IN THE COURT OF APPEALS OF IOWA

No. 7-242 / 06-1652
Filed May 23, 2007

IN RE THE MARRIAGE OF MARY C. VILLARREAL AND MARIO VILLARREAL

Upon the Petition of
MARY C. VILLARREAL,
Petitioner-Appellee/Cross-Appellant,

And Concerning
MARIO VILLARREAL,
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Pottawattamie County, Charles L. Smith, Judge.

Mario Villarreal appeals, and Mary Villarreal cross-appeals, challenging various economic provisions of the decree dissolving their marriage. **AFFIRMED.**

Jon E. Heisterkamp of Peters Law Firm, P.C., Council Bluffs, for appellant/cross-appellee.

Suellen Overton, Council Bluffs, for appellee/cross-appellant.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

MILLER, J.

Mario Villerreal appeals, and Mary Villerreal cross-appeals, challenging various economic provisions of the decree dissolving their marriage. Mario claims the district court erred in (1) awarding Mary permanent alimony of $2,000 per month, (2) ignoring a debt in dividing property, and (3) requiring him to pay COBRA medical insurance premiums for Mary for eighteen months. Mary claims the court erred in not awarding more property to her. Mary requests an award of appellate attorney fees and costs. We affirm on both the appeal and cross-appeal.

I. BACKGROUND FACTS

The parties were married on April 2, 1988, when Mary was eighteen years of age and Mario was twenty. Mario had graduated from high school. Mary quit high school before her senior year to marry Mario. Mario has acquired no further formal education. Mary acquired a GED in about 2003. The parties have three children, seventeen-year-old Adrian, fifteen-year-old Javin, and three-year-old Aaleah.

Mary was not employed outside the home until Adrian was about two years of age. She then worked part-time in day care at a hospital for two to three years. Mary next worked in housekeeping at the hospital for about eleven to twelve years, ending with Aaleah's birth in early 2003. Mario had always preferred that Mary not work outside the home, but Mary preferred to do so, for social time with adults, until Aaleah's birth. Mary's earnings over time rose from $9,903 in 1993 to $17,213 in 2001 and $17,100 in 2002. At the time she left

employment following Aaleah's birth, Mary was earning about eight dollars per hour.

Mario has been consistently employed since the parties' marriage. He initially worked at IBP, but then became employed at Nebraska Beef, Ltd., where he has worked for about the last seven years. Mario is Nebraska Beef's operations manager. His salary has steadily increased over the years, resulting in a salary of over $180,000 per year in 2003, 2004, and 2005.

II. THE DISTRICT COURT DECISION

Certain portions of the district court's decision are relevant to the issues presented. The court placed the children in the parties' joint legal custody and in Mary's physical care subject to reasonable rights of visitation in Mario. It found Mario's gross income to be $182,093.62 per year, and his net income to be $10,054.80 per month. The court imputed gross income of $16,640 per year and $1,386 per month to Mary, and ordered Mario to pay child support and to provide health insurance for the children.

The district court made findings concerning the existence and values of assets and the existence and amounts of debts. It divided the parties' property in a manner which, according to its findings, resulted in Mary receiving property with a value of $116,240.01 and Mario receiving $130,596.93. The court ordered Mario to pay $6,000 toward Mary's attorney fees and to pay court costs.

The district court also ordered Mario to pay the COBRA health insurance premiums for Mary for a period of eighteen months. It ordered him to pay Mary alimony of $2,000 per month, to terminate "upon the death of either party or until Mary remarries or cohabits with another for at least one year."

III. SCOPE AND STANDARDS OF REVIEW

In this equity case our review is de novo. Iowa R. App. P. 6.4. We examine the entire record and adjudicate rights anew on the issues properly presented. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). 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. 6.14(6)(*g*). This is because the trial court has a firsthand opportunity to hear the evidence and view the witnesses. *In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992).

IV. MERITS

The following principles are of importance in dealing with the issues concerning economic matters presented in this case. Property division and alimony must be considered together in evaluating their individual sufficiency. *In re Marriage of Trickey*, 589 N.W.2d 753, 756 (Iowa Ct. App. 1998). In marriages of long duration, both alimony and a nearly equal property division may be appropriate, especially where the disparity in earning capacity is great. *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997). Prior cases have little precedential value concerning economic provisions of a decree, and we must rest out decision primarily on the particular circumstances of the parties before us. *In re Marriage of Gaer*, 476 N.W.2d 324, 326 (Iowa 1991).

A. Property Issues

The partners to a marriage are entitled to a just share of the property accumulated through their joint efforts. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa Ct. App. 1991). Iowa courts do not require an equal or

percentage division. *Id.* The determining factor is what is fair and equitable in each circumstance. *Id.*

Adjudicating property rights in a dissolution action inextricably involves a division between the parties of both their marital assets and liabilities. *In re Marriage of Johnson*, 299 N.W.2d 466, 467 (Iowa 1980). The allocation of marital debts between the parties is as integral a part of the property division as is the apportionment of marital assets. *Id.* The allocation of marital debts therefore inheres in the property division. *Id.*; *In re Marriage of Siglin*, 555 N.W.2d 846, 849 (Iowa Ct. App. 1996). Accordingly, the term "property division" incorporates both division of assets and assignment of responsibility for debts.

Some four to five years before trial Mario purchased an entity variously identified at points in the record as "Super Fresh Meats," "Omaha Super Fresh Meats," "Omaha Quality Meats," and "Omaha Meats, LLC." The purchase price for the limited liability company (LLC) was about $8,000. The district court noted Mario's testimony that the business was not doing well and owed more than it was worth, and that Mario had not filed sale tax reports since 2003 or income tax returns since 2001. The court found it had little evidence of the actual value of the business. In dividing property the court awarded it to Mario at a value of zero.

Mario testified that Omaha Meats, LLC, owed its supplier some $127,000 and was losing money. He claims the district court erred in failing to recognize the company's negative value in the division of property. The evidence shows that the business is a limited liability company. Iowa Code section 490A.601 (2005) provides that, subject to exceptions not shown to apply in this case, "No

member or manager of a limited liability company is personally liable for . . . debts of the limited liability company." Nothing in the record shows or suggests that either or both of the parties have individual liability for the debts of the business. We affirm the award of Omaha Meats, LLC, to Mario at zero value.

Mary claims the district court erred by failing to consider $19,000 she alleges Mario withdrew from the parties' joint account at about the time they separated (she acknowledges it appears the $19,000 included a 401(k) refund of $11,541.09 received in about July 2005),[1] $8,601.55 in 401(k) refunds received in the period of January through March 2006, and a more than $8,000 average balance Mario maintained in an account in his name alone. She argues she should therefore receive more in the property division than she in fact received.

Mary filed her petition for dissolution of marriage of October 12, 2005. The evidence shows that on September 1, 2005, the parties' joint savings account contained $19,110.18, and on October 31, 2005, it had been reduced to zero. Mary acknowledged withdrawing $3,000 to pay attorney fees, and Mario testified that she actually withdrew much more than the $3,000, through several withdrawals. Mario acknowledged that he might have made a withdrawal of $11,132.86 that occurred on October 24, 2005. In related testimony he explained that in the same general time frame the parties had spent approximately $25,000 on their house, "rebuilding" a kitchen and building a three and one-half car garage. He testified that a lot of the money that went into the account had been used for those projects.

[1] On July 1, 2005, an $11,000 deposit was made to the parties' joint account.

Mario received $8,601.55 in 401(k) refunds in January through March 2006. He points to a $4,000 deposit on April 6 as perhaps having been part of the $8,601.55, but is otherwise unable to explain what happened to the remainder of those refunds.

On his June 15, 2006 affidavit of financial status Mario listed the value of his cash and bank accounts as "nominal." Mary argues that he maintained an average balance of $8,000 or more.

The district court noted Mary's claim regarding the more than $19,000 withdrawn from the parties' joint account in September and October 2005, the $8,601.55 in 401(k) refunds, and the average balance in Mario's separate checking and savings account. It found a lack of credible evidence concerning those amounts and what had been done with them, and therefore expressly "limit[ed] its findings based on the amounts in their respective accounts." It found that Mario's Centris checking and savings accounts had a combined value of $8,722, the amounts contained in the accounts as of April 30, 2006, and charged him with that amount in its property division.

Mary's claim is that Mario has withdrawn and secreted certain monies, and that she should as a result receive a larger property award. We agree with the district court's finding, implicit in its analysis and decision, that Mary has not proved such a claim. We affirm the court's property division.

B. Alimony

Mario claims the district court erred by improperly awarding permanent alimony rather than rehabilitative alimony. He further claims that if permanent alimony is appropriate then the amount awarded is excessive and it should

terminate upon his retirement. Mario cites several unpublished opinions of this court in support of his arguments. However, as our appellate courts have frequently noted, prior cases have little precedential value with respect to economic issues, and our decision must rest on the particular circumstances of the parties in the case before us. *See, e.g., Gaer*, 476 N.W.2d at 326.

"Alimony is an allowance to the spouse in lieu of the legal obligation for support." *In re Marriage of Sjulin*, 431 N.W.2d 773, 775 (Iowa 1988). Spousal support is not an absolute right; an award depends on the circumstances of the particular case. *In re Marriage of Dieger*, 584 N.W.2d 567, 570 (Iowa Ct. App. 1998). The discretionary award of spousal support is made after considering the factors listed in Iowa Code section 598.21A. *Id.* Even though our review is de novo, we accord the district court considerable latitude in making alimony determinations and will disturb its ruling only when there has been a failure to do equity. *In re Marriage of Kurtt*, 561 N.W.2d 385, 388 (Iowa Ct. App. 1997).

Facts bearing on the factors listed in section 598.21A(1) are relevant to the alimony issue. At the time of trial the parties had been married almost eighteen and one-half years. Mary was thirty-six years of age and Mario was thirty-eight. Mario is apparently in good health. Mary has allergies and has arthritis in a knee. More importantly with respect to her prospects for the future, Mary suffers from dyslexia and had difficulties in school, her past employment has been in relatively unskilled jobs such as day care and housekeeping, and by agreement of the parties she was not employed outside the home the first several years of the marriage and has not been employed outside the home the three years since Aaleah's birth. That is not to say Mary is unemployable, for we

assume that at some point, perhaps when Aaleah begins school, Mary will return to the work force. Instead, we merely point out that she is not a strong candidate for further education or technical training and is likely to hold relatively unskilled and moderately compensated jobs when she does return to the work force.

The property division which we have affirmed divides the parties' property approximately equally. The parties are of limited education, as previously noted. Mario quite apparently has greater employment skills, work experience, and much higher earning capacity than Mary.

It is not feasible that Mary will be able to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. Mario's alimony payments will be includable in Mary's gross income and deductible from his gross income. *See* I.R.C. §§ 61(a)(8), 71(a), 62(a)(10), and 215(a) (West 2002). Finally, based on the parties' past employment earnings as shown by the evidence, together with their reasonably anticipated future prospects, it appears reasonable to assume that at their retirement ages Mario will receive much greater social security benefits than Mary will.

After considering relevant factors we find an award of permanent alimony proper. Further, based on the parties' present circumstances and reasonably anticipated changes such as Mary's return to employment at an income similar to what she has earned in the past, we find the amount and duration of alimony ordered by the trial court to be fair and equitable.

C. COBRA Insurance

The district court ordered Mario to pay the premiums for COBRA medical insurance for Mary for a period of eighteen months. The evidence shows that

those premiums were $371 per month at the time of trial. Mario claims the district court erred, arguing that the amount of alimony awarded incorporates an expenditure for medical insurance. We consider all economic aspects of a decree as a whole. *In re Marriage of Schepple*, 524 N.W.2d 678, 679 (Iowa Ct. App. 1994). We determine what is equitable under the specific facts of the case. *In re Marriage of Byall*, 353 N.W.2d 103, 106 (Iowa Ct. App. 1984).

The amount and duration of permanent alimony is reasonable, given the parties' large difference in earning capacities. The award of COBRA premiums is reasonably limited in time, continuing only until about the time Aaleah will begin school and Mary will presumably return to the work force. The district court's decree awards Mario somewhat more property than it awards Mary, and Mario's payment of about $6,700 in COBRA premiums will have the effect of making the property division more nearly equal. We determine the district court's order that Mario pay Mary's COBRA premiums for a limited period of time to be fair and equitable and affirm on this issue.

D. Appellate Attorney Fees

Mary requests an award of appellate attorney fees. Such an award rests in this court's discretion. *In re Marriage of Sullins*, 715 N.W.2d 242, 255 (Iowa 2006). The factors to be considered include the needs of the party requesting the award, the other party's ability to pay, and the relative merits of the appeal. *Id.* Upon consideration of the foregoing factors, we award Mary $3,000 in appellate attorney fees.

V. CONCLUSION

We have considered all of the parties' contentions, whether or not discussed in detail. We affirm the trial court on all issues presented on both the appeal and the cross-appeal. We award Mary $3,000 in appellate attorney fees.

Costs on appeal are taxed three-fourths to Mario and one-fourth to Mary.

AFFIRMED.