

IN THE COURT OF APPEALS OF IOWA

No. 2-303 / 11-1396
Filed June 13, 2012

**IN RE THE MARRIAGE OF MARIO VASQUEZ
AND LUCIA SANCHEZ**

Upon the Petition of

MARIO VASQUEZ,
Petitioner-Appellee,

And Concerning

LUCIA SANCHEZ,
Respondent-Appellant.

Appeal from the Iowa District Court for Woodbury County, Steven J. Andreasen, Judge.

Lucia Sanchez appeals the decree dissolving her marriage to Mario Vasquez. **AFFIRMED.**

Craig H. Lane of Craig H. Lane, P.C., Sioux City, for appellant.

Kendra M. Olson, Sioux City, for appellee.

Considered by Eisenhauer, P.J., and Potterfield and Mullins, JJ.

MULLINS, J.

Lucia Sanchez appeals the decree dissolving her marriage to Mario Vasquez arguing the district court erred: (1) in the amount and duration of the spousal support award, (2) by not awarding her the marital home free and clear of any claim by Mario in lieu of spousal support, (3) by not awarding her retroactive child support, and (4) by not ordering Mario to pay her trial attorney fees. Because we agree with the findings of the district court, we affirm.

I. Standard of Review.

We review marriage dissolution decrees de novo. *In re Marriage of Fennelly*, 737 N.W.2d 97, 100 (Iowa 2007). We decide the issues raised anew, but give weight to the district court's factual findings, especially with respect to the credibility of the witnesses. *Id.* We review a district court's decision on whether to award attorney fees for abuse of discretion. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006).

II. Background Facts and Proceedings.

Lucia and Mario were married in California in December 1985. They had six children during the marriage, four of which have reached the age of majority. The two youngest children are ages fourteen and eleven. The youngest child is handicapped and has medical coverage through Title XIX.

On April 16, 2010, Mario filed a petition for dissolution of marriage. The petition came to a trial on January 26, 2011. Both parties utilized an interpreter at trial because they speak Spanish as a primary language with only limited English.

At the time of trial, Lucia and Mario were both fifty years old, and both only went through the sixth grade. Although Lucia obtained her GED and a beautician's license in 1985, she never worked in that field. Rather, Lucia stayed at home raising the parties' six children. From 1992 through 2005, Lucia had no earned income. In 2006, she earned \$200 delivering vegetables. In 2008 and 2009, Lucia had brief periods of employment at meat processing facilities where she earned \$2000 and \$1000, respectively. Lucia also worked for about five-weeks at a meat processing facility in 2010, but quit because the work was too physically demanding. Lucia has diabetes and takes medication for depression.

Mario has spent a majority of the marriage working as a truck driver. At the time of trial, he was working as a seasonal truck driver for a construction company. During the summer months, Mario worked forty to sixty-five hours a week, but in the winter months Mario collected \$400 per week in unemployment benefits. In 2009, Mario earned \$41,010 as a truck driver and received \$4766 in unemployment compensation. Mario earned approximately \$32,000 and \$33,000 in 2007 and 2008. Mario testified that he was not sure if the construction company would call him back to work in the spring due to his accumulation of "points" on his driving record for speeding tickets. Mario was taking a class for his CDL through the Iowa Department of Transportation at the time of trial.

The parties' most significant asset was their marital home. They purchased the home when they moved to Iowa in 2005. The marital home has a value of \$143,300 and has no encumbrances.

On December 1, 2010, Mario moved out of the marital home. Mario went to California to look for employment where he lived with friends, his daughter, and at times slept in his vehicle. Mario returned to Iowa the week before trial. Mario testified that while he was in California, he sent one of his adult sons \$200 for an electric bill, \$100 for a water bill, and continued to pay for the family's car insurance. At the time of trial, Lucia lived in the marital home with the two minor children as well as an adult son, his wife, and his daughter.

On August 3, 2011, the district court filed its decree dissolving the parties' marriage. The district court awarded the parties joint legal custody with Lucia having physical care of the minor children subject to reasonable visitation by Mario. The district court further determined Mario's income was \$40,000 per year and Lucia had an earning capacity of \$6000 per year. Mario was ordered to pay child support at \$911 per month, and cash medical support in the amount of \$166 per month. In turning to spousal support, the district court concluded Lucia should be awarded \$300 per month for ten years. The district court also determined Lucia should be awarded the marital home, but that Mario should be given a property equalization payment in the amount of \$69,536. Lucia was ordered to make the equalization payment within nine months, or the marital home was to be sold with the net proceeds divided equally. The district court also concluded the parties should be obligated to pay their own attorney fees.

Lucia appeals the decree.

III. Spousal Support.

Lucia claims that the district court erred in both the amount and duration of spousal support. Lucia argues that the spousal support amount should have been \$500 and should last the remainder of her life.

Spousal support is not an absolute right, but depends upon the particular facts and circumstances of each case. *In re Marriage of Hansen*, 733 N.W.2d 683, 704 (Iowa 2007). The factors to be considered in making spousal support awards are contained in Iowa Code section 598.21A(1) (2009). While our review is de novo, we give the district court considerable latitude in determining whether to award spousal support based upon the statutory factors. *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.*

In awarding spousal support, the district court noted that the parties had a twenty-five year marriage, that Lucia has no significant work history and some health problems, and a lesser earning capacity than Mario. However, the district court also noted that after ten years, the parties’ youngest child will have been out of school for several years, Lucia will have had an opportunity to reenter the workforce, and Mario’s earning capacity will likely diminish due to his inability to maintain forty-five to sixty hour work weeks. The district court also noted Mario was making significant child support and medical support payments for his earning capacity. We find the district court properly weighed the statutory factors, including the property distribution, and that the spousal support award in

this case does not fail to do equity. Accordingly, we affirm the district court's spousal support award.

IV. Property Distribution.

Lucia also challenges the district court's property distribution. She first argues the district court erred in not considering Mario's dissipation of certain assets during the marriage. Lucia also argues the district court erred in not awarding her the marital home free and clear of any claim by Mario in lieu of spousal support.

A. Dissipation of Assets. Addressing Lucia's dissipation arguments, the district court determined:

Initially, the Court finds and concludes that no deduction or credit will be attributed to Mario based upon a dissipation of assets. Lucia claims that he spent and lost marital funds gambling. Lucia further claims that the parties obtained a pension distribution from an IRA or Mario's 401(k) account in the amount of \$13,393 in 2009. She claims Mario gave her \$5000 to pay marital expenses but then used the remaining funds for his exclusive benefit. Lucia also claims that Mario used the parties' entire 2009 tax refund for his exclusive benefit.

Although Lucia proved that these funds generally were available to Mario, she has failed to prove an amount of expenditures made by him. More importantly, she has failed to prove that any expenditures made by Mario would constitute a dissipation of assets. The parties often gambled together. Although Mario may have gambled higher amounts, the gambling expenditures were somewhat typical prior to the breakdown of the marriage. It is also unknown what the total net amount of losses, if any, were sustained through Mario's gambling. In regard to the 2009 refund, Mario used those funds to travel to Mexico to visit family. Finally, these claimed expenditures occurred prior to the parties' separation and the breakdown of the marriage. Lucia introduced no evidence suggesting expenditures or dissipation of assets by Mario since their separation in November 2010.

We find the district court's determinations are supported by the evidence in the record. See *Fennelly*, 737 N.W.2d at 104-05. We therefore affirm its finding that Lucia should not be given a set-off for any alleged dissipated assets.

B. Marital Home in Lieu of Spousal Support. Lucia also argues she should have been awarded the marital home in lieu of spousal support. However, we agree with the district court that Mario's equitable share of the marital home is approximately double the present value of the spousal support. This requested offset would result in substantial inequity, and therefore no error occurred in its denial. See *In re Marriage of Goodwin*, 606 N.W.2d 315, 323 (Iowa 2000).

V. Retroactive Child Support.

Lucia further argues that she should have been awarded child support dating back to December 1, 2010. However, when Mario left the marital home, Lucia maintained possession and use of the home for herself and the children while Mario was homeless and spent several nights living out of his vehicle. Nonetheless, Mario still made payments toward the electric and water bills on the marital home. Lucia did not request a temporary child support order. Under these circumstances, we find that the decision of the district court to deny the request for retroactive child support to be equitable.

VI. Trial Attorney Fees.

Lucia also argues the district court erred in not ordering Mario to pay for her trial attorney fees in the amount of \$2000. An award of attorney fees, or denial of such a request, lies in the discretion of the trial court. *In re Marriage of*

Applegate, 567 N.W.2d 671, 675 (Iowa Ct. App. 1997). The decision should be based on the abilities of the parties to pay and the fairness and reasonableness of the fees. *In re Marriage of Witten*, 672 N.W.2d 768, 784 (Iowa 2003). Upon our review, we find the district court did not abuse its discretion in denying Lucia's request for trial attorney fees.

AFFIRMED.