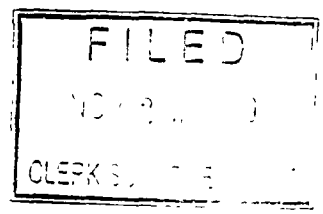
IN THE COURT OF APPEALS OF IOWA

No. 1999-255 (9-485) / 98-1371
Filed November 23, 1999

IN RE THE MARRIAGE OF PAUL LUSTGRAAF AND NANCY LUSTGRAAF



Upon the Petition of
PAUL LUSTGRAAF,
Petitioner-Appellee,

And Concerning
NANCY LUSTGRAAF,
Respondent-Appellant.

Appeal from the Iowa District Court for Story County, Carl E. Peterson, Judge.

The respondent appeals various economic provisions of the parties' dissolution decree. **AFFIRMED IN PART AND REVERSED IN PART.**

Joseph G. Bertogli, Des Moines, for appellant.

Dale E. Sharp of Sharp, Benson, Jahn, Feilmeyer & Westenfield, P.L.C., **Ames, for appellee.**

Heard by Streit, P.J., and Vogel and Vaitheswaran, JJ.

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STREIT, P.J.

After the divorce, Nancy faced the daunting challenge of fording the formidable currents of age, inadequate education, and sporadic professional history in hopes of enjoying the calm waters of comfortable living. Nancy appeals the district court's dissolution decree claiming the trial court erred in dividing the marital property, applying the child support guidelines, granting her minimal alimony, and denying her attorney fees. We agree with her request for increased alimony but deny her remaining claims.

I. Background Facts & Proceedings.

Paul and Nancy Lustgraaf married in August of 1975. They have two children, Susan, age twenty, who is physically and mentally disabled and resides in assisted living, and Patricia, age seventeen. At the time of dissolution Paul was forty-eight, and Nancy was forty-two.

Paul is a graduate of Iowa State University and is currently a computer analyst for that institution, earning $64,000 per year. Nancy is a high school graduate who has worked intermittently towards a degree in social work and hotel management since 1976. She intends to complete her course work in approximately five years. In the course of the marriage, Nancy quit numerous jobs in order to raise both children and to care for Paul's ailing father. At the time of trial, she was a night auditor at the University Inn earning $6.50 per hour with no benefits.

Nancy filed for dissolution of marriage in November of 1997. The court was called to equitably divide the marital property, determine the appropriate amount of child support, and decide whether awarding alimony was proper. In its decree the district court awarded Paul a net property award of $7115.34 and Nancy an award of $7971.15. Nancy was awarded the marital home valued at $83,000 and the mortgage thereon. The court ordered Paul to pay child support of $604.30 per month and alimony of $250 per month. Nancy was awarded one-half of 87.5 percent of Paul's TIAA/CREF account, valued at $553,250.90, less a $7000 adjustment.

Nancy appeals, claiming the district court erred in: (1) dividing the marital property, given the disparity in their respective earnings and that prior to trial Paul accumulated significantly more debt on the credit cards; (2) failing to account for pretax deductions in determining Paul's child support obligation; (3) granting her rehabilitative alimony in the amount of $250 per month for five years; and (4) failing to charge Paul for her attorney fees. Nancy further requests appellate attorney fees.

II. Division of the Marital Property.

Nancy first claims the court improperly divided the marital property, given the disparity in their respective incomes and that prior to trial Paul accumulated significantly more debt on their credit cards.

A. Standard of Review. In an equity action our review is de novo. *In re Marriage of Brauer*, 511 N.W.2d 645, 646 (Iowa App. 1993). We have a duty to examine the entire record and adjudicate anew the issues properly presented. *Id.* We

give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. *Id.*

B. The Division Was Equitable. The partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). A fastidious adherence to equal property division does not bind the courts of this state. *In re Marriage of Webb*, 426 N.W.2d 402, 405 (Iowa 1988). The proper goal of the courts is to "achieve an equitable and just award under the circumstances." *Id.* In discerning a just and equitable distribution, a court should evaluate and consider the factors enumerated in Iowa Code section 598.21(1) (1997).[1] *In re Marriage of Mott*, 444 N.W.2d 507, 511 (Iowa App. 1989). The allocation of marital debts is an integral part of a property division. *See In re Marriage of Johnson*, 299 N.W.2d 466, 467 (Iowa 1980).

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[1] Iowa Code section 598.21(1) (1997) states in part:

> The court shall divide all property . . . equitably between the parties after considering all of the following:
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> *a.* The length of the marriage.
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> . . .
>
> *c.* The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services.
>
> . . .
>
> *f.* The earning capacity of each party, including educational background, training, employment skills, [and] work experience.
>
> *g.* The desirability of awarding the family home . . . to the party having custody of the children . . . .
>
> *h.* The amount and duration of an order granting support.

The trial court's division of the marital property was equitable under the circumstances. Paul's earnings are substantially greater than those of Nancy, yet the court offset such disparate earnings by ordering Paul pay an additional $10,000 in debt. Nancy was awarded the most substantial asset, the family home. The lion's share of debts assigned to Nancy were her student loans. Nancy fails to support her contention regarding the additional credit card debt accumulated by Paul during the pendency of the dissolution. Expenditures made during a separation should. in some cases, be considered in making an equitable distribution. *See In re Marriage of Williams*, 421 N.W.2d 160, 163-65 (Iowa App. 1988). In this case, however, Nancy fails to point this court to the record in support of her claim. She claims Paul further accumulated credit card debt during the pendency of the dissolution but fails to show the precise amount of the debt, documentation of such debt, or the distribution of such debt to the respective credit cards. Given the unanswered questions surrounding Nancy's claim, there is simply no evidence to support alteration of the property division. The court equitably divided both the assets and the accumulated debt. The district court's division of property is affirmed.

III. Child Support Calculation.

Nancy next claims the trial court erred in failing to account for pretax mandatory pension withholdings and health insurance payments in determining Paul's child support obligation and the trial court overstated Nancy's earnings.

A. Standard of Review. We review actions that concern support orders de novo. *See In re Marriage of Maher*, 596 N.W.2d 561, 564 (Iowa 1999).

B. The Child Support Calculation Was Proper. We generally presume the amount of child support that results from application of the guidelines is the correct amount of child support to be awarded. *See* Iowa Code § 598.21(4)(a) (1997). A variation from the guidelines shall not be considered unless the result would be unjust or inappropriate. *See id.*

> The purpose of the child support guidelines is to provide for the best interest of the children by recognizing the duty of both parents to provide adequate support for their children in proportion to their respective incomes. *While the guidelines cannot take into account the specific facts of individual cases*, they will normally provide reasonable support.

Iowa Child Support Guidelines ¶ 2 (1995) (emphasis added); *see In re Marriage of Beecher*, 582 N.W.2d 510, 513 (Iowa 1998).

The district court correctly applied the child support guidelines. To be effective, guidelines must operate in generalities. Forcing the child support guidelines to account for every financial wrinkle would defeat its intended purpose. Variation from the guidelines is only appropriate if an unjust result will occur. Mandatory pension contributions and health care premiums paid with pretax dollars do not rise to the level of injustice. The trial court correctly concluded Nancy's gross earnings for purposes of the child support guidelines were $13,648. Given her hourly wage and full-time work status, the court correctly relied on her current financial situation

rather than relying on past years when both her wage and hours varied. The child support obligation is affirmed.

IV. Alimony.

Nancy further claims the trial court erred in granting her rehabilitative alimony in the amount of $250 per month for five years.

A. Standard of Review. We review de novo Nancy's challenge to the alimony awarded. *In re Marriage of Clinton*, 579 N.W.2d 835, 838 (Iowa App. 1998).

B. Increased Rehabilitative Alimony Is Appropriate. Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Kurtt,* 561 N.W.2d 385, 387 (Iowa App. 1997). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3). *In re Marriage of Sychra,* 552 N.W.2d 907, 908 (Iowa App. 1996). We consider the length of the marriage, the age and health of the parties, the parties' earning capacities, the levels of education, and the likelihood the party seeking alimony will be self-supporting at a standard of living comparable to the one enjoyed during the marriage. *In re Marriage of Clinton,* 579 N.W.2d at 839.

After the divorce Nancy faced the daunting challenge of fording the formidable currents of age, inadequate education, and sporadic professional history in hopes of enjoying the calm waters of comfortable living. Despite that challenge, Nancy does have a responsibility to place herself in a situation where she can maintain self-

sufficiency. Enabling Nancy to bear such responsibility demands rehabilitative assistance from her ex-husband. Her current plight is not attributable to a lack of intelligence or laziness. Rather, it is a product of sacrificing her personal goals for the sake of her children and other loved ones. During the course of the marriage, Nancy was consistently called upon to put her career and education on hold in order to provide for the needs of her children as well as Paul's father. To that end, Paul shall pay Nancy rehabilitative alimony in the amount of $750 per month for five years from date procedendo issues. This will give Nancy ample opportunity to acquire the necessary education to better herself should she decide to do so.

V. Attorney Fees.

Nancy claims the trial court erred in denying her attorney fees and further requests appellate attorney fees.

A. Trial Attorney Fees. An award of attorney fees lies within the discretion of the trial court. *In re Marriage of Guyer*, 522 N.W.2d 818, 822 (Iowa 1994). Whether attorney fees should be awarded depends on the respective abilities of the parties to pay, and the fees must be fair and reasonable. *Id.* Nancy must establish the trial court abused its discretion in denying her request for fees. *Id.* We find the decision of the trial court was equitable and not an abuse of discretion.

B. Appellate Attorney Fees. An award of appellate attorney fees is not a matter of right but rests within our discretion. *In re Marriage of Scheppele*, 524 N.W.2d 678, 680 (Iowa App. 1994). In determining whether to award appellate

attorney fees, we 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 decision of the trial court on appeal. *Id.* Given the relative circumstances of the parties in this action, we find equity warrants the award of appellate attorney fees to Nancy in the amount of $750. Costs are taxed to Paul.

AFFIRMED IN PART AND REVERSED IN PART.