IN THE COURT OF APPEALS OF IOWA

No. 6-591 / 95-1469

000073

IN RE THE MARRIAGE OF LAURA APPLEBEE CLARK AND PAUL MICHAEL CLARK

Upon the Petition of
LAURA APPLEBEE CLARK,

Appellee,

And Concerning
PAUL MICHAEL CLARK,

Appellant.

FILED
AUG 22 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Johnson County, Thomas L. Koehler, Judge.

Appellant appeals from the district court's dissolution decree. **AFFIRMED AS MODIFIED.**

Robert W. Conrad, Knoxville, for appellant.

Tricia A. Johnston, Iowa City, for appellee.

Considered by Habhab, C.J., Sackett, and Cady, JJ.

CADY, J.

Michael Clark appeals from the economic provisions of the parties' dissolution decree. On our de novo review, we affirm as modified.

Laura Applebee Clark and Paul Michael ("Mike") Clark were married on October 16, 1982. Two children were born during the marriage. Jessica was born on October 10, 1986. Melinda was born on August 6, 1988.

During the marriage, Laura was a homemaker and primary caretaker of the children. Mike worked as a drug and alcohol counselor at the Riverview Release Center in Newton, Iowa.

The parties separated prior to the filing of this action. The day after the separation, Mike withdrew all funds from the parties' bank accounts. One account contained flood grant money which was contractually designated to repair flood damage to the parties' home. Mike also voluntarily resigned from his job with Riverview following the separation. He claimed he resigned due to depression and a substance abuse problem. Prior to his resignation, Mike received a net monthly income of $1,892.25

Trial was set for July 26, 1995. On July 17, 1995, Mike's attorney filed a motion to withdraw as counsel. The motion alleged Mike had moved several times and had not remained in contact with his attorney. The motion was granted on July 25 and trial commenced on July 26 without an appearance by Mike or any counsel on his behalf.

On July 26, 1995, the trial court filed the dissolution decree. The court awarded Laura the physical care of the children. The court found Mike had quit his job after the parties separated, and concluded Mike voluntarily reduced his level of income in order to avoid paying child support. Relying on evidence introduced by Laura, the court found Mike previously had a net monthly income of $1,892.25 and ordered him to pay $703.91 in monthly child support. The court ordered Mike to provide health insurance for the children and to pay for all of their medical expenses not covered by insurance. Laura was awarded the dependency deductions for both children. The court also ordered Mike to pay $100 per month in spousal support until such time as the last child reaches the age of eighteen, marries, dies, or becomes self-supporting. Laura was awarded the family home and was given responsibility for the encumbrance. Further, the court awarded Laura all of Mike's IPERS pension plan which was valued at approximately $8000. Laura was ordered to pay $525 of joint marital debts and Mike was ordered to pay debts totaling $3,955. Mike was further ordered to pay $1,800 of Laura's trial attorney fees.

Mike filed a notice of appeal, a motion for new trial, and a rule 179(b) motion on August 24, 1995. The district court entered an order on September 1, 1995, which stated the court lacked jurisdiction over the motion for new trial since Mike had filed a notice of appeal.

On appeal, Mike argues: 1) the court erred in using his earning capacity when determining his child support obligation and ordering him to provide health insurance

for the children and cover any unreimbursed medical expenses 2) the court erred in its division of the marital property; 3) the court erred in awarding spousal support; 4) the court should not have awarded the dependency deductions to Laura; and 5) the court erred in ordering him to pay Laura's trial attorney fees.

Laura requests an award of appellate attorney fees.

I. Scope of Review

Our review is de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court, especially when considering credibility, but we are not bound by them. Iowa R. App. P. 14(f)((7).

II. Child Support

Mike argues the trial court incorrectly imputed his income from his previous job at Riverview to him for the purpose of determining his child support obligation. The trial court found Mike voluntarily reduced his income by resigning from his job during the parties' separation and it was justified in setting child support at his previous wages. We agree with the trial court.

Our appellate courts have repeatedly recognized that a court is justified in using a parent's former salary in setting child support payments if the parent's reduction income is voluntary or self-inflicted. *In re Marriage of Foley,* 501 N.W.2d 497, 500 (Iowa 1993). The self-infliction rule applies equitable principles to the determination of child support in order to prevent parents from gaining an advantage

by reducing their earning capacity and ability to pay support through improper intent or reckless conduct. *Id.*

On our de novo review of the record we find Mike voluntarily quit his employment with Riverview. Although he argues he was forced to resign from his employment because of his substance abuse problems and depression, there is nothing in the record to substantiate this claim. Further, Mike has not been diligent in seeking a new job to help meet the financial needs of his children. *See Foley*, 501 N.W.2d at 500. Since Mike's claimed inability to pay child support is based on his voluntary departure from his employment, the trial court correctly imputed his former salary to him for the purpose of determining child support. Further, the trial court correctly assigned Mike the responsibility of all of the children's health care costs.

III. Property division

The division of property in a dissolution of marriage is based on each partner's right to a just an equitable share of the property accumulated as a result of their joint efforts. *In re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989). What is just and equitable in each particular case is determined after careful consideration of our statutory criteria set out in Iowa Code section 598.21(1). *In re Marriage of Robison*, 542 N.W.2d 4, 5-6 (Iowa App. 1995).

The parties in this case do not have substantial assets. Laura was awarded the majority of the marital assets and only a small portion of the marital debt. The trial court determined the disparity in the division of assets was equitable due to the

hardships placed on Laura and the children as a result of Mike's actions. We agree. During the parties' separation Mike converted almost all of the parties' savings to his personal use including monies specifically designated to repair flood damage to the family home. He acted with total disregard of the well-being of Laura and the children and substantially depleted the parties' assets. The property division was equitable.

IV. Alimony

Alimony is not a right, but depends on the particular circumstances of each case. *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976). It is related to the division of property, but has a different purpose. *In re Marriage of Tucker*, 213 N.W.2d 498, 501 (Iowa 1973). Alimony is an allowance to a spouse in lieu of the legal obligation for support established by the marriage. *In re Marriage of Misol*, 445 N.W.2d 411, 413 (Iowa App. 1989). Like the division of property, we consider a variety of factors. Iowa Code § 598.21(3). The principal components in determining the amount of alimony are need and ability to pay. *In re Marriage of Stark*, 542 N.W.2d 260, 262 (Iowa App. 1995).

We find the trial court's award of alimony was warranted. This was a twelve -year marriage. During the marriage Laura was a homemaker and she was the primary caretaker of the children. Further, Laura shouldered the majority of the responsibility for the children's well-being as Mike's behavior became increasingly erratic toward the end of the marriage.

V. Dependency Deductions

The trial court awarded Laura the dependency tax deductions for the children. We modify the decree to provide Mike with the dependency deductions when he becomes current on his child support payments, including back child support.

VI. Attorney Fees

Trial courts have discretion to award attorney fees in a dissolution of marriage. *In re Marriage of Roberts*, 545 N.W.2d 340, 344 (Iowa App. 1996). We agree with the trial courts's decision to award attorney fees to Laura. We award Laura an additional $1000 in attorney fees on appeal.

VII. Conclusion

In conclusion we modify the decree entered by the trial court to award Mike the dependency deductions for both children when he becomes current on his child support payments, including back child support. We otherwise affirm all other provisions of the decree. We award appellate attorney fees to Laura of $1000.

AFFIRMED AS MODIFIED.