IN THE COURT OF APPEALS OF IOWA

No. 6-774 / 05-1449
Filed December 28, 2006

**IN RE THE MARRIAGE OF GARY BERTLING
AND DEBRA HONTS-BERTLING**

Upon the Petition of

GARY BERTLING,
Petitioner-Appellant,

And Concerning

DEBRA HONTS-BERTLING,
Respondent-Appellee.

Appeal from the Iowa District Court for Johnson County, Amanda P. Potterfield, Judge.

Gary Bertling appeals the property and alimony provisions of a dissolution decree. **AFFIRMED.**

Van M. Plumb, West Des Moines, for appellant.

Patrick W. O'Bryan, Des Moines, for appellee.

Considered by Sackett, C.J., and Vaitheswaran, J., and Brown, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

VAITHESWARAN, J.

This appeal raises a challenge to the property and alimony provisions of a dissolution decree. We affirm.

I. Background Facts and Proceedings

Gary Bertling and Debra Honts-Bertling married in 1988 and divorced in 2005. At the time of trial, Gary was fifty years old and Debra was forty-eight years old.

Until one month before trial, Gary worked approximately seventy-eight hours per week at two different jobs. In a temporary support order, the district court found he earned "around $65,000 between his two jobs," a finding that Gary does not dispute. At the time of trial, Gary had reduced his hours to between fifty-two and fifty-five per week. He explained that, although he enjoyed working seventy-eight hours per week, he was having problems with a right knee injury sustained twenty-two years earlier. His annual income at the time of trial was approximately $39,000.

During the marriage, Debra worked for the Soil Conservation Service, the Hawkeye Community Action Program, and as a mental health counselor. She also ran a daycare center from her home. In the five years preceding trial, her highest gross annual earnings were $14,013.74.

Debra also served as primary caretaker of the parties' eight children, two of whom were independent adults at the time of trial. Three of the children had special needs that qualified the family for an adoption subsidy in the amount of $20,000 per year.

At trial, Debra presented an "accounting" of the parties' assets and liabilities. Gary testified that he essentially agreed with this accounting, but wished to have eight pieces of personal property transferred to him. Debra offered to give him all the items except two dressers, a rectangular table, and a blue couch and loveseat. The district court allowed her to retain these items. As for the balance of the property distribution, the district court awarded Gary $177,002 in assets and Debra $65,587 in assets. The court equalized the distribution by dividing one of Gary's 401(k) accounts evenly between the parties and by transferring one of his investment retirement accounts to Debra. The court credited Gary for amounts he gave Debra during trial, less temporary child support that he owed, and ordered him to pay child support of $731.63 per month and maintain health insurance and life insurance coverage for the children. The court additionally ordered Gary to pay alimony of $1000 per month until Debra reaches the age of sixty-seven, remarries, or dies, or Gary dies. Gary appeals.

II. Property Distribution

Gary contends "[t]he district court improperly ruled regarding property distribution." His sole argument in support of this contention is: "Judge Potterfield's ruling simply does not make an equitable distribution of the property according to the tenants (sic) set out above. The Court's ruling on alimony further exacerbates this fact." We have reviewed the property distribution and conclude it is equitable.

III. Alimony

Gary also contends, "The court's award of alimony is improper under the current caselaw." He argues that the parties' children will all be in school within the next three years, at which point Debra, "with her advanced degree, can go get a job and help support herself." He maintains that rehabilitative rather than traditional alimony would have been more appropriate.

Although our review of the district court's alimony award is de novo, we afford that court considerable latitude in making the determination. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). We will disturb that determination only when there has been a failure to do equity. *Id*.

We are not convinced the district court failed to do equity. The parties were married for over sixteen years. Gary conceded that he was the primary wage earner during the marriage. While Debra had a bachelor's degree in general studies and earned wages during much of the marriage, her earnings were substantially lower than Gary's. In addition, she willingly assumed the role of caretaker for the party's eight children, many of whom were adopted with the knowledge that they would require specialized care. While Debra received an adoption subsidy for some of the children, that subsidy did not come close to meeting the family's expenses. Indeed, those modest expenses far exceeded the sum of all of Debra's income, including alimony.

We have also considered the fact that the youngest child will attend school within three years of trial. Debra testified that this fact would not make her available to re-enter the job market, as many of the children required

transportation to medical appointments and needed assistance during school hours.

As for Gary's contention that Debra could help support herself, there is scant evidence that she could sufficiently retrain herself in the short-term to become self-supporting in the long-term. To the contrary, the record reveals that she was charged with taking care of the children for all but five hours every other Sunday, the sole period when Gary was to exercise visitation. Gary did not request more than these five hours of visitation, noting that it would be unfeasible until he owned a home. Without time or assistance, Debra was simply not in a position to improve her employment prospects.

Under these particular circumstances, we agree with the district court that an award of traditional alimony was equitable. *See Anliker*, 694 N.W.2d at 540 ("Traditional alimony is payable for life or so long as a spouse is incapable of self-support.").

IV. Appellate Attorney Fees

Debra seeks an award of appellate attorney fees. Such an award rests within our discretion. *In re Marriage of Scheppele*, 524 N.W.2d 678, 680 (Iowa Ct. App. 1994). While neither party is in a strong financial position, we note that Debra prevailed on appeal and has no income after expenses. For this reason, we order Gary to pay $1000 towards her appellate attorney fees or her actual bill, whichever is less.

AFFIRMED.