

IN THE COURT OF APPEALS OF IOWA

No. 6-1078 / 06-0699
Filed March 14, 2007

**IN RE THE MARRIAGE OF BILLI SUE COONS
AND RONALD WILLIAM COONS**

**Upon the Petition of
BILLI SUE COONS,**
Petitioner-Appellant,

**And Concerning
RONALD WILLIAM COONS,**
Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, James E. Kelley,
Judge.

Petitioner appeals several economic issues in the parties' dissolution
decree. **AFFIRMED AS MODIFIED AND REMANDED.**

Sharon Sinnard, Bettendorf, for appellant.

Michael J. McCarthy of McCarthy, Lammers & Hines, Davenport, for
appellee.

Cynthia Z. Taylor of Zamora, Taylor, Alexander, Woods & Fredericks,
Davenport, guardian ad litem for minor child.

Considered by Zimmer, P.J., and Miller, J., and Beeghly, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

BEEGHLY, S.J.**I. Background Facts & Proceedings**

Ronald and Billi Coons were married in 1992. They have one minor child, Frances, who was born in 1996. Billi filed a petition for dissolution of marriage in May 2005. The parties entered into a stipulation that they would have joint legal custody of Frances, with Billi having primary physical care. The parties agreed to a specific visitation schedule. They also agreed to a division of property. The issues of spousal support, child support, and attorney fees were submitted to the court.

A dissolution hearing was held on December 30, 2005. Ronald was then thirty-five years old. He was employed at Oscar Mayer in Davenport. He testified he made about \$30,000 in 2004, and would make slightly less in 2005. Ronald had a high school degree and had taken some college classes.

Billi was thirty-eight years old at the time of the hearing. She was employed part-time at Handicapped Development Center (HDC), and had annual income of \$11,576 per year. Billi is mildly mentally retarded. She previously qualified for Social Security Disability benefits, but was not currently receiving any payments due to her employment.

Karly Driscoll, an employment services case manager at HDC, testified she was Billi's case manager. She stated Billi was both a client of HDC and was employed there. Driscoll testified Billi probably did not have the ability to work at a job requiring more skills than her present job. She stated she did not expect Billi could become self-supporting, even with more training.

A dissolution decree was entered by the district court on December 30, 2005. A supplemental decree was entered on February 23, 2006. The court approved the parties' stipulation. The court determined Ronald had annual income of \$29,447, and ordered him to pay child support of \$460.40 per month. The court provided for the child's medical expenses. The supplemental decree did not address the issues of spousal support or attorney fees.

Ronald filed a motion pursuant to Iowa Rule of Civil Procedure 1.904(2), stating he should have been awarded the income tax dependency exemption for the child. Billi resisted Ronald's motion, stating she should have been awarded spousal support and attorney fees. The district court modified the parties' decree to provide that Ronald should be awarded the tax exemption for the child. Billi appealed.

II. Standard of Review

Our review of this equitable action is de novo. Iowa R. App. P. 6.4. We examine the entire record and decide anew the issues properly presented. *In re Marriage of Rhinehart*, 704 N.W.2d 677, 680 (Iowa 2005). In equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the district court, but is not bound by them. Iowa R. App. P. 6.14(6)(g).

III. Child Support

Billi contends the district court improperly determined Ronald's income for purposes of calculating his child support obligation. Ronald presented a pay stub showing that for the pay period ending December 18, 2005, he had total year-to-

date compensation of \$30,886.47. Another exhibit, submitted by the State, showed Ronald had made \$23,295.70 for the first three quarters of 2005. Based on this exhibit, he could expect to make \$31,061 in 2005. Ronald's child support worksheet showed him as having income of \$29,447, while Billi had income of \$11,500. Billi's worksheet showed Ronald had income of \$30,500, and she had income of \$11,500.

We determine a parent's income from the most reliable evidence presented. *In re Marriage of Powell*, 474 N.W.2d 531, 534 (Iowa 1991). There is no information in the record, other than Ronald's worksheet, to show how the district court came to the conclusion Ronald's income in 2005 would be \$29,447. We determine Ronald's 2005 income would be at least \$31,061. We remand to the district court for re-calculation of Ronald's child support obligation.

IV. Alimony

Billie contends the district court should have awarded her alimony. Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Kurtt*, 561 N.W.2d 385, 387 (Iowa Ct. App. 1997). The discretionary award of alimony is made after considering those factors found in Iowa Code section 598.21(3) (2005). 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 alimony 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).

We determine Billi is entitled to traditional alimony. See *In re Marriage of Frances*, 442 N.W.2d 59, 64 (Iowa 1989) (noting traditional alimony is payable for life, or so long as a spouse is incapable of self-support). It is clear Billi's earning capacity will never approach that of Ronald. The testimony of Driscoll, Billi's case manager, showed it is unlikely Billi will ever earn much more than she earns now. Billi does not have the ability to become self-supporting. We determine Billi is entitled to alimony of \$200 per month until she reaches the age of sixty-five, or until the death of Billi or Ronald, whichever occurs first.

V. Tax Exemption

Billi asserts she should have been awarded the federal income tax exemption for the minor child. Generally, the custodial parent receives the tax exemption for a minor child. See Iowa Ct. R. 9.6(4). The district court has the ability, however, to award tax exemptions to a non-custodial parent "to achieve an equitable resolution of the economic issues presented." *In re Marriage of Rolek*, 555 N.W.2d 675, 679 (Iowa 1996).

The district court determined Ronald should receive the tax exemption for the child. The court stated it did so to minimize the amount of income tax payable in total by the parties. The court found that due to her level of income, Billi was not required to pay any income tax. The court found insufficient Billi's concern that the dependency exemption would permit her to be eligible for the earned income credit. We also note Ronald was ordered to provide health insurance for the child and to pay for most of the uncovered medical expenses. We concur in the district court's reasoning. We conclude that to achieve an

equitable resolution of the economic issues presented in this case Ronald should receive the tax exemption for the parties' child.

VI. Attorney Fees

Billi asserts the district court should have awarded her trial attorney fees. An award of attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Romanelli*, 570 N.W.2d 761, 765 (Iowa 1997). An award of attorney fees should be reasonable and fair, and based on the parties' respective abilities to pay. *In re Marriage of Scheppele*, 524 N.W.2d 678, 680 (Iowa Ct. App. 1994). We determine Ronald should pay \$1000 for Billi's trial attorney fees.

Billi also seeks attorney fees for this appeal. On a request for appellate attorney fees, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party was required to defend the district court's decision on appeal. *In re Marriage of Wood*, 567 N.W.2d 680, 684 (Iowa Ct. App. 1997). We determine Ronald should pay \$1000 for Billi's appellate attorney fees.

VII. Guardian ad Litem Fees

Billi claims the district court should have addressed the issue of payment for the guardian ad litem fees. At the dissolution hearing, the district court stated this issue would be addressed in the supplemental decree. Through apparent inadvertence, however, the matter was not included in the supplemental decree. On remand, the district court should address the costs for the guardian ad litem.

We affirm the decision of the district court, as modified. We remand for further proceedings in the district court on the issues of child support and guardian ad litem fees. We do not retain jurisdiction. Costs of this appeal are assessed one-half to each party.

AFFIRMED AS MODIFIED AND REMANDED.