IN THE COURT OF APPEALS OF IOWA

No. 7-282 / 96-782 000323

IN RE THE MARRIAGE OF ANN MARIE MONTGOMERY AND ROBERT P. MONTGOMERY

FILED
JUL 30 1997

Upon the Petition of
ANN MARIE MONTGOMERY,

Appellee,

And Concerning
ROBERT P. MONTGOMERY,

Appellant.

Appeal from the Iowa District Court for Polk County, Ray A. Fenton, Judge.

The appellant appeals various economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Robert P. Montgomery of Parrish, Kruidenier, Moss, Dunn & Montgomery, Des Moines, for appellant.

Roger J. Hudson and Stacey N. Bell of Smith, Schneider, Stiles, Hudson, Serangeli, Mallaney, Shindler & Scalise, P.C., Des Moines, for appellee.

Considered by Cady, P.J., and Streit, and Vogel, JJ.

CADY, J.

Robert Montgomery appeals from a district court decree dissolving his fifteen month marriage to Ann Montgomery. We modify the decree on our de novo review.

Robert and Ann were married May 21, 1994. They separated seven months later, and the marriage ended in divorce on August 30, 1995.

Robert and Ann met in May 1992. Robert was employed by a Des Moines law firm as an attorney and Ann worked as a program manager with AT&T. Robert was twenty-eight years old. Ann was twenty-six years of age.

The relationship between Robert and Ann flourished in the inception. In February 1993 they jointly purchased a home in Des Moines for $112,000. They each contributed one-half of the down payment of $7,324 and financed the remaining amount with a bank. Robert lived in the house until November 1993, when Ann moved in to live with Robert.

Ann took a leave of absence from AT&T in December 1993 to pursue a masters decree at Iowa State University. AT&T continued to provide benefits to her and paid for many of her educational expenses. Ann obtained a part-time job at Papourri after leaving AT&T. It is possible for her to return to AT&T after completing her decree. Ann's annual income at the time of her leave of absence was more than $45,000.

Robert paid most of the household and living expenses from his income after Ann began school in January 1994. Robert and Ann also obtained a bank loan in

April 1994. The $6,000 loan was combined with a prior $10,000 loan incurred by Robert. The $6,000 loan proceeds were to pay their wedding and other expenses.

Ann completed her class work in May 1995. She was required to submit a thesis to complete the masters program. She expected to complete her thesis by the Spring of 1996.

Robert earned income of approximately $67,000 in 1994. However, he failed to make quarterly estimated tax payments during the year. Consequently, he incurred an outstanding tax liability more than $20,000.

Robert removed $4,100 from a joint bank account at the time of the separation. Robert remained in the home. Ann moved into an apartment. Ann was awarded temporary alimony.

The district court awarded the residence to Robert, but gave Ann one-half of the $20,000 equity in the house. The personal property accumulated during the marriage was evenly divided, and the property and debts brought into the marriage were awarded to the owner. The debts incurred during the marriage were largely awarded to Robert. These debts included the tax liability for 1994 of $20,000, the $6,000 bank loan, and an account at Younkers of $455. Ann was not awarded alimony.

Robert contends on appeal the division of property was inequitable. He first argues he paid most of the expenses of the home, including the monthly mortgage payments, and should receive a greater share of the equity. He next contends Ann

should be responsible for one-half of their $6,000 bank loan, and one-half of the 1994 tax liability. Robert points out his failure to make quarterly estimated tax payments allowed the parties to spend more of his income on their other needs. Robert further argues the property settlement should reflect his financial contributions to the marriage during the time Ann pursued her graduate work, and Ann's property award should be reduced by the amount of the temporary alimony he paid to her. Ann requests appellate attorney fees.

Our review is de novo. Iowa R. App. P. 4. The division of property in a dissolution of marriage is based upon each marital partners' right to a just and equitable share of the property accumulated as a result of their joint efforts. *In re Marriage of Webb,* 426 N.W.2d 402, 405 (Iowa 1988). We have no hard and fast rules to govern the division process, but rely upon a host of factors. *See In re Marriage of Vrban,* 359 N.W.2d 420, 423 (Iowa 1984). These factors include the length of the marriage, the contributions of each party to the marriage, the contributions by one party to the education of the other party, the earning capacity of each party, the tax consequences to each party, and any other factor relevant to each individual case. Iowa Code § 598.21(1) (1995).

In applying these factors to this short-term marriage, it is appropriate to recognize Robert contributed to Ann's education by assuming most of the financial obligations of the marriage. It is also proper to recognize Ann's earning capacity will likely increase because of her master's decree. Robert also accumulated an income

tax liability during the marriage by generating income which was used to support the parties' lifestyle. It is proper to consider this obligation in dividing the property It is also proper to consider a portion of the joint bank note the parties executed one month prior to their marriage.

The allocations of marital debts inhere in the property division. *In re Marriage of Johnson*, 299 N W 2d 466, 467 (Iowa 1980). Considering the debts assumed by Robert under the district court decree, as well as Robert's financial contributions while Ann pursued her master's degree, the property division under the district court decree was inequitable. To make the property division equitable, we modify the decree to reduce Ann's lien in the residence to $1000.

We reject Robert's claim that Ann's share of the property should be further reduced by the amount of the temporary alimony she received since permanent alimony was found to be unnecessary. Although property rights and alimony are closely related, they are distinguishable and have different purposes. *In re Marriage of Murray*, 213 N.W.2d 657 (Iowa 1973). A spouse has an obligation to support the other spouse. *See In re Marriage of Sjulin*, 431 N.W.2d 773, 775 (Iowa 1988) Furthermore, the failure to award permanent alimony does not make an award of temporary alimony wrong. *See Bork v. Richardson*, 289 N.W.2d 622, 625 (Iowa 1980) (preferable to provide temporary support pending outcome of dissolution, even if it is determined later not to be supported by the evidence). It would be inequitable

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to consider the amount of temporary alimony awarded in this case in dividing the property.

We have considered all claims raised on appeal. We modify the district court decree to reduce Ann's interest and lien in the residence to $1000. We otherwise affirm the district court decree. We deny Ann's request for appellate attorney fees. Costs to Robert.

AFFIRMED AS MODIFIED.