IN RE THE MARRIAGE OF RONALD J. AVERY AND DEBBIE A. AVERY Upon the Petition of RONALD .

2008 | Cited 0 times | Court of Appeals of Iowa | June 25, 2008

IN THE COURT OF APPEALS OF IOWA

No. 8-367 / 07-1799 Filed June 25, 2008

IN RE THE MARRIAGE OF RONALD J. AVERY AND DEBBIE A. AVERY

Upon the Petition of RONALD J. AVERY, Petitioner-Appellee,

And Concerning DEBBIE A. AVERY, Respondent-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Thomas N.

Bower, Judge.

proceeding. AFFIRMED.

Gary Boveia of Boveia Law Firm, Waverly, for appellant.

Thomas Langlas of Gallagher, Langlas & Gallagher, P.C., Waterloo, for

appellee.

Considered by Huitink, P.J., and Mahan and Miller, JJ. MAHAN, J.

dissolution

proceeding. She claims the district court erred in (1) requiring her to pay Ronald

an reimbursement alimony; (3) imputing her income; (4) valuing and distributing

Ron (k) account; and (5) awarding her $2000 in attorney fees instead of

$5000 as she requested. She also requests $5000 in appellate attorney fees.

We affirm.

I. Background Facts and Proceedings.

Ronald and Debbie Avery were married in 1993 and have three children:

Tyler, born in November 1990; Brandon, born in April 1994; and Cody, born in

November 2006. At the time of trial, Ronald was thirty-nine years old and Debbie

was thirty-eight years old.

Ronald graduated from high school and attended college courses at Loras

College and Northeast Iowa Community College, but did not obtain a degree. He

began working for Hy-Vee in 1991, and has participated in the Hy-Vee manager

training program. Ronald has worked in various capacities at Hy-Vee since

1991, and in April 2007 he accepted a position as a Hy-Vee store director in

Vermillion, South Dakota.

Debbie has no post-high school education. She began working at Hy-Vee

part-time in high school. She has worked most of the marriage in a variety of

positions, including doing daycare in the home, associate teaching at North Iowa

Juvenile Detention Center, associate teaching at Castle Hill and working in

different capacities at Hy-Vee been for Hy-Vee, including five years as a health and beauty care manager before she went on medical leave in August 2006 during her pregnancy with the

remained unemployed since that time.

Ronald filed a petition for dissolution on June 7, 2006. After a trial, the

court awarded Debbie the family home at 348 Norris Court, with equity of

$33,000. It further ordered Debbie to pay Ronald a one-half equity interest in the

home in the amount of $16,500, plus interest at the rate of five percent within six

months of ; within six months

oungest

son; or at the time the house is sold or refinanced whichever occurs first.

The parties agreed to joint custody of the children. The parties further

agreed that the children would remain in the physical care of Debbie. The court

ordered Ronald to pay child support in the amount of $1352 per month, based on

. It also

awarded alimony to Debbie in the amount of $200 per month for a period of

thirty-six months. The court further orde -Vee 401(k) account,

valued at $50,758, to be divided equally between the parties. Finally, it ordered

Ronald to pay $2000 toward Debbie 1

, imputation

of her income, valuation and distribution account, and alimony

and attorney fees awards. She also requests appellate attorney fees.

1 The court distributed further property and debts of the parties, but those matters are not on appeal and we will not address them. II. Scope and Standard of Review.

We review dissolution decrees de novo. Iowa R. App. P. 6.4; In re

Marriage of Fennelly, 737 N.W.2d 97, 100 (Iowa 2007). Though we are not

credibility determinations. In re Marriage of Sullins, 715 N.W.2d 242, 247 (Iowa

2006).

III. Issues on Appeal.

A. Division of Real Estate.

Debbie argues the district court erred in ordering her to pay Ronald a one-

half home at 348 Norris Court in the amount of

$16,500, plus interest at the rate of five percent. 2 The district court ordered

equity interest upon one of the following triggering

events: within six months of the date of any remarriage by Debbie, within six

months of the graduation from high school or eighteenth birthday of the pa youngest son; or at the time the house is sold or refinanced. Debbie contends

that the house should be awarded to her in full considering the property she

brought into the marriage; the marital contributions she made caring for the

children; the financial assistance her family provided throughout the marriage;

; the

desirability of awarding the family home to her; and the needs she has for the

home for raising the children. We find th

The partners in a marriage are entitled to a just and equitable share of the

property accumulated through their joint efforts. In re Marriage of Dean, 642

2 N.W.2d 321, 325 (Iowa Ct. App. 2002). Iowa courts do not require an equal

division or percentage distribution. In re Marriage of Campbell, 623 N.W.2d 585,

586 (Iowa Ct. App. 2001). The determining factor is what is fair and equitable in

each particular circumstance. In re Marriage of Miller, 552 N.W.2d 460, 463

(Iowa Ct. App. 1996). The distribution should be made in consideration of the

criteria set forth in Iowa Code section 598.21(5) (Supp. 2007). We accord the

trial court considerable latitude in resolving economic provisions of a dissolution

decree and will disturb a ruling only when there has been a failure to do equity.

In re Marriage of Smith, 573 N.W.2d 924, 926 (Iowa 1998).

In this case, equitable the marriage, and present need for the home. Debbie is allowed to keep the

house without paying Ronald for his one-half interest for up to seventeen years.

Further, when Debbie does have to pay Ronald, she is only obligated to pay him

one- equity value, plus five percent interest. We find

348 Norris Court is equitable and within the range of the

evidence. We find no reason to alter the real estate distribution and we affirm on

this issue.

B. Alimony.

Debbie next argues that the district court erred in failing to award sufficient

reimbursement alimony. She contends that she should be awarded $1000 per

month in reimbursement alimony rather than $200 per month ordered by the

court. Debbie argues that Ronald is able to devote all his energies to his career,

while her energies are consumed by the responsibil three sons. Specifically, Debbie notes that the two oldest sons have behavioral and medical needs that require substantial time and energy and she has no

family in the area to assist her.

is predicated upon economic sacrifices made by

one spouse during the marriage that directly enhance the future earning capacity

In re Marriage of Anliker, 694 N.W.2d 535, 541 (Iowa 2005)

(internal citations omitted). Reimbursement alimony is similar to a property

award and should be fixed at the time of the decree. Id. It is, however, based on

future earning capacity rather than a division of tangible assets. Id.

duty to look at the future earning capacity of the spouses couples closely with a

concern for loss of anticipated support, which is reimbursable through alimony.

In re Marriage of Probasco, 676 N.W.2d 179, 185 (Iowa 2004). Reimbursement

alimony is therefore most appropriate in cases where one spouse has obtained

education during the marriage that will lead to a well-paying career but has not

worked long enough to accumulate property to be shared with the sacrificing

spouse.

Alimony is not an absolute right. Id. at 540. Whether alimony is awarded

depends on the circumstances of each particular case. Id. In determining

whether to award alimony, the district court is to consider the factors in Iowa

Code section 598.21A(1). That section allows the court to consider (1) the length

of the marriage, (2) the age and physical and emotional health of the parties, (3)

the property distribution, (4) the educational level of the parties at the time of the

marriage and at the time the dissolution action is commenced, (5) the earning

capacity of the party seeking alimony, and (6) the feasibility of the party seeking alimony becoming

self-supporting at a standard of living reasonably comparable

to that enjoyed during the marriage. Iowa Code § 598.21A(1)(a)-(f). We only

disturb the Anliker, 694

N.W.2d at 540.

In this case, we find that month for thirty-six months is equitable. The marriage between the parties was

moderate in length and was not devoted almost entirely to the educational

advancement of one spouse. Debbie has been active in the job market during

much of the marriage. She has extensive retail work experience. In particular,

Debbie was the health and beauty care manager at Hy-Vee for five years before

she went on medical leave in August 2006 during her pregnancy with the youngest son. Since that time, Debbie has rejected two offers from Hy-Vee to

return to work. The district court noted that although should be a stay-at-home mom is admirable, [it] is not realistic given the financial

Moreover, the district court left open the possibility for spousal support

e Vermillion, South Dakota store

shows profits. Given these facts, we cannot find that Debbie sacrificed for the

parties are in reasonably good health,

their property is equitably distributed, and Debbie has an earning capacity

sufficient to be self-supporting at a standard of living reasonably comparable to

alimony is equitable and affirm on this issue. C. Imputed Income.

Debbie contends the court should not have imputed her income at

$21,320 for child support purposes because she is unemployed. Debbie argues

the court should have instead imputed no income to her and awarded child

ually.

Debbie has been active in the job market during much of the marriage.

For the five years prior to her medical leave for Debbie was the health and beauty care manager at Hy-Vee. As the court

mentioned, given the financial status of the parties, it is unrealistic for Debbie to

remain unemployed and a stay-at-home mom, particularly when she has such

extensive work experience. The age of the children would not prevent Debbie

from pursuing similar employment.

We find $21,320 is a reasonable and equitable annual earning capacity.

s imputed income and we affirm on this issue.

D.

k)

account for purposes of distribution between the parties. The court determined

that amount to be divided equally between the parties. As a result of that order,

Debbie received $25,379. Debbie contends, however, that because Ronald

receive $36,096, Debbie

argues that Ronald withdrew the $22,000 without consulting her and that he

spent the funds for his own personal needs. Dissipation of assets is a proper consideration when dividing marital

property. Fennelly, 737 N.W.2d at occurred, courts must decide (1) whether the alleged purpose of the

expenditure

is supported by the evidence, and if so, (2) whether that purpose amounts to

Id. The first factor is an evidentiary issue.

Courts may determine the alleged purpose on the basis of whether the spending spouse can show how the funds were spent by testifying or producing receipts or similar evidence. Id. Determination of the second factor requires courts to consider several issues: (1) the proximity of the expendit

separation, (2) whether the expenditure was typical of expenditures made by the parties prior to the breakdown of the marriage, (3) whether the expenditure

the

exclusion of the other, and (4) the need for, and the amount of, the expenditure.

Id. at 104-05.

Ronald provided sufficient evidence concerning his

expenses and obligations. Ronald used part of the 401(k) account withdrawal to pay for marital credit card debt

Furthermore, Ronald moved out of the family home at 348 Norris Court in February 2007 and did not take any home furnishings. Ronald paid a rental deposit and payment for an apartment in Evansdale. Soon after, he was offered a new job in Vermillion and had to find an apartment there. Six weeks elapsed

Hy-Vee in Waterloo to his first pay check

in Vermillion. We conclude that the court correctly found that Ronald adequately

explained the expenditures and the expenditures were the result of legitimate household expenses and marital debt. We affirm on this issue.

E. Trial Attorney Fees.

Debbie argues the court erroneously awarded her $2000 in attorney fees, rather than $5000 as she requested. Attorney fees are not a matter of right, but In re Marriage of Romanelli, 570 N.W.2d abuse of discretion. Sullins, 715 N.W.2d at 255. An award of attorney fees is based upon the respective abilities of the parties to pay the fees and whether the fees are fair and reasonable. In re Marriage of Applegate, 567 N.W.2d 671, 675 (Iowa Ct. App. 1997). We conclude that the district court did not abuse its discretion when it awarded Debbie $2000 in attorney fees.

F. Appellate Attorney Fees.

Debbie requests attorney fees on appeal. This court has broad discretion in awarding appellate attorney fees. In re Marriage of Okland, 699 N.W.2d 260, 270 (Iowa 2005). An award of appellate attorney fees is based upon the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal. Id. Given the relative asset position of the parties, we deny s request for appellate attorney fees. Costs on appeal are assessed one-half to Debbie and one-half to Ronald.

AFFIRMED.