IN THE COURT OF APPEALS OF IOWA

No. 1-304 / 90-1542

IN RE THE MARRIAGE OF DAVID J. MacKENZIE AND LINDA J. MacKENZIE

FILED
DEC 31 1991
CLERK SUPREME COURT

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Upon the Petition of

DAVID J. MacKENZIE,

Petitioner-Appellant/Cross-Appellee,

And Concerning

LINDA J. MacKENZIE,

Respondent-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Wapello County, Richard J. Vogel, Judge.

David appeals and Linda cross-appeals from the economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

David J. Hester of Johnson, Hester & Walter, Ottumwa, for appellant.

Dan L. Dudley, Des Moines, for appellee.

Considered by Oxberger, C.J., and Schlegel and Hayden, JJ.

OXBERGER, C.J.

David and Linda MacKenzie were married in Ottumwa, Iowa, on May 8, 1965. They have two children. The oldest child, Leslie, is not affected by this action. The parties agreed that they should have joint legal custody of the younger child, Christopher, and that Linda should have his primary physical care.

David was 49 years old at the time of the trial. He has worked for John Deere in Ottumwa for 24 years. For the past 11 years he has been a general supervisor. By 1989 his gross annual income for tax purposes had risen to $73,376.

Linda was 46 years old at the time of the trial. She did not work outside the home during most of the marriage. Linda received a high school diploma in 1962. She was currently enrolled in an executive secretarial program at a community college and anticipated graduation in May 1991.

On September 17, 1990, the district court dissolved the parties' marriage and divided their debts and assets. The court found the marital homestead had a market value of approximately $50,000, and a mortgage of $9,564. The parties also owned a rental house, and this had a value of $15,000 and a mortgage of $5,570. The court awarded the marital residence to Linda and the rental property to David. The court granted to David net assets valued at $89,395. Linda received property with a net distribution

value of $50,636. Because David received $38,759 more in assets than Linda, the court ordered David to pay her the additional sum of $19,380 within sixty days.

In computing child support, the court found that David had a monthly income of $4,400 and that Linda had no income. The court established David's child support for Christopher in the sum of $1,135 per month commencing October 1, 1990.

The court found that as a secretary in the Ottumwa area, Linda would earn approximately $6 per hour. The court ordered David to pay her alimony of $400 per month for the first year along with Linda's school expenses. Beginning September 1, 1991, David's alimony obligation would be reduced to $300 per month until he is no longer responsible for child support. At that point, David's alimony obligation was to increase to $800 per month until the death of either party. The court ordered each party to pay his or her own attorney fees.

David appeals and Linda cross-appeals.

I. Scope of Review.

Our scope of review in dissolution cases is de novo. In re Marriage of Craig, 462 N.W.2d 692, 693 (Iowa App. 1990). While not bound by the trial court's determination of factual findings, we will give considerable weight to them, especially when considering the credibility of witnesses. Id.

II. Property Division.

David first claims the district court improperly divided his pension benefits. The court allocated the present value of David's future pension benefits to him. This amounted to $50,000. David was then required to pay Linda $19,379 in order to equalize the property distribution. David asks that instead of awarding Linda a portion of the present value of the pension, she be awarded a portion of the benefits, when and if they are received.

Pension benefits are treated as marital property and are subject to equitable distribution. In re Marriage of Williams, 449 N.W.2d 878, 882 (Iowa App. 1989). Several schemes for the distribution of pension benefits have been devised, but the overriding principle found in each is to ensure that a spouse receives an equitable share of a pension which is accumulated during a marriage. In re Marriage of Huffman, 453 N.W.2d 246, 248 (Iowa App. 1990).

We find the property division in this case was equitable.

III. Alimony.

David claims the district court should not have awarded Linda permanent or lifetime alimony. He points out that Linda received a portion of his pension as property, and that he must also pay her alimony out of his pension benefits. In the alternative, David claims the award of alimony should be reduced to $300 per month.

Alimony is an allowance to the ex-spouse in lieu of a legal obligation to support that person. In re Marriage of Cooper, 451 N.W.2d 507, 508 (Iowa App. 1989). Alimony is not an absolute right, but must be determined in light of all circumstances. In re Marriage of Oler, 451 N.W.2d 9, 13 (Iowa App. 1989). When evaluating the need for an award of spousal support, we take into consideration the length of the marriage, the physical health of the parties, the distribution of marital property, the earning capacity of each party, and the feasibility of the party seeking maintenance to become self-supporting. In re Marriage of Imhoff, 461 N.W.2d 343, 345 (Iowa App. 1990).

We affirm the award of lifetime alimony to Linda. She has been out of the job market for many years. Her earning capacity will never be as high as David's is presently. However, we modify the decree to make the award of alimony terminate on Linda's remarriage. The general rule is that an award of alimony will terminate on the remarriage of the receiving spouse, absent extraordinary circumstances. In re Marriage of Shima, 360 N.W.2d 827, 828 (Iowa 1985). If Linda remarries and remains in need of financial assistance, she may file an application to modify the decree. See In re Marriage of Lalone, 469 N.W.2d 695, 698 (Iowa 1991).

In her cross appeal, Linda contends that she should be awarded a greater amount of alimony during the time the

parties' minor child is receiving support. We believe the amount of alimony awarded to Linda is adequate, considering all of the applicable circumstances in this case. We affirm the amounts of alimony awarded to Linda.

IV. Child Support.

David claims the district court improperly applied the child support guidelines. He feels the court should have taken Linda's expected income and her alimony into consideration.

In Lalone, 469 N.W.2d at 696, the wife's alimony and income from liquid assets she received in the decree were considered as income to her for purposes of applying the child support guidelines. The husband's alimony payments were also deducted from his income. Id. at 697. The court stated:

> We agree with the district court that the present alimony has an effect on the income of both parties. Consideration of the amount of alimony paid under the present decree, while not provided by our guidelines as a deduction from income, may nevertheless be considered by the court in an attempt to "do justice between the parties."
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> Id.

In the present case, Linda will receive alimony of $400 per month for the first year. Her alimony is not reimbursement alimony. David's child support obligation should be $992 per month for this period. After Linda graduates David's alimony obligation is reduced to $300 per month. His child support obligation will be $1,029 per

month if Linda's sole income is her alimony. We modify the dissolution decree to implement these changes. We note when the trial court made its ruling, the supreme court had not decided the Lalone case. In the event Linda becomes employed, David may seek a modification of the decree.

V. Valuation of Marital Residence.

In her cross-appeal Linda contends the district court erred in valuing the marital residence. The district court valued the property at $50,000. Linda points out that the residence was valued at $34,685 in the tax rolls.

We affirm the district court's valuation of the marital residence. Where a value placed on the assets by the district court is well within the permissible range of the evidence, we will not disturb it on appeal. In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984).

VI. Attorney Fees.

Linda asks for attorney fees for this appeal. In determining whether appellate attorney fees should be awarded, 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 Imhoff, 461 N.W.2d 343, 345-346 (Iowa App. 1990). We find that each party should be responsible for his or her own attorney fees. Costs of this action are assessed one-half to each party.

AFFIRMED AS MODIFIED.