IN THE COURT OF APPEALS OF IOWA

No. 2-606 / 92-122

FILED
SEP 2 1993
CLERK SUPREME COURT

000411

IN RE THE MARRIAGE OF ANGELINA MECH AND WILLIAM C. MECH

Upon the Petition of
ANGELINA MECH,
Petitioner-Appellant,

And Concerning
WILLIAM C. MECH,
Respondent-Appellee.

Appeal from the Iowa District Court for Woodbury County, James L. McDonald, Judge.

Angelina appeals from the economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED AND REMANDED.**

Gregory N. Lohr of Baron, Sar, Goodwin, Gill, Lohr & Horak, Sioux City, for appellant.

David L. Reinschmidt of Munger & Reinschmidt, Sioux City, for appellee.

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

Angelina, ("Angie") and William, ("Will") Mech were married in April 1980. They have seven minor children who will be affected by the dissolution decree. The marriage was dissolved on November 7, 1991.

The parties separated four years prior to their divorce. At the time of trial, Will resided with his mother and was not paying rent. Angie and the children continued to reside in the homestead the parties acquired during the marriage. Will works for the City of Sioux City as an electrician, with a net income of approximately $1680 per month. Angie is a licensed cosmetologist and had been self-employed at times during the marriage. She was employed part time and netted approximately $225 per month.

The parties agreed Angie should have primary physical care of the children and remain in the homestead. The court applied the child support guidelines and set Will's child support responsibility at 50.2% of his net income, but translated the obligation to $121.50 per month per child. The court directed Will to maintain his current health and hospitalization coverage for the children with the parties to equally share those expenses not reimbursed.

Neither party brought substantial assets into the marriage. During their marriage the parties acquired normal household furniture and appliances, four vehicles, and a homestead being purchased on contract. They set the value of the home between $35,000-$38,000 upon which

approximately $30,000 is owed. They filed a stipulation concerning assets, but disputed ownership of a few items.

In dividing the parties' assets, the court set aside to Will a Classic Corvette Will had brought into the marriage and his $13,000 IPERS account. The court ordered Will to pay Angie $1500 payable in $100 installments to equalize the property distribution. In dividing their debts, the court ordered that all debts incurred by the parties during the marriage and prior to their separation are the joint obligation of the parties. Debts incurred after the separation date are the separate obligation of the party incurring the debt.

No alimony was ordered and the parties are responsible for their respective attorney fees. Angie appeals.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

I. Child Support Guidelines

Angie first contends the district court erred in failing to deviate from the uniform child support

000414

guidelines in computing Will's monthly income. The parties receive, in a refund check, all of the federal income tax they pay during the year. Angie contends Will should not be allowed to claim tax liability. Thus, Angie contends the district court should not have deducted federal income tax from Will's monthly income.

We allow Will to deduct from monthly income those amounts he is required by law to pay and, under the uniform guidelines, is entitled to as a deduction. However, following dissolution, Will can no longer claim Angie and one of the children as an exemption. He will also no longer be able to declare Angie's business losses. This will have an impact on Will's tax status. We are not willing to deviate from the uniform child support guidelines on this issue. However, we are also not willing to allow a virtual windfall to Will in this situation either. Accordingly, we remand the question of Will's post-dissolution federal tax liability to the district court for determination.

Angie also contends the district court improperly awarded child support on a per child basis in order that his support could be reduced as each child reached the age of majority. We agree.

The uniform child support guidelines established by the Iowa Supreme Court do not provide for a "per child" payment, but rather establish a percentage of income to be paid on the basis of the number of children and the

parties' respective incomes. Iowa Code section 598.21(4)(a) (1991), in pertinent part, provides:

> There shall be a rebuttable presumption that the amount of child support which would result from the application of the guidelines prescribed by the supreme court is the correct amount of child support to be awarded. A variation from the guidelines shall not be considered by a court without a record or written finding, based on stated reasons, that the guidelines would be unjust or inappropriate as determined under the criteria prescribed by the supreme court.

The district court made no such finding and we find no reason for such here. Accordingly, we modify the decree and delete any references to a "per child" amount. We order Will to pay 50.2% of his income in child support until such time as that percentage is no longer valid pursuant to the uniform guidelines.

II. Life Insurance Beneficiaries

Angie next contends the district court erred in failing to include, in its decree, the parties' stipulation that the children be the named beneficiaries of Will's life insurance policies. Will does not dispute this. Accordingly, we modify the dissolution decree to require Will to name the parties' children as beneficiaries of his life insurance policies.

Angie also contends Will should be required to name the children as beneficiaries of his IPERS plan. Will argues, and we agree, there is nothing in the record to indicate this issue was presented to the trial court. We will not

000716

review an issue which was not presented to the trial court. Iowa Dept. of Human Servs. v. Duckert, 465 N.W.2d 871, 873 (Iowa 1991). Accordingly, we decline review of this issue.

III. Property Distribution

Angie next contends the district court erred in failing to equitably divide the parties' assets. Will received his entire IPERS account. The district court found he had accumulated $13,000 of his IPERS account during the marriage. Angie received the homestead, valued at $35,000 encumbered in the amount of $29,200. Neither party received personal property to offset or further effect this distribution. The district court ordered Will to pay Angie an additional $1500 to equalize the property distribution.

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 of 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). In addition, 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). IPERS accounts

may properly be considered. In re Marriage of Oler, 451 N.W.2d 9, 12 (Iowa App. 1989).

We agree with Angie's contention that this distribution is inequitable. Although Will's contribution to his IPERS account totaled $13,000 during the marriage, his employer also contributed a substantial amount. The actual value of the account on retirement will be considerably more. Angie stayed at home or was self-employed throughout most of the marriage. She cared for the parties' seven children. We find she is entitled to a portion of Will's IPERS upon his retirement. Angie should receive a percentage of the accrued benefits based on the years of the marriage. We modify the decree to provide when and if Will commences to receive his IPERS benefits he shall pay to Angie an amount equal to fifty percent of a fraction of his benefits; the numerator of the fraction being eleven years, the number of years the couple was married, and the denominator of the fraction being the total number of years during which benefits were accumulated prior to being paid. See Oler, 451 N.W.2d at 12. If Will ceases employment with an "IPERS" employer and receives a pay out of his accumulated IPERS benefits, Angie is entitled to a fraction of his pay out. Once again, the amount would be determined with the numerator of the fraction being eleven years and the denominator being the number of years benefits were accumulated.

000118

In addition, we modify the district court's order to eliminate the requirement that Will pay Angie $1500.00 as a part of the property distribution. We otherwise affirm the property distribution.

IV. Attorney Fees

Angie also requests attorney fees on appeal.

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).

Will's superior financial position dictates he pay $1500 towards Angie's attorney fees on appeal. Costs of this appeal are taxed to Will.

AFFIRMED AS MODIFIED AND REMANDED.