors of Iowa Code section 598.21(3) in light of the property distribution and child support award, we agree that alimony is justified. However, we find \$300 per month to be equitable under these circumstances. Therefore, we modify the amount of the lower court's award.

Furthermore, we do not agree to extending these payments until death or remarriage. Joan and David were only married for thirteen years. Joan has the skills, training, and experience necessary to engage in full time employment. She is currently employed and has been working off and on since high school. As a matter of public policy, it is undesirable and inequitable for the supporting spouse to be required to continue paying alimony after the dependent spouse's standard of living is assured. In re Marriage of Hayne, 334 N.W.2d 347, 351 (Iowa App. 1983). Ten years should provide Joan time to assure her standard of living and to provide for Laura until she reaches majority or completes college. Therefore, we modify the duration of the alimony award to death of either party, remarriage by Joan, or ten years from the decree, whichever occurs first.

IV. Attorney Fees. The fourth issue raised by petitioner is the award of attorney fees to respondent. An award of attorney fees in a dissolution action is not a matter of right, but depends on the relative needs, abilities, and financial circumstances of the parties. In re

Marriage of Stanley, 411 N.W.2d 698, 702 (Iowa App. 1987).

We agree with the trial court that David is in the better position to pay the attorney fees.

Furthermore, Joan has requested attorney fees on appeal. In evaluating this request, we consider Joan's needs, David's ability to pay, and whether Joan was obligated to defend the trial court's decision on appeal. In re Marriage of Bornstein, 359 N.W.2d 500, 504 (Iowa App. 1984). Upon consideration of these factors, we conclude that Joan is entitled to appellate attorney fees in the amount of \$975.

AFFIRMED AS MODIFIED.