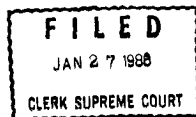


IN THE COURT OF APPEALS OF IOWA



IN RE THE MARRIAGE OF CAROL MEISINGER AND DAVID J. MEISINGER

Upon the Petition of	)	142
CAROL MEISINGER,	)	Filed January 27, 1988
Petitioner-Appellee,	)	
And Concerning	)	
DAVID J MEISINGER,	)	7-286
Respondent-Appellant.	)	86-1531

Appeal from the Iowa District Court for Polk County (CD50-29518), Rodney J Ryan, Judge.

Respondent husband appeals certain provisions in the decree of dissolution of marriage entered by the trial court. **AFFIRMED AS MODIFIED.**

Gary S Gill, Des Moines, for respondent-appellant.

Harlan M. Hockett and Timothy McCarthy II, Des Moines, for petitioner-appellee

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

SCHLEGEL, J.

The respondent husband appeals certain provisions in the decree of dissolution of marriage entered by the trial court. The respondent claims the trial court erred in: (1) ordering alimony to be paid until the wife dies or remarries; (2) ordering alimony payments which are too high; (3) ordering child support of \$1,000 per month; (4) ordering an increase in child support if respondent's income increases; (5) failing to order visitation in alternating years on Christmas; (6) failing to order a division of the equity in the homestead; (7) awarding seventy-five percent of the cash termination benefits of a pension plan to the wife; and (8) awarding forty percent of a trust account held by respondent to the wife. *The petitioner asks for attorney fees on this appeal.* Our scope of review is de novo. Iowa R. App. P. 4. We affirm as modified.

The respondent, David J. Meisinger, and the petitioner, Carol Meisinger, were married in 1969. They have one child, Jessica, who was born in 1980. David has a Ph.D. and is employed by International Minerals and Chemicals, Inc. at a salary of \$55,020 per year. David pursued his education during the marriage. He worked part time and received student loans. Carol graduated with a B.A. in 1975. She worked outside the home until Jessica was born. Carol's final job paid her nine dollars per hour.

I.

David claims that the trial court erred in ordering alimony to be paid to Carol until her death or remarriage. He also contends that the court's order for alimony payments of \$1,200 per month for twenty-four months, \$800 per month for the next twenty-four months, and \$500 per month thereafter is excessive. The factors governing an award of alimony are set forth in Iowa Code section 598.21(3) (1985). The Iowa Supreme Court has recognized that under certain circumstances, rehabilitative alimony is the appropriate form of support

payment. See In re Marriage of Bevers, 326 N.W.2d 896, 900 (Iowa 1982). We believe these circumstances exist in the present case. Carol has a college education, is physically capable of employment and has proven that she is able to secure employment in the past. We are aware that Carol has been out of the job market during her marriage and may need further training to become employed again. Therefore, we hold that Carol is entitled to a support award which will sufficiently rehabilitate her. It is not necessary for David to contribute to her support indefinitely.

Having determined that Carol is entitled to rehabilitative alimony, we now address the questions of how much to award and for how long. In light of the factors stated in Iowa Code section 598.21(3), we find the trial court's alimony award to be excessive. As noted before, the purpose of this award should be to rehabilitate Carol in order that she may effectively reenter the job market. Given that she has a college education, is in good health, and has prior work experience, we believe that an award of \$625 per month for two years is proper. Such an amount will enable Carol to seek additional training and education which she might need to again enter the job market.

II.

David next argues that the trial court erred in ordering child support in the amount of \$1,000 per month when there was no showing that the minor child needed that amount of money. The factors governing the proper amount of each parent's support obligation are set forth in Iowa Code section 598.21(4) (1985). That code section states that the child support ordered should be a reasonable and necessary amount. We believe that the trial court's order of \$1,000 per month child support is excessive. Nothing in the trial court's findings of facts or dissolution decree indicates on what basis this amount was set. We also are unable to find evidence in the record to justify the award. Absent

more extensive and specific evidence of what amount is necessary to support Jessica in the standard of living she would have enjoyed had there been no dissolution, we are unable to conclude that \$1,000 per month is the proper amount. We order David to pay the more reasonable amount of \$500 per month in child support.

III.

David also asserts that the trial court improperly ordered the child support payments to increase in an amount equivalent to the percentage of any increase in his gross income. We do not find this provision to be proper. The sole basis for the proposed increases in child support was increases in David's gross income. This is not a reasonable manner in which to increase David's child support obligation. It does not account for the degree of Jessica's changing needs, it does not account for the degree of increase in the cost of living, it does not account for other factors affecting David's ability to pay, and it does not account for factors affecting Carol's ability to contribute to Jessica's support. We therefore order that this provision in the trial court's dissolution decree be stricken. Our ruling does not foreclose the possibility of Carol seeking modification of the child support payment at a later date upon a showing of the necessary grounds for such a modification.

IV.

David also claims that the trial court erred in failing to order visitation privileges for him with Jessica on Christmas Eve and Christmas Day, at least on an alternate basis. The trial court's decree allowed David visitation with Jessica during her Christmas vacation period, commencing December 26 and continuing "until a date and time which would allow Jessica to be returned to [Carol's] residence two full days before the commencement of school (or, in the event Jessica is not in school, then to be returned to [Carol] by January 3)."

Visitation is determined by the best interests of the child. In re Marriage of Hubbard, 315 N.W.2d 75, 82 (Iowa 1982). It is not in Jessica's best interest to not spend any Christmas holidays with her father. We therefore order that every other year, David shall have Christmas vacation visitation rights as follows: Jessica's travel day shall be moved back such that she is in David's custody from December 24 up through the return date provided for in the original decree. Travel costs shall be assessed to David. In the years that David does not have Jessica on Christmas Eve and Christmas Day, visitation shall be in accord with the trial court's original decree.

V.

David next contends that the trial court erred in certain provisions of the property division. First, he claims that the court erred in failing to order a division of the equity in the homestead of the parties. The court's decree awarded Carol the equity in the parties' homestead after it was sold (equity equalling \$4,000). The governing principle for division of the parties' property is that it be equitable. See In re Marriage of Wallace, 315 N.W.2d 827, 831 (Iowa App. 1981). Factors to consider are set forth in Iowa Code section 598.21(1) (1985). We believe the trial court's award of the equity in the homestead to Carol was fair and equitable. We are not bound to achieve a precisely equal division in awards of marital property. See In re Marriage of Lattig, 318 N.W.2d 811, 814 (Iowa App. 1982). The court awarded Carol her I.R.A. in the amount of \$750, while David was awarded his I.R.A. in the amount of \$7,000. In light of the significantly greater value of the I.R.A. awarded to David, we conclude that the court's award of the \$4,000 equity in the home to Carol was not unfair.

David also argues that the trial court improperly awarded seventy-five percent of the total amount of the cash termination benefits of David's pension plan to Carol. Again, we view this property award in light of what is most equit-

able. See Marriage of Wallace, 315 N.W.2d at 831. There is nothing in the record which would warrant awarding Carol seventy-five percent of David's pension plan cash termination benefits. We hold that a 50/50 division would be more equitable and modify the decree accordingly.

David's final contention is that the trial court erred in awarding Carol forty percent of the trust money held in an account by David. David claims that the trust account was a gift to him from relatives and should not be divided. Section 598.21(2) of the Iowa Code provides that:

2. Property inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage.

After reviewing the record, we conclude that the trust account held by David was a gift to him and thus, falls within the scope of section 598.21(2). There is nothing in the trial court's decree, nor do we find anything in the record to justify a conclusion that "refusal to divide the property is inequitable to the other party or to the children of the marriage." We therefore hold that David is entitled to the entire amount of the trust account.

VI.

Carol requests an award of attorney fees incurred in defending this appeal. In a dissolution action, attorney fees are not awarded as a matter of right. In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977). We deny Carol's petition for attorney fees connected with this appeal.

AFFIRMED AS MODIFIED.