FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-666 / 93-879

IN RE THE MARRIAGE OF MICHELLE N. WINEGARDNER AND DOUGLAS B. WINEGARDNER

Upon the Petition of

MICHELLE N. WINEGARDNER,

Appellee,

And Concerning

DOUGLAS B. WINEGARDNER,

Appellant.

Appeal from the Iowa District Court for Marion County, James W. Brown, Judge.

The husband appeals economic provisions of the parties' dissolution decree. **AFFIRMED.**

Lorelei H. Brewick of Carney, Hudson, Williams, Blackburn, Grask & Appleby, Des Moines, for appellant.

Greg A. Life of Life Law Office, Oskaloosa, for appellee.

Heard by Oxberger, C.J., Sackett, J., and Critelli, S.J.*

*Senior judge from the 5th Judicial District serving on this court by order of the Iowa Supreme Court.

CRITELLI, S.J.

Douglas and Michelle Winegardner were married in May 1989. They have one child, Cory, born September 29, 1990.

Douglas is thirty-one years old, in good health, and employed at Pella Corporation. The district court found his net monthly income to be $1468, excluding bonus or deferred salary. Michelle is twenty-five years old, in good health, and works as a dental assistant. The district court found her net monthly income, after child care, to be $906. Child care expense was $208 per month. We find that the net pay after child care should have been $806.

The district court found Douglas' pension plan had increased in loan value $10,000 during the marriage.

The district court awarded the parties joint legal custody of Cory, with Michelle assuming primary physical care. Douglas was awarded reasonable visitation.

The district court ordered Douglas to pay $335 per month child support pursuant to the child support guidelines (22.8% of $1468) and to pay 22.8% of his annual net bonus. The court awarded the home to Douglas, subject to a $6000 lien on behalf of Michelle, payable twenty-four months from the date of the decree. The court awarded Michelle one-half of the increase in Douglas' pension. Douglas was ordered to pay $500 of Michelle's trial attorney's fees and one-half of all court costs.

Douglas appeals from the child support award and the property distribution and the award of trial attorney's fees.

SCOPE OF REVIEW

On review in divorce proceedings, we have the duty to examine the entire record and adjudicate anew rights on issues property presented; we give weight to the fact findings of the trial court, especially when considering credibility of witnesses, but we are not bound by them. In re Marriage of Stepp, 485 N.W.2d 846 (Iowa App. 1992), Iowa R. App. P. 4, 14(f)(7).

Our review in cases such as these is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We are not bound by these determinations, however. Id. Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

Pension benefits are treated as marital property in Iowa and are properly subject to equitable distribution. In re Marriage of Mott, 444 N.W.2d 507, 510-11 (Iowa App. 1989).

The partners in the 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). Iowa courts do not require an equal division or percentage distribution. Id. The determining factor is what is fair and equitable in each

circumstance. Id. The distribution of the property should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1991). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983).

An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). 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 Castle, 312 N.W.2d 147, 150 (Iowa App. 1981).

Iowa trial courts are permitted considerable discretion in allowing attorney's fees and costs in dissolution actions. In re Marriage of Morehead, 224 N.W.2d 242, 245 (Iowa 1974).

CALCULATION OF HUSBAND'S NET MONTHLY INCOME

The trial court correctly determined Douglas's net monthly income. Before bonus, he netted $280 per week. However, the trial court properly added back loan repayment of $35 per week and profit-share contribution of $22.50 per week. That total multiplied by four and one-third weeks per month is very close to the found amount of net monthly income for Douglas. That computation will not be disturbed. We find the correct guideline percentage should

have been 23.2%. Douglas's monthly child support is therefore $340 per month.

PERCENTAGE OF BONUS

The trial court ordered Douglas to pay 22.8% of his bonus as additional child support. This is more like deferred salary and is paid to employees each December. It is, in this case, $1.69 for each hour Douglas worked that year.

The trial court was well within the law in ordering part of the child support to be based on a percentage of this bonus or deferred salary. This award will not be disturbed, with the exception that the percentage of the bonus shall be 23.2%.

LIEN ON HOMESTEAD TO WIFE

The trial court awarded the marital home to Douglas. He gave Michelle a lien of $6,000.

Douglas purchased the marital home in 1984, approximately five years prior to the marriage. He paid $28,000 for it. The mortgage was still over $26,000 at the time of the marriage. The home was valued at $35,000 at the time of the dissolution, and the mortgage was $10,000, due in part because Douglas had paid down the mortgage with some of the proceeds from the sale of a motor vehicle.

The trial court properly determined that the property had increased $10,000 in value during the almost four years

of this marriage. It divided the increase and gave the half ($5,000) plus an additional $1,000 to Michelle to balance the difference in other property divided between the parties.

The $6,000 lien was ordered to bear interest at the rate of 7% per annum from the date of the decree and was payable in full twenty-four months from the date of the decree. The determination of the amount of the lien, the amount of interest, and the indicated payment terms are all reasonable and well within the discretion of the trial judge. They will not be disturbed.

SHARE OF PENSION

The trial court awarded Michelle $5,000 as her share of Douglas's retirement fund. The court found that the retirement account had increased in value over $22,000 during the marriage, but only found her share of same to be one-half of the increase in loan value of that account.

The calculation and award is fair and reasonable and will not be disturbed.

ATTORNEY FEES

The award of $500 against Michelle's attorney fees and the requirement that the parties split the court costs is fair and reasonable and will not be disturbed.

We affirm all aspects of the trial court's decision and judgment.

AFFIRMED.