IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ROBERTA ANN ADELMAN AND JAMES ROBERT ADELMAN

Upon the Petition of	)	
ROBERTA ANN ADELMAN,	)	
Petitioner-Appellee,	)	Filed November 26, 1986
And Concerning	)	
JAMES ROBERT ADELMAN,	)	6-233 / 85-1169
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Polk County (No. CD047-28078) - George Bergeson, Judge.

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

James W. Carney of Carney, Hudson & Williams, Des Moines, for appellant.

Kenneth W. Rittgers, Des Moines, for appellee.

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

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The respondent husband appeals from the decree dissolving the parties' marriage. On appeal, the respondent asserts: (1) that his child support obligation is excessive; (2) that the trial court should have set up the child support obligation on a per-child basis, with the support for a particular child to terminate when the child reaches the age of 18, marries, graduates from high school, or becomes self-supporting; (3) that petitioner's alimony award is excessive; (4) that the trial court should have provided for the alimony award to terminate upon petitioner wife's remarriage, cohabitation with a male, or death; and (5) that petitioner wife's attorney fee award is excessive. We affirm as modified.

Petitioner Roberta Ann Adelman and respondent James Robert Adelman were married in 1962. The parties have three children: Tony, age 22; Robin (a girl), age 19; and Timothy, age 14. Tony is presently a senior at the University of Minnesota. Robin has a learning disability and is currently attending a special education program at Area XI. Robin and Tim both live with their mother.

Throughout most of the parties' 23 years of marriage, Roberta was the primary caretaker of the family home. At the beginning of the parties' marriage Roberta worked in a yard goods store while James completed his education at Iowa State University. Following graduation, James began a career in sales and worked for three different companies from 1964 to the present. James is currently employed with Swank-Luxury Items and is a sales representative primarily for men's luxury accessories.

In 1978, Roberta began part-time work as clerical help with Northwestern Bell. In 1980, she began work as a full-time receptionist at Bankers Life. In 1981, Roberta accepted a position with Drake University, where she quickly received three different promotions and at the time of trial was a program administrative assistant. While at Drake, Roberta began to take six free credit hours per semester towards a degree in journalism and public relations, with an expected graduation date of May, 1989. Roberta earned approximately $664.00 per month from the job at Drake.

Both parties have filed separate financial statements. Roberta filed two financial statements showing a net monthly income from Drake of $664.00 per month. Roberta claimed monthly living expenses of approximately $1,500.00 per month. James's projected net income for 1985 was approximately $1,375.00 per month, based upon projected commissions for goods actually shipped minus all his travel expenses and taxes. James's living expenses are estimated at approximately $1,322.00 per month. Though James's income was considerably higher in the five years prior to trial, James explained at trial that the reduction in income in 1985 was based upon accounts being transferred away from him by his corporate office and there being a sizeable decrease in projected gross sales, which James estimated would be approximately $43,700.00.

In its dissolution decree, the trial court set up a joint custody arrangement with Roberta having physical care of the remaining minor child, Timothy. The trial court directed James to pay child support of $700.00 per month for Robin and Timothy until Timothy reached age 18 or graduated from high school. The trial court directed James to pay alimony of $200.00 per month for four years. The trial court directed James to apply his half of the remainder (after payment of certain fees and taxes) of the parties' 1984 income tax refund, plus $350.00, toward Roberta's attorney fees. The trial court awarded Roberta the parties' house, the household goods in her possession, a 1982 Buick, her retirement plan, her IRA, and her interest in her family's farm, estimated by Roberta to be approximately $16,237.00. The trial court awarded James a $10,000.00 judgment for his equity in the parties' house, the parties' duplex, the household goods in his possession, a 1984 Buick, his retirement plans, his IRA, his VIP account, and the parties' stock. The trial court directed Roberta to pay the mortgage on the house, the loan on her car, her student loan, and a credit union loan; it directed James to pay all the parties' other debts.

Since dissolution actions are equitable proceedings, our review is de novo. Iowa R. App. P. 4. While we are not bound by the findings of the trial court, we do give weight to them, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). As with all dissolution cases, precedent is of little value, and therefore our decision must ultimately depend on the particular facts relevant to each issue. In re Marriage of Vrban, 359 N.W.2d 420, 423 (Iowa 1984).

James first contends that the child support award in the amount of $700.00 per month for Robin and Timothy was excessive on the grounds that while the dissolution decree provided that Timothy's share of support should continue until Timothy reached the age of 18 or graduated from high school, no similar provision was made for Robin when she becomes self-supporting. James argues that the effect of the award as expressed in the decree would result in his paying $700.00 per month for Robin's support alone. James further argues that the award is excessive in lieu of his projected net monthly income of $1,375.00. We agree.

The child support division of the dissolution decree provides:

> That the respondent shall pay to the Petitioner as and for child support the sum of $700.00 per month for the support of Timothy Robert Adelman and Robin Lynn Adelman. Said support shall be paid by the Respondent on the 1st day of July, 1985, and continue on the 1st day of each and every month thereafter until Timothy Robert Adelman reaches the age of eighteen years or graduates from high school whichever event occurs last.

Though perhaps inartfully drawn, we do not believe that the intent of the child support division was to countenance an award of $700.00 per month per child. We note that Robin was expected to graduate from Area XI in June of 1986. Roberta testified that Robin had not yet obtained gainful employment, but that she was hopeful that the placement department at Area XI could find Robin a good job. At the time of trial, Robin was earning between $30.00 and $87.00 per week. Though James testified that he gives her money for gas and other miscellaneous expenses, and also makes her car payment, such income is not sufficient for Robin to be able to leave her home and maintain her own household. Roberta testified that though Robin buys most of her own clothes, she still must live at home until she finds gainful employment. We believe that support for Robin should continue. Roberta testified, however, that the Area XI advisors believe that despite Robin's learning disability, the prospects are good that she will be placed in some type of gainful employment in the near future. We therefore modify the dissolution decree to the extent the support for Robin shall continue until such time as Robin becomes self-supporting. In re Marriage of Hobart, 375 N.W.2d 290, 292 (Iowa 1985).

In arguing that the amount of child support award is excessive, James points out that four months after the dissolution decree was issued, Roberta left her job at Drake and began working at Bankers Life, where she earned approximately $1,050.00 per month. Roberta contends that she does not now have the job at Bankers Life, and that, in any event, such matters should be brought in a modification proceeding. It is a general principle that trial courts make final disposition of dissolution cases on the circumstances then existing. In re Marriage of Weidner, 338 N.W.2d 351, 361 (Iowa 1983). It, therefore, follows that in our de novo review of assignments of error with respect to a dissolution decree, we are limited in our examination to the evidence at trial and those issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). By attempting to introduce evidence that Roberta has increased her earnings subsequent to the decree, James in effect is arguing that there has been a substantial change in circumstances since entry of the original decree. Such matters are more properly the subject of an application for modification, In re Marriage of Hobben, 260 N.W.2d 401, 403 (Iowa 1977), and we will therefore not consider them for purposes of this appeal.

No hard and fast rules govern economic issues in dissolution actions. In re Marriage of Vrban, 359 N.W.2d at 423. Although both parties to a marriage are under the same legal obligation to support their children, such obligation to support is not necessarily to be borne equally and should be apportioned according to the reasonable ability of each parent to contribute. In re Marriage of Heineman, 309 N.W.2d 151, 153 (Iowa Ct. App. 1981). When considering the adequacy of a child support award, we look to the factors set forth in Iowa Code section 598.21(4) (1985). Iowa Code section 598.21(4) provides that the court requiring child support payments may look to a variety of factors, including: (1) the financial resources of the child; (2) the financial resources of both parents; (3) the standard of living the children would have enjoyed had there not been a dissolution; (4) the physical and emotional health needs of the child; (5) the child's educational needs; (6) the tax consequences to each party; and other relevant factors. In addition to these requirements, we may also consider the parties' age, present earning capacity, future prospects, duration of the marriage, the indebtedness of each or both, and any other relevant factors. In re Marriage of Byall, 353 N.W.2d 103, 107 (Iowa Ct. App. 1984).

In making its child support award, the trial court apparently determined that the most significant factor was the financial resources of both parents. The record reveals that from 1980 through 1984, James's net yearly income was between $23,000.00 and $24,000.00. Though James had been drawing approximately $4,000.00 per month, the evidence offered at trial indicated that because

James had drawn so heavily against his expected income in order to pay the support payments and other debts provided for in the dissolution decree, his draw from Swank would be reduced by $500.00 per month until his sales business increased. James testified that Swank had withdrawn his K-G Mens Stores and Brandeis accounts from his sales territory, and that due to the generally poor economic condition of the clothing industry, his income was reduced substantially. All of James's travel expenses must also come out of his monthly draw. James pays approximately $460.00 per month for an apartment, $202.00 per month for utilities, $200.00 per month on food, $100.00 per month on clothing, and $330.00 per month on car and other miscellaneous expenses. James also pays approximately $390.00 per month on his 1984 Buick and $126.00 per month on a loan from the Swank Credit Union for Robin's car. James also voluntarily paid Roberta $600.00 per month in support and $247.00 per month on Roberta's car during the pendency of the dissolution. Pursuant to the decree, James received a $10,000.00 judgment for his equity in the parties' home, the parties' duplex on which there are over $1,000.00 in back taxes, his 1984 Buick, his IRA, VIP retirement plan, and the parties' stock. James still owes his uncle $9,000.00 for a loan which was used to make a down payment on the duplex.

Roberta's net monthly income at the time of trial was $664.00 per month. Roberta claims monthly expenses of $333.00 per month on the house payment, $400.00 per month on food, $175.00 per month on clothing, $269.00 per month on utilities, and $350.00 per month on car and transportation expenses and miscellaneous. Roberta was awarded the parties' home, the household goods in her possession, her 1982 Buick, her retirement plan, and her IRA. Roberta also received her one-third share in the family business, estimated value at approximately $16,237.00. The trial court directed Roberta to pay the mortgage on the house, on which Roberta must take out a $10,000.00 loan to pay for James's interest in the home, the loan on her car, her student loans, and her credit union loan. Roberta is to receive pursuant to the dissolution decree $200.00 per month in alimony.

The record thus reveals that neither party is exceptionally healthy financially. James, however, has undoubtedly the greater earning potential and should substantially contribute to the support of his two children. Roberta has shown a remarkable ability to increase her earning potential in a very short period of time, and her future degree from Drake will substantially increase her earning potential, although Roberta must currently pay expensive tuition at Drake. Upon consideration of all the relevant circumstances, we believe that the child support award of $700.00 per month is excessive under the circumstances and in light of the alimony award of $200.00 per month. We therefore modify the child support division of the decree to provide that the child support payments shall be $225.00 per month per child.

James also contends that the trial court erred in not qualifying the payment of alimony to Roberta upon her death, cohabitation with another, or remarriage. James also contends that the $200.00 per month alimony award should be lowered. We disagree.

The general rule in Iowa is that while the subsequent remarriage of a spouse does not result in automatic termination of an alimony obligation, it shifts the burden to the recipient to show that extraordinary circumstances exist which require the continuation of the alimony payments. <u>In re Marriage of Shima</u>, 360 N.W.2d 827, 828 (Iowa 1985); <u>In re Marriage of Schober</u>, 379 N.W.2d 46, 47 (Iowa Ct. App. 1985). We have also held that cohabitation does not result in automatic termination of alimony. <u>Schober</u>, 379 N.W.2d at 47. We note, however, that it has long been against public policy for a spouse to have an obligation of support from a former spouse while receiving an obligation of support from a present spouse. In re Marriage of Woodward, 229 N.W.2d 274, 279 (Iowa 1975), citing Wolter v. Wolter, 183 Neb. 160, 164, 158 N.W.2d 616, 619 (1968). Therefore, when a party remarries, alimony is not automatically terminated, but it does make out a prima facie case which requires a court to end it in the absence of proof of some extraordinary circumstances justifying its continuance. Shima, 360 N.W.2d at 828; Woodward, 229 N.W.2d at 280.

In the present case, however, no provision was made concerning the termination of alimony upon death, remarriage, or cohabitation. Rather, the trial court awarded Roberta alimony from July 1, 1985, to June 1, 1989. The criteria for granting alimony are codified in Iowa Code section 598.21(3). The trial court obviously considered as important in this case the criteria in sections 598.21(3)(e) and (f). Obviously important to the trial court's award was the fact that Roberta had remained at home as the family caretaker for most of the parties' twenty-three years of marriage and must therefore acquire sufficient education or training to enable her to find appropriate employment. Roberta, in an attempt to increase her earning potential, began classes at Drake to obtain a degree in journalism and public relations, and, being able to take only six hours per semester, will not graduate until June of 1989.

When determining the appropriateness of alimony, the trial court must consider the earning capacity of each party and the present standards of living and ability to pay balanced against relative needs of the other. In re Marriage of Estlund, 344 N.W.2d 276 (Iowa Ct. App. 1983). Upon our de novo review, we have considered the relative income of the parties, the indebtedness of each, and all other factors provided in section 598.21(3), and we believe the alimony award was proper, both as to amount and duration.

James's last contention is that the trial court's award for attorney fees, providing that James's one-half share of the parties' tax refund plus $350.00

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were to be paid to Roberta as part of her attorney fees, was excessive. Under Iowa law, attorney fees are not recoverable in a dissolution as a matter of right, but rest within the sound discretion of the trial court and depend upon one spouse's financial needs and the other spouse's ability to pay. Estlund, 344 N.W.2d at 281. The record here adequately supports the trial court's determination that James, who had greater earnings and earning capacity than Roberta, was better able than her to pay those expenses of this dissolution proceeding. We, therefore, do not find the trial court's award excessive.

AFFIRMED AS MODIFIED.