IN THE COURT OF APPEALS OF IOWA

No. 0-814 / 10-0745
Filed December 8, 2010

IN RE THE MARRIAGE OF MARK E. TONEY
AND MARY A. TONEY

Upon the Petition of
MARK E. TONEY,
Petitioner-Appellant,

And Concerning
MARY A. TONEY,
Respondent-Appellee.

Appeal from the Iowa District Court for Carroll County, Gary L. McMinimee, Judge.

Petitioner appeals and respondent cross-appeals the alimony provision of the dissolution decree. **AFFIRMED ON APPEAL AND CROSS-APPEAL.**

Patrick O'Bryan, Des Moines, for appellant.

Vicki Copeland of Wilcox, Polking, Gerken, Schwarzkopf & Copeland, P.C., Jefferson, for appellee.

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

SACKETT, C.J.

Mark E. Toney and Mary A. Toney married in 1989, and their marriage was dissolved in April 2010. The district court, among other things, awarded Mary alimony of $1200 a month for six years. Mark appeals, contending the alimony should be reduced to $750 a month. Mary cross-appeals, contending she should have been awarded lifetime alimony and Mark should be required to pay her appellate attorney fees. We affirm on appeal and cross-appeal and award no appellate attorney fees.

SCOPE OF REVIEW. In this equity case our review is de novo. Iowa R. App. P. 6.907. 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. 6.904(3)(*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).

BACKGROUND. Mark was born in 1967, and Mary was born in 1966. Mark had, at the time of the hearing, been employed by the State of Iowa for twenty-two years and currently serves as a state trooper. His annual income in 2009 was $74,045.30. He contends that his annual earnings are approximately $64,584, advancing that his income will be less in 2010 as a result of state budget cuts, which did away with paid overtime and forced him to take five furlough days.

Mary holds an associate degree and was employed at various jobs during the marriage, leaving employment at times to care for the parties' two sons, born in 1991 and 1996. At the time of trial Mary had been employed for eight years as a baker by the Carroll Community Schools' lunch program. Her annual income was between $10,000 and $11,000.

The parties have two sons. The first was born in July 1991, and the second was born in April 1996. At the time of trial in February 2009 the older son was finishing high school and residing with his father. The younger son was fourteen and spent time with both parents after they separated. The issue of his physical care was contested. The district court placed him in the parties' joint custody with physical care given to Mary. Mark has not appealed that decision. The district court fixed Mary's child support obligation for the older child at $505.73 and Mark's obligation for the younger child at $447.27, ordering Mary to pay an offset payment of $58.46 until the older child graduated from high school at which time Mark would be required to pay her child support of $447.27 a month. In determining child support the district court considered the $14,400 Mark was ordered to pay in annual alimony as income to Mary and as a deduction from Mark's income.[1] Also deducted from Mark's income was a pension payment of approximately $7000 annually. Both parties had health insurance provided by their employers; however, Mark paid about $150 a month for dependent coverage. Mark was ordered to continue to provide the coverage as long as it was available to him.

[1] Any modification of the alimony would change the child support computation.

The parties' retirement accounts and deferred compensation account as of the date of the decree were to be divided equally. Mary advances that other assets and debts were divided so that both parties received fifty percent of their equities. Mark does not challenge the property division or contend it was not equitable.

ALIMONY. Mark contends the alimony award should be reduced. Mary contends its term should be extended. Iowa is an equitable distribution state, which means the partners in a marriage that is to be dissolved are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Robison*, 542 N.W.2d 4, 5 (Iowa Ct. App. 1995). Property division and spousal support should be considered together in evaluating their individual sufficiency. *In re Marriage of Trickey*, 589 N.W.2d 753, 756 (Iowa Ct. App. 1998). Spousal support is not an absolute right; an award depends on the circumstances of each particular case. *In re Marriage of Dieger*, 584 N.W.2d 567, 570 (Iowa Ct. App. 1998). Any form of spousal support is discretionary with the court. *In re Marriage of Ask*, 551 N.W.2d 643, 645 (Iowa 1996). The discretionary award of spousal support is made after considering the factors listed in Iowa Code section 589.21A(1) (2009). *Dieger*, 584 N.W.2d at 570. Even though our review is de novo, we accord the district court considerable discretion in making spousal support determinations and will disturb its ruling only where there has been a failure to do equity. *In re Marriage of Kurtt*, 561 N.W.2d 385, 388 (Iowa Ct. App. 1997). We consider the length of the marriage, the age and health of the parties, the parties' earning capacities, the levels of

education, and the likelihood the party seeking spousal support will be self-supporting at a standard of living comparable to the one enjoyed during the marriage. *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa Ct. App. 1998).

The district court noted that the duration of the alimony it fixed should provide an opportunity for Mary, who took time off outside employment for child care, to transition to a self-supporting person while parenting the parties' younger son.

An alimony award will differ in amount and duration according to the purpose it is designed to serve. *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997). It appears the district court considered the alimony rehabilitative. Rehabilitative alimony was conceived as a way of supporting an economically dependent spouse through a limited period of education or retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting. *See In re Marriage of Francis*, 442 N.W.2d 59, 63 (Iowa 1989); *see also In re Marriage of O'Rourke*, 547 N.W.2d 864, 866 (Iowa Ct. App. 1996). Because self-sufficiency is the goal of rehabilitative alimony, the duration of such an award may be limited or extended depending on the realistic needs of the economically dependent spouse, tempered by the goal of facilitating the economic independence of the ex-spouses. *Francis*, 442 N.W.2d at 64.

As the spouse with the lesser earning capacity, Mary is entitled to be supported, for a reasonable time, in a manner as closely resembling the standards existing during the marriage as possible, to the extent that is possible

without destroying Mark's right to enjoy at least a comparable standard of living as well.

Mark argues not that Mary should not have alimony but that the sum and duration of the alimony should be modified. He points out Mary only works outside the home during the school year. He notes that Mary's obligation to pay child support for their older child terminated on July 1, 2010, and he will continue to owe her monthly child support for the younger child during most of the six-year period he is required to pay alimony in addition to the $150 he is required to pay for the children's health insurance. He also contends his pension contribution is substantial, which limits the money he currently has available, and that Mary will received one-half of his pension.[2]

Mary contends the monthly award of $1200 is equitable but it should be extended, for the evidence shows she will continue to be incapable of self-support for longer than six years. She also contends she has substantial responsibility for the care of the parties' younger child who has some issues and it is not realistic to believe she can rehabilitate herself in six years.

The alimony awarded is substantial but limited in duration. It provides Mary with the opportunity to better herself. After considering all of the factors relevant to possible alimony awards, we agree with and find no abuse of discretion in the trial court's decision. We affirm on appeal and on cross-appeal.

Mary also contends she should receive attorney fees of $3332 that she owes her attorney for fees and out-of-pocket expenses incurred in this appeal.

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[2] The pension was divided at the time of the dissolution, and there is no reason not to believe that future payments inure only to Mark's benefit.

She contends the award is justified because Mark's ability to pay is greater than hers.

The district court had denied Mary's request for trial attorney fees, finding in considering the income and property division each party should pay his or her own. Neither party has been successful on appeal. We do not find that Mark has a greater ability to pay than does Mary. We award no appellate attorney fees. Costs on appeal are taxed one-half to each party.

AFFIRMED ON APPEAL AND CROSS-APPEAL.