

IN THE COURT OF APPEALS OF IOWA

No. 9-602 / 09-0084
Filed September 2, 2009

**IN RE THE MARRIAGE OF TRACY ALAN HOWELL
AND LISA ANN HOWELL**

**Upon the Petition of
TRACY ALAN HOWELL,**
Petitioner-Appellee,

**And Concerning
LISA ANN HOWELL,**
Respondent-Appellant.

Appeal from the Iowa District Court for Appanoose County, James Q. Blomgren, Judge.

The respondent appeals the property settlement and spousal support provisions of the decree dissolving the parties' marriage. **AFFIRMED AS MODIFIED AND REMANDED.**

Bryan J. Goldsmith of Webber, Gaumer & Emanuel, P.C., Ottumwa, for appellant.

Allan C. Orsborn of Orsborn, Milani & Mitchell, L.L.P., Ottumwa, for appellee.

Considered by Vaitheswaran, P.J., Mansfield, J., and Schechtman, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

MANSFIELD, J.

Lisa Ann Howell appeals the property settlement and spousal support provisions of the decree dissolving her marriage to Tracy Alan Howell. We affirm as modified and remand.

I. Facts and Procedural Background.

Lisa and Tracy were married in 1997. They had two children, a son born in 1997 and a daughter born in 2000. At the time the decree was entered, Tracy was thirty-nine years old and Lisa was thirty-five years old. Neither party has any physical or mental limitations. Both are high school graduates.

Tracy has worked at the Cargill plant in Eddyville for the past twenty years, and is currently a general foreman employed by Weitz making \$29.75 per hour. His annual base pay for a forty-hour work week is \$61,880; however, Tracy's 2007 W-2 earnings included overtime pay and bonuses, and totaled \$87,454. Although overtime and bonuses are not guaranteed, Tracy has earned them for the past few years. He is a journeyman millwright and a member of Millwright Local Union 2158.

When Lisa and Tracy were married, they had both been working at Cargill and their incomes were quite comparable. Tracy, for example, made \$38,426 in 1996 and Lisa made \$36,910. However, while Tracy continued in his employment, Lisa quit her job to be a stay-at-home mom when the first child was born. Also, Lisa maintained the household generally during Tracy's frequent work-related travels.

In 2005, Lisa reentered the workforce. Lisa is currently employed as a registered pharmacy technician at Hy-Vee in Centerville. She works

approximately thirty-four to thirty-five hours per week and makes thirteen dollars per hour. Lisa earned \$19,693.70 in gross wages for 2007.

In July 2007, Tracy petitioned for dissolution of the marriage. The dissolution trial took place on June 25 and 26, 2008. The parties stipulated they should have joint legal custody and Lisa should have physical care of the children. On September 2, 2008, the district court filed a written ruling dividing the assets and liabilities of the parties, and ordering Tracy to pay Lisa \$1244 per month for child support. For purposes of calculating Tracy's child support obligation, the court imputed his income at \$87,454, and Lisa's income at \$23,868. The district court's ruling did not mention spousal support, although Lisa had requested it.

Thereafter, Lisa filed a motion to enlarge and amend the district court's decree. Among other things, Lisa argued the court erred in (1) failing to award her spousal support; (2) valuing Tracy's Carpenters Pension Fund at \$3274.55 and awarding it solely to Tracy; and (3) determining several credit card payments for attorney fees made by Tracy totaling \$11,623.00 were joint marital debts and including them in the parties' divided property. After a hearing on the motion, the court entered an order upholding its previous ruling in the decree with regard to those issues.

Lisa now appeals, rearguing several of the issues she raised in her motion to enlarge and amend. She contends the district court should have awarded her \$800 per month in spousal support or some other appropriate amount. Lisa further argues the district court erred in its property settlement, specifically with

regard to its valuation and distribution of Tracy's Carpenters Pension Fund, and its classification of Tracy's credit card payments as marital debt.

II. Analysis.

We review dissolution decrees de novo. Iowa R. App. P. 6.907 (2009); *In re Marriage of Fennelly*, 737 N.W.2d 97, 100 (Iowa 2007). We give weight to the factfindings 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); *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006).

A. Spousal Support.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). In determining whether to award alimony, the district court is to consider the factors in Iowa Code section 598.21A(1) (2007). That section allows the court to consider, among other things, (1) the earning capacity of each party and (2) the present standards of living and ability to pay balanced against the relative needs of the other. *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa Ct. App. 1994). The court may also consider the amount of child support ordered under the decree when determining if spousal support is to be awarded and, if so, the appropriate amount of the award. *In re Marriage of Will*, 489 N.W.2d 394, 400 (Iowa 1992). We only disturb the district court's decision if there is a failure to do equity. *Anliker*, 694 N.W.2d at 540.

In our de novo review, we believe an award of spousal support is necessary to do equity in this case. Lisa and Tracy's marriage lasted eleven years. During the parties' marriage, Lisa's career and earning capacity were put

on hold while she took on a caregiver and housekeeper role for the family and Tracy acted as the main breadwinner. Lisa's staying at home benefited the family and enabled Tracy to steadily increase his income. Although Lisa reentered the workforce in 2005, she has continued to earn significantly less than she did prior to the parties' marriage. The district court imputed Lisa's income at \$23,868 for purposes of calculating Tracy's child support obligation. In contrast, Tracy now earns close to \$90,000 including overtime and bonuses.

For the foregoing reasons, we believe this case falls within the category of cases where an award of spousal maintenance is needed to achieve equity. A number of the factors set forth in Iowa Code section 598.21A support such an award, including the length of the marriage, Lisa's relative earning capacity, her length of absence from the job market, her responsibilities for the children, and the feasibility of her becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. Simply stated, when Lisa and Tracy married each other, they were at the same income level; now, due to the marriage and their children, Lisa earns about one-fourth of what Tracy earns. Thus, this is the kind of case where alimony is appropriate. However, we do not feel it is necessary to award alimony until the youngest child turns eighteen, as requested by Lisa. The record shows that Tracy has good job skills and wants to go to school to become a pharmacist. Upon our review, we grant Lisa alimony in the amount of \$800 per month for seventy-two months.

B. Pension Fund.

Lisa's second argument on appeal relates to the court's division of property. Lisa had asked the court to divide Tracy's pension between the parties

equally pursuant to a Qualified Domestic Relations Order. However, the district court simply put Tracy's pension on his side of the ledger as part of the overall property division. Lisa contends that in doing so, the court incorrectly undervalued Tracy's Carpenters Pension Fund at \$3274.55 total. She alleges that \$3274.55 is not a present value calculation, but rather, Tracy's projected monthly benefit upon retirement.

Upon our review of this matter, we find the pension documents are confusing (to say the least). Like Lisa, we have our doubts that the present value of Tracy's entire pension is only \$3274.55. However, based on the testimony and exhibits, we cannot say that the record supports a different figure. No one attempted during the trial to establish that the present value was anything other than \$3274.55. In fact, Lisa testified as follows:

Q. And on your Exhibit CC, you show Tracy's vested amount as being \$3274; is that correct? A. That was as of 2006.

Thus, like the district court, we believe that \$3274.55 is the number that has the most support in this record. We cannot take new evidence or retry this case on appeal. Accordingly, we affirm on this point.

C. Tracy's Attorney Fees.

Lisa also argues the court erred when it determined several credit card payments for attorney fees made by Tracy totaling \$11,623 were joint marital debts and included them in the parties' divided property. We find this argument to be without merit. The record shows that both parties utilized joint assets to pay attorney fees for these proceedings. Lisa used cash and Tracy used credit

cards. The district court's decision with regard to this issue is just and equitable and we affirm.

For the foregoing reasons, we affirm the decision of the district court on the property settlement issues, while granting Lisa alimony in the amount of \$800 per month for seventy-two months. We remand for recalculation of child support in accordance with the applicable guidelines. Costs of appeal shall be divided evenly between the parties.

AFFIRMED AS MODIFIED AND REMANDED.