IN THE COURT OF APPEALS OF IOWA

No. 1-877 / 11-0836
Filed January 19, 2012

IN RE THE MARRIAGE OF BRUCE CRAIG TOWNE AND LAURIE JOANN TOWNE

Upon the Petition of

BRUCE CRAIG TOWNE,
Petitioner-Appellee,

And Concerning

LAURIE JOANN TOWNE,
Respondent-Appellant.

Appeal from the Iowa District Court for Webster County, Joel E. Swanson, Judge.

Appeal from the support and visitation provisions of the decree dissolving the parties' marriage. **AFFIRMED.**

Mark D. Fisher of Nidey, Wenzel, Erdahl, Tindal & Fisher, P.L.C., Cedar Rapids, for appellant.

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

Considered by Vogel, P.J., and Eisenhauer, J., and Sackett, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

SACKETT, S.J.

Laurie Towne appeals from the child support, spousal support, and visitation provisions of the decree dissolving her marriage to Bruce Towne. She contends the court erred in determining Bruce's income, which affected the court's child support calculation and its decision not to award any spousal support. She also contends the court did not order visitation according to the terms of the parties' stipulation. We affirm.

At the time of the dissolution, the parties had been married over thirty-five years and had one minor child, fifteen-year-old Maria, still at home. During the marriage Bruce obtained his veterinary medicine degree and began working for another veterinarian in Gowrie in 1988. In 1993 he opened his own practice. Laurie is an LPN. During much of the marriage, Bruce was the primary breadwinner, while Laurie worked part-time and cared for the parties' four children.

Before trial, the parties agreed on the division of property, joint legal custody of Maria, with Laurie having primary physical care, and visitation. The parties' stipulation was presented orally on the record and later reduced to writing. In its decree the court approved the written stipulation, determined Bruce's income, established child support, denied Laurie's request for spousal support, and awarded Laurie attorney fees.

Laurie filed a motion to amend or enlarge, which was granted in part, retaining jurisdiction on the issue of a postsecondary subsidy for Maria and dividing another marital asset.

We review dissolution cases de novo. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). "Although we decide the issues raised on appeal anew, we give weight to the trial court's factual findings, especially with respect to the credibility of the witnesses." *In re Marriage of Witten*, 672 N.W.2d 768, 773 (Iowa 2003). "Precedent is of little value, as our determination must depend on the facts of the particular case." *In re Marriage of White*, 537 N.W.2d 744, 746 (Iowa 1995).

1. Bruce's Income. The district court determined Bruce's income for child support purposes was $37,000. Laurie contends the district court erred in determining Bruce's income, which affected the court's calculation of child support and its decision not to award spousal support. She asserts the court improperly relied on Bruce's proposed 2010 tax return prepared by his girlfriend, with whom he lives, and Bruce's testimony of his estimated income for 2011. She argues the proper calculation of Bruce's income is an average over five or ten years, as it fluctuates from year to year. Laurie also argues the ten-year average of Bruce's income is nearly identical to the median income of similarly-situated veterinarians in Iowa. Bruce responds the 2010 tax return and his testimony provide an accurate representation of the steady decline in his earnings.

Bruce's income shows a downward trend over the past five years.[1] His testimony concerning his estimated 2011 income follows that same trend.

[1] The 2008 spike in his income reflects a one-time project for Ft. Dodge Animal Health. When that one-time income is discounted, Bruce's income from his veterinary practice trends steadily downward.

Because the district court's determination of Bruce's income is within the range of permissible evidence, we affirm the district court's determination. *See In re Marriage of Hansen*, 733 N.W.2d 683, 703 (Iowa 2007) (stating a "trial court's valuation will not be disturbed when it is within the range of permissible evidence").

2. Child Support. Laurie contends the child support ordered is inequitable and not in Maria's best interest. The stipulation of the parties set Bruce's monthly child support at $485. After considering the relevant statutory and case law factors, the court ordered Bruce to pay monthly child support of $522. There is a rebuttable presumption that applying the child support guidelines results in the correct amount of child support. Iowa Ct. R. 9.4; *In re Marriage of McKenzie*, 709 N.W.2d 528, 533 (Iowa 2006).

Using the income determinations of the district court, which we have affirmed, we conclude the court correctly calculated the amount of Bruce's child support, even though it is higher than the amount in the parties' stipulation. Nothing in the record convinces us that adjustments to the amount calculated under the child support guidelines are necessary to provide for Maria's needs or to do justice between Bruce and Laurie. *See* Iowa Ct. Rs. 9.4, 9.11; *see also In re Marriage of Wahlert*, 400 N.W.2d 557, 560 (Iowa 1987). We affirm the child support ordered by the district court.

3. Spousal Support. Laurie contends the court erred in not ordering Bruce to pay her any alimony. She asserts she should receive monthly alimony of $1200 until their daughter Maria is no longer eligible for support, then monthly

alimony of $1600. 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). Alimony is not an absolute right; any form of alimony is within the discretion of the court. *In re Marriage of Ask*, 551 N.W.2d 643, 645 (Iowa 1996). The discretionary award of alimony is made after considering the factors listed in Iowa Code section 598.21A(1) (2009). *Id.* Property division and alimony should be considered together in evaluating their individual sufficiency. *In re Marriage of Trickey*, 589 N.W.2d 753, 756 (Iowa Ct. App. 1998).

Bruce earns more than Laurie.[2] Laurie received the bulk of the parties' unencumbered assets. Bruce is obligated to pay child support. Although Laurie helped Bruce through his education, thus increasing his earning capacity, she also enjoyed the fruit of that increase for most of their marriage. Both parties are educated. Laurie is self-supporting. Neither party will enjoy a standard of living reasonably comparable to that enjoyed during the marriage. Although Laurie leaves the marriage at a relative financial disadvantage, it is not nearly so great as she argues. Having considered traditional, rehabilitative, and reimbursement alimony and finding none of them appropriate to the particular circumstances of the parties before us, we affirm the decision of the district court that no award of spousal support is warranted.

4. Visitation. Laurie contends the district court erred in not following the parties' stipulation concerning visitation. At the beginning of the trial, the parties

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[2] Most recently, Bruce contributed about sixty percent of the family income and Laurie about forty percent.

recited on the record the agreement of the parties on various matters. Concerning visitation, the following statements are relevant:

> Bruce's attorney: [T]his court will insert its standard visitation schedule . . . . The parties recognize that due to the age of the daughter, that [Bruce] will need to remain flexible on whether or not that occurs, and when it occurs, because of her activities and other factors.
>
> Laurie's attorney: [W]ith regard to the visitation, there was—Laurie's in agreement that Bruce should have reasonable and liberal rights of visitation with his daughter, Maria . . . [who] has indicated, you know, she doesn't wish to have overnights with him at this time and doesn't want to exercise visitation when the girlfriend is around, . . . I don't know if it would be better just to put he's granted reasonable and liberal rights of visitation, because I don't know that anybody can force this girl to go for an every other weekend, four weeks in the summer, especially if the new girlfriend's around, she won't go and we don't want to set [Laurie] up for contempt.
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> Bruce's attorney: It was my understanding, your honor, we were going to put the standard in and then with some language that [Bruce] recognizes that he'll have to work with his daughter regarding the actual times and dates. He does want the ability, if he can repair the relationship with his daughter, to make that happen, but he does understand that she's fifteen and at this point in time, he's going to have to sit down and have a conversation with her.
>
> The court: I assume that, counsel, you're going to draw this up for signature, what you've agreed upon, [and] present it to me for signature?

The parties presented a written joint stipulation that the court approved. Although visitation was discussed on the record, the written stipulation does not address visitation. The court ordered typical visitation of alternating weekends and several weeks in the summer.

In her motion to enlarge, amend, and modify, Laurie asserted it was her understanding the visitation "to be granted to [Bruce] was fair and reasonable visitation with the exact dates and times to be worked out between the parties and the child, taking into account the best interests of the child."

The district court denied all of Laurie's motion to enlarge, amend, and modify except her requests that the court retain jurisdiction to determine a post-secondary education subsidy when appropriate and that the court divide the patronage dividends received from the local telephone cooperative.

From the discussion of the parties' agreement on the record and from the lack of any mention of visitation in the written stipulation, it is clear there was agreement Bruce would have reasonable and liberal visitation according to the court's standard schedule. There was not clear agreement on the effect Maria's wishes should have on visitation.

Laurie argues the court should have included a provision that Bruce "will have to remain flexible on whether or not visitation occurs and when it occurs, because of [Maria's] activities and other factors." Alternatively, she requests that we remand to the district court for further proceedings to address visitation.

Bruce acknowledges he will have to remain "somewhat flexible" in visitation depending on Maria's activities and impending employment opportunities, but he asserts there was no agreement visitation was to be dependent on Maria's wishes.

The legislature has determined it is generally in the best interests of a child to be assured the opportunity for the maximum continuing physical and emotional contact with both parents "unless direct physical harm or significant emotional harm to the child . . . is likely to result for such contact with one parent." Iowa Code § 598.41(1)(a). "We consider the desires of a child in fixing

visitation, but will not permit those desires to control." *In re Marriage of Fynaardt*, 545 N.W.2d 890, 895 (Iowa Ct. App. 1996).

The court ordered certain typical minimum visitation for Bruce and "whatever visitation schedule the parties may agree upon." We acknowledge Maria's desire not to be with her father while his girlfriend is present. However, there is no showing direct physical or significant emotional harm is likely to result from Maria's contact with Bruce. We conclude the district court's provisions for visitation in the decree follow as much as the parties agreed upon and are in Maria's best interest. We affirm the visitation ordered by the court and encourage the parties to work together on visitation because of the importance of the parent-child relationship. *See In re Marriage of Ruden*, 509 N.W.2d 494, 495-96 (Iowa Ct. App. 1993) (noting the importance of visitation and that "both parents are charged with maintaining the best interests of the children, and thus with cooperating in visitation").

5. Attorney Fees. Laurie seeks an award of appellate attorney fees. Any attorney fee award is within our discretion and is not a matter of right. *Sullins*, 715 N.W.2d at 255. We consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. *In re Marriage of Maher*, 596 N.W.2d 561, 568 (Iowa 1999). Having considered the appropriate factors, we decline Laurie's request for attorney fees.

AFFIRMED.