IN THE COURT OF APPEALS OF IOWA

No. 6-876 / 06-0616
Filed December 13, 2006

IN RE THE MARRIAGE OF TED DENNIS GRABAU AND KELLI MICHELLE GRABAU

Upon the Petition of
TED DENNIS GRABAU,
Petitioner-Appellee,

And Concerning
KELLI MICHELLE GRABUAU,
Respondent-Appellant.

Appeal from the Iowa District Court for Marshall County, William J. Pattinson, Judge.

Petitioner appeals certain economic provisions of the decree dissolving her twenty-seven year marriage. **AFFIRMED.**

Sharon Soorholtz Greer of Cartwright, Druker & Ryden, Marshalltown, for appellant.

Kevin M. O'Hare and Bethany J. Currie of Johnson, Sudenga, Latham, Peglow & O'Hare, P.L.C., Marshalltown, for appellee.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

SACKETT, C.J.

Kelli Grabau appeals certain economic provisions of the decree dissolving her twenty-seven year marriage to Ted Grabau. We affirm.

SCOPE OF REVIEW.

We review dissolution of marriage decrees in equity. *In re Marriage of Knickerbocker*, 601 N.W.2d 48, 50 (Iowa 1999). Consequently, our review is de novo. Iowa R. App. P. 6.4. "We examine the entire record and adjudicate anew rights on the issues properly presented." *In re Marriage of Beecher*, 582 N.W.2d 510, 512-13 (Iowa 1998). We give weight to the findings of the district court, especially concerning the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(*g*); *Beecher*, 582 N.W.2d at 513. The weight given to credibility assessments is "because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying." *In re Marriage of Springer*, 538 N.W.2d 897, 900 (Iowa Ct. App. 1995) (citing *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992)). Precedent is of little value because our determination must depend on the facts of each particular case. *In re Marriage of White*, 537 N.W.2d 744, 746 (Iowa 1995) (citing *In re Marriage of Sparks*, 323 N.W.2d 264, 265 (Iowa Ct. App. 1982)).

BACKGROUND AND PROCEEDINGS.

The parties were married in 1978 and have two children born in 1992 and 1994. At the time of trial Ted was forty-eight years old. He earned a bachelor's degree in metallurgical engineering from Iowa State University in 1979 and has worked at Fisher Controls in Marshalltown since his graduation. His annual salary is $92,300.

Kelli was forty-nine years old. She earned a pharmacy degree from Drake University in 1979. She worked full-time as a pharmacist following her graduation until the birth of the parties' first child in 1992. At that time it was decided that Kelli would reduce her hours, and she took a job as a consulting pharmacist working twelve to fifteen hours per week. She continues in that job and at the time of trial, was earning just over thirty-eight dollars per hour. Kelli also taught a few classes at the YMCA and was a part-time dance instructor for a local studio. Her annual earnings are about $26,000.

In dissolving the marriage the district court basically approved a joint care arrangement the parties had structured. The older child would spend fourteen days a month with Ted and the balance with Kelli. The court designated Kelli as the younger child's primary care parent but provided she spend twelve days a month with her father.

In fixing child support, the court found Kelli to be underemployed and based child support on Kelli's earning capacity determined to be $59,280 a year. The court based Ted's earning capacity on his annual salary of $92,300. Ted was to pay Kelli $224 per month for the older child and $700 per month for the younger child.[1]

The court divided the property of the parties so that each party received roughly $400,000 in net worth of assets.

The parties' home was included in the property awarded to Kelli and a lien in the amount of $93,095 in Ted's favor was imposed on the home. Kelli was ordered to pay $40,000 with interest on or before November 28, 2006 and the

[1] The court based its calculations for Lauren's support on the fact that Ted was a noncustodial parent.

remaining $53,095 with interest on or before July 1, 2012. The interest rate was set at four percent per annum and the interest was to be simple, not compounded interest.

Finally, the court awarded Kelli alimony in the form of $1000 per month for one year, $750 monthly for six months, and $500 monthly for six months.

Kelli appeals. Ted does not challenge the district court's decree.

ANALYSIS.

Alimony. Kelli first contends the alimony award is not adequate. Kelli was awarded alimony for two years. The award provided she receive $1000 a month for twelve months, $750 a month of the next six months, and $500 a month for the remaining six months. She contends she should have $1500 a month for five years and $750 a month for an additional two years.

An alimony award should be considered in light of the property division in order to determine the individual sufficiency of each. *In re Marriage of Eras*, 480 N.W.2d 84, 85 (Iowa Ct. App. 1991). It is appropriate to look at earning capacity and the standard of living the parties have maintained, as well as relative ability to pay. *In re Marriage of Imhoff*, 461 N.W.2d 343, 345 (Iowa Ct. App. 1990). We also look at the factors of Iowa Code section 598.21(3)(2005). The goal of rehabilitative alimony is self-sufficiency. *In re Marriage of Wessels*, 542 N.W.2d 486, 489 (Iowa 1995) (citing *In re Marriage of Francis*, 442 N.W.2d 59, 64 (Iowa 1989)). The duration of the alimony should be tailored to the realistic needs of the dependent spouse with the intent that it facilitates economic independence. *Id*.

The district court determined two years of rehabilitative alimony was appropriate based upon the property Kelli would receive and her earning capacity. Kelli contends that in fixing alimony the district court did not give sufficient weight to the time she was out of the job market to care for the children.

Kelli has been employed as a pharmacist either full or part-time since her graduation from Drake in 1979. The parties had agreed that she decrease her hours of work to care for the children and she did that for about thirteen years starting in 1993. However, she did not put her professional skills on hold to do so. Additionally, Ted is assuming substantial responsibility for the care of both children as well as contributing substantially to their support. We affirm the alimony award.

Paying Ted's Equity in the Home. Kelli contends she should have been given more favorable treatment in paying a lien the district court established on the family home.

It is within the trial court's discretion to award interest on a deferred property division. *See In re Marriage of Richards*, 493 N.W.2d 876, 883 (Iowa Ct. App. 1989) (finding denial of interest was appropriate); *In re Marriage of Pertzsch*, 451 N.W.2d 22, 24 (Iowa Ct. App. 1989) (finding interest on property division appropriate); *In re Marriage of Blume*, 473 N.W.2d 629, 634 (Iowa Ct. App. 1991) (same). There is no inequity here and we affirm.

Calculation of Child Support. Kelli next contends the court erred in determining her income for purposes of child support. She argues her income should have been based on the average of her income over the past several years rather than her earning capacity. When determining child support, the first

task is to determine the net monthly income of both the custodial and noncustodial parent. *See In re Marriage of Nelson*, 570 N.W.2d 103, 105 (Iowa 1997). This income should include all income which is not "anomalous, uncertain, or speculative." *Id.* (citing *Brown*, 487 N.W.2d at 332; *In re Marriage of Russell*, 511 N.W.2d 890, 893 (Iowa Ct. App. 1993)).

When a parent makes an election not to work outside the home, it may be appropriate for the court to consider earning capacity rather than actual earnings when applying the child support guidelines. *In re Marriage of Malloy*, 687 N.W.2d 110, 115 (Iowa Ct. App. 2004); *Nelson*, 570 N.W.2d at 106; *State ex rel. Hartema v. Cottrell*, 513 N.W.2d 765, 768 (Iowa 1994); *State ex rel. Lara v. Lara*, 495 N.W.2d 719, 721-22 (Iowa 1993).

> Before using earning capacity rather than actual earnings a court we must make a determination that, if actual earnings were used, substantial injustice would occur or adjustments would be necessary to provide for the needs of the children and to do justice between the parties.

Nelson, 570 N.W.2d at 106; *see also In re Marriage of Bergfeld*, 465 N.W.2d 865, 870 (Iowa 1991); *In re Marriage of Flattery*, 537 N.W.2d 801, 803 (Iowa Ct. App. 1995). We examine the employment history, present earnings, and reasons for failing to work a regular work week when assessing whether to use earning capacity. Kelli has the education, training, and ability to earn as much or more than the amount the district court determined. The custody arrangement the parties basically structured resulted in Ted assuming substantial responsibility in his home for the care of the children and for their support when they are in his care. In addition, he is paying Kelli child support. We affirm the district court's

decision to consider Kelli's earning capacity and find the court established a reasonable earning capacity for her.

Attorneys Fees. Kelli requests that Ted be required to pay her appellate attorney fees. She contends an award of attorney fees is appropriate because she received few liquid assets that she can access without a penalty and that Ted has the better ability to pay the fees given his greater earnings. The net worth of the parties was nearly equally distributed. They both have similar earning potential. Each party is able to pay their own attorney fees. Kelli is not awarded appellate attorney fees. Costs on appeal are taxed to her.

AFFIRMED.