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CLINT A. JENSEN, APPELLANT, V. ANGELA J. JENSEN, APPELLEE.

820 N.W.2d 309

Filed September 4, 2012. No. A-11-657.

1. **Divorce: Child Custody: Child Support: Property Division: Alimony: Attorney Fees: Appeal and Error.** In an action for the dissolution of marriage, an appellate court reviews de novo on the record the trial court's determinations of custody, child support, property division, alimony, and attorney fees; these determinations, however, are initially entrusted to the trial court's discretion and will normally be affirmed absent an abuse of that discretion.
2. **Divorce: Property Division: Alimony.** In dividing property and considering alimony upon a dissolution of marriage, a court should consider four factors: (1) the circumstances of the parties, (2) the duration of the marriage, (3) the history of contributions to the marriage, and (4) the ability of the supported party to engage in gainful employment without interfering with the interests of any minor children in the custody of each party.
3. **Alimony: Appeal and Error.** In reviewing an alimony award, an appellate court does not determine whether it would have awarded the same amount of alimony as did the trial court, but whether the trial court's award is untenable such as to deprive a party of a substantial right or just result.
4. **Alimony.** In determining whether alimony should be awarded, in what amount, and over what period of time, the ultimate criterion is one of reasonableness.
5. ____. The purpose of alimony is to provide for the continued maintenance or support of one party by the other when the relative economic circumstances make it appropriate. Alimony should not be used to equalize the incomes of the parties or to punish one of the parties.
6. ____. Disparity in income or potential income may partially justify an award of alimony.

Appeal from the District Court for Lincoln County: DONALD E. ROWLANDS, Judge. Affirmed.

Kim M. Seacrest, of Seacrest Law Office, P.C., L.L.O., for appellant.

Angela J. Jensen, pro se.

IRWIN, SIEVERS, and PIRTLE, Judges.

PIRTLE, Judge.

INTRODUCTION

Clint A. Jensen appeals from a decree in the district court for Lincoln County dissolving his marriage to Angela J.

Jensen. The only issue Clint contests is the district court's award of alimony to Angela. Based on the reasons that follow, we affirm.

BACKGROUND

The parties were married on June 7, 1985, and three children were born during the marriage. The parties separated on April 14, 2010. Clint moved out of the marital home, and Angela continued to live in the marital home with the parties' youngest child, who was 17 years of age. The other two children had reached the age of majority. After the parties separated, Clint continued to pay the mortgage on the marital home in the amount of $913 per month, plus the utilities for the home, and he also provided groceries for the parties' youngest child. The marital home was put on the market for sale at the end of July 2010.

On July 9, 2010, Clint filed a complaint for dissolution of marriage. Angela subsequently filed an answer and counterclaim. In May 2011, the parties entered into a settlement agreement whereby they settled all issues except an appropriate award of alimony. However, the parties did agree that Clint would not be obligated to pay any alimony until after the marital home sold, as long as he continued to pay the mortgage on the home and the utility bills. The settlement agreement also reflected that the youngest child graduated from high school in May 2011, moved out of the family home, and was living independently, and it reflected that based on the emancipation of the child, there was no obligation of child support.

A trial was held on June 7, 2011. At the time of trial, the home had not sold and was still on the market. Angela continued to live in the home, and Clint continued to pay the mortgage and the utility bills. Angela never made an application for temporary child support or temporary spousal support during the pendency of the case.

The evidence also showed that Clint was 47 years old at the time of trial. He has a high school diploma and an associate degree in criminal justice. Clint had been working for a railroad for many years, where he has had various positions and

has worked his way "up the ranks." During the last 3 years of the marriage, Clint was making more than $90,000 per year. At the time of trial, his net earnings were approximately $5,000 per month.

Angela was also 47 years old at the time of trial. She has a high school diploma and has attended "about a year and a half" of college. She was employed off and on during the marriage, but she primarily stayed home with the children, which was mutually agreed upon by the parties. At the time of trial, she was employed as a cocktail waitress making $6 per hour and working about 14 hours per week. She was also providing babysitting services in her home. She testified that between her two part-time jobs, she was making about $680 per month. She further testified that she is capable of working 40 hours per week and capable of making at least $8 per hour, based on past employment.

Following trial, the trial court entered a decree of dissolution in which it incorporated the parties' settlement agreement. It further ordered Clint to pay Angela $1,500 per month in alimony for 149 months, to start after the sale of the marital home. The trial court also denied Clint's request for a credit against his alimony obligation based on the mortgage payments he made during the pendency of the case.

ASSIGNMENTS OF ERROR

Clint assigns that the trial court erred in (1) awarding Angela alimony in the amount of $1,500 per month for a total of 149 months and (2) denying his request for a credit against his alimony obligation based on the mortgage payments he made during the pendency of the case.

STANDARD OF REVIEW

[1] In an action for the dissolution of marriage, an appellate court reviews de novo on the record the trial court's determinations of custody, child support, property division, alimony, and attorney fees; these determinations, however, are initially entrusted to the trial court's discretion and will normally be affirmed absent an abuse of that discretion. *Thompson v. Thompson*, 18 Neb. App. 363, 782 N.W.2d 607 (2010).

ANALYSIS

Clint first assigns that the trial court erred in awarding Angela alimony in the amount of $1,500 per month for a total of 149 months. He argues that she is capable of supporting herself and that an award of $1,500 per month in alimony is too high.

[2-4] In dividing property and considering alimony upon a dissolution of marriage, a court should consider four factors: (1) the circumstances of the parties, (2) the duration of the marriage, (3) the history of contributions to the marriage, and (4) the ability of the supported party to engage in gainful employment without interfering with the interests of any minor children in the custody of each party. *Myhra v. Myhra*, 16 Neb. App. 920, 756 N.W.2d 528 (2008). In reviewing an alimony award, an appellate court does not determine whether it would have awarded the same amount of alimony as did the trial court, but whether the trial court's award is untenable such as to deprive a party of a substantial right or just result. *Id.* In determining whether alimony should be awarded, in what amount, and over what period of time, the ultimate criterion is one of reasonableness. *Id.*

[5,6] The purpose of alimony is to provide for the continued maintenance or support of one party by the other when the relative economic circumstances make it appropriate. Alimony should not be used to equalize the incomes of the parties or to punish one of the parties. *Id.* However, disparity in income or potential income may partially justify an award of alimony. *Id.*

In the instant case, the parties were married for 26 years. Angela has a high school diploma and has taken some college courses. She worked sporadically during the marriage, but the parties had agreed that she would primarily stay at home with the children. At the time of trial, Angela was earning about $680 per month. She testified, however, that she was capable of working 40 hours per week and capable of making $8 per hour, which would result in a gross annual income of $16,640. Based on her earning potential and her monthly living expenses, Angela asked the court to award her between $2,100 and $2,300 per month in alimony.

There is great disparity between the parties' incomes. Clint's income has consistently increased during his employment with the railroad, and during the last 3 years of the marriage, he was earning more than $90,000 in gross annual wages. Thus, we conclude that the trial court's award of $1,500 per month in alimony to Angela for a total of 149 months is reasonable based on the facts of this case and was not an abuse of discretion.

Clint also assigns that the trial court erred in denying his request for a credit against his alimony obligation based on the mortgage payments he made during the pendency of the case. Clint argues that he is entitled to such credit because Angela has not cooperated with the Realtors in allowing open houses and showings, which has contributed to the house's not being sold. Angela denied hindering the process of selling the home. She admitted that at one point, she denied the Realtor's request for an open house because at that time the house was not ready to be shown. She also acknowledged that she refused to allow the Realtor to show the home to a potential buyer on one occasion because she was out of town. She estimated that the house has been shown to 10 potential buyers.

Based on the record before us, we do not conclude that Angela's actions have contributed to the house's not being sold. The marital home was put on the market for sale at the end of July 2010. As of June 7, 2011, the date of trial, the home had not sold but had been shown to potential buyers on numerous occasions.

Clint apparently began making the mortgage payments voluntarily after the parties separated and subsequently agreed in the property settlement to continue paying the mortgage until the marital home sold. When Clint and Angela entered into the settlement agreement, there was no way of knowing how long it would take to sell the house, and the agreement simply stated that Clint would continue paying the mortgage until the house sold. There was no time limit set. Further, during the pendency of the case, Clint did not pay any temporary child support or temporary spousal support and Angela never made application for such support. Both parties were apparently content with the arrangement they had agreed upon, and

there is no basis upon which to conclude that the trial court erred in denying Clint's request for a credit against his alimony obligation.

CONCLUSION

We conclude that the trial court did not err in awarding alimony to Angela in the amount of $1,500 per month for a total of 149 months or in denying Clint's request for a credit against his alimony obligation based on the mortgage payments he made during the pendency of the case. Accordingly, the decree of dissolution entered by the district court is affirmed.

AFFIRMED.

IN RE GUARDIANSHIP OF JORDAN M., A CHILD UNDER 18 YEARS OF AGE. MATTICE M., APPELLANT, V. KAAREN H., APPELLEE.

820 N.W.2d 654

Filed September 18, 2012. No. A-12-017.

1. **Guardians and Conservators: Appeal and Error.** Appeals of matters arising under the Nebraska Probate Code, Neb. Rev. Stat. §§ 30-2201 through 30-2902 (Reissue 2008 & Cum. Supp. 2010), are reviewed for error on the record.
2. **Guardians and Conservators: Parent and Child.** The father and mother are the natural guardians of their minor children and are duly entitled to their custody, being themselves not otherwise unsuitable.
3. **Guardians and Conservators: Parental Rights.** The court may appoint a guardian for a minor if all parental rights of custody have been terminated or suspended by prior or current circumstances or prior court order.
4. ____: ____. The appointment of a guardian for a minor child does not result in a de facto termination of parental rights; rather, a guardianship is no more than a temporary custody arrangement established for the well-being of a child.
5. **Guardians and Conservators: Child Custody.** Granting one legal custody of a child confers neither parenthood nor adoption; a guardian is subject to removal at any time.
6. **Child Custody: Parental Rights: Presumptions.** The parental preference principle establishes a rebuttable presumption that the best interests of a child are served by reuniting the child with his or her parent.
7. **Guardians and Conservators: Parental Rights: Proof.** As a part of the parental preference principle, an individual who seeks appointment as guardian of a minor child over the objection of a biological or adoptive parent bears the burden of