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ARKANSAS COURT OF APPEALS

DIVISION I

No. CV-21-251

JESSICA JOHEIM

APPELLANT

V.

MEREDITH JOHEIM

APPELLEE

Opinion Delivered May 11, 2022

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
THIRD DIVISION
[NO. 60DR-18-3438]

HONORABLE CATHLEEN V.
COMPTON, JUDGE

AFFIRMED

N. MARK KLAPPENBACH, Judge

This appeal concerns the division of retirement accounts and the award of alimony in a divorce proceeding. Appellant Jessica Joheim asserts on appeal that the circuit court committed reversible error by awarding appellee Meredith Joheim (1) one-half of Jessica’s nonmarital and nonvested retirement accounts, and (2) \$3,500 a month in alimony. We affirm.

Jessica and Meredith became romantically involved in 1999. They changed their last names to “Joheim,” a combination of their two surnames, before moving to Arkansas in 2000, where Jessica attended medical school. In May 2001, while in Vermont, they obtained a “Vermont License & Certificate of Civil Union.” Jessica and Meredith conducted themselves as a couple, buying and selling residences, cosigning loans, and sharing bank accounts. They created health-care proxies, powers of attorney, and estate documents

together. The couple have four children who were born in 2002, 2006, 2014, and 2015.¹ The women were legally married in Arkansas in May 2014. Meredith, who holds a master's degree in biological sciences, was the stay-at-home parent to the children from 2006 until shortly after the parties separated in the fall of 2018. Since their separation, the parties worked out a true joint-custody arrangement.

Meredith reentered the workforce and got a job at UAMS as a grants editor; she earns \$55,550 annually. During their marriage, Meredith acquired a UAMS retirement account worth approximately \$7,418.

Jessica earned her medical degree and worked as a hospitalist physician for various employers over the years and acquired and/or contributed to multiple retirement plans including a Catholic Health Initiatives (CHI) pension, a CHI 403(b) account, a Securian Financial 401(k) account associated with Arkansas Hospice, a thrift savings plan, a CHI 401(k) account, and a Fidelity account associated with Conway Regional Medical Center. Jessica might eventually, but had not yet, vested in a federal employee retirement pension (FERP) due to her ongoing work with the Veteran's (VA) Hospital.

Jessica is in her early forties and lives with a rare condition that causes spontaneous cerebrospinal fluid leaks (CSF leaks). These episodes can be life threatening, and she receives treatment at Cedars Sinai Hospital in California. For seven months between 2009 and 2010, Jessica was on bed rest and underwent multiple surgeries. Jessica had purchased a disability-income policy in 2005 (nonmarital), and she purchased an additional disability-income

¹Meredith gave birth to the first two children. Both Meredith and Jessica legally adopted the last two children in 2016, and Jessica legally adopted the first two children in 2017.

policy in 2015 (marital). In 2018, Jessica was placed on disability because she could no longer physically tolerate full-time work as a hospitalist. Jessica works five to seven days a month at the VA hospital in Little Rock, earning \$126,589 annually. Her disability benefits total \$12,731 a month, although her disability status is periodically reviewed and might change if her physical ability improves. The nonmarital benefit is approximately \$9,548 a month, and the marital benefit is approximately \$3,183 a month.

The circuit court found that, due to the severity of Jessica's medical condition, Jessica would be awarded both her nonmarital disability-policy benefits and the marital disability-policy benefits. Each party was ordered to be responsible for medical bills and debts in their individual names, which was in keeping with what the parties had agreed in the temporary order pending divorce. The circuit court noted that Jessica's medical-school student-loan debt was incurred prior to the marriage, so that was Jessica's nonmarital debt.

The circuit court made the following findings regarding alimony:

I have great discretion with respect to determining the specific monetary amount of an alimony award. The purpose of alimony is to "rectify the economic imbalance in earning power and standard of living of the parties to a divorce in light of the particular facts of each case." *Cherry v. Cherry*, 2020 Ark. App. 294 (2020) (citing *Farrell v. Farrell*, 2017 Ark. App. 7, at 7-8, 510 S.W. 3d 787, 792 (2017)).

The financial need of one spouse and the ability of the other spouse to pay are the primary factors to consider when determining whether alimony should be awarded. Other factors to be considered include: the financial circumstances of both parties; the couple's past standard of living; the value of jointly owned property; the amount and nature of the income, both current and anticipated, of both parties; the extent and nature of the resources and assets of each party; the amount of each party's spendable income; the earning ability and capacity of both parties; the disposition of the homestead or jointly owned property; the condition of health and medical needs of the parties; and the duration of the marriage. *Dozier v. Dozier*, 2014 Ark. App. 78 (2014)[.]

Plaintiff [Meredith] and Defendant [Jessica] have become accustomed to a certain lifestyle, a lifestyle made possible by Defendant's income as a physician. As noted earlier, Plaintiff remained outside the workforce for several years to be a stay at home parent. Plaintiff also contributed to the parties' relationship by enabling Defendant to attend medical school once they had made the joint decision that she would. Although it is true that I cannot use the Vermont Civil Union as the date of the parties' marriage, I do take into account the length of their time together as a couple. Based on the length of their relationship, the plans they made together concerning children, estates, comingling of assets, and medical school, I order Defendant to pay alimony to the Plaintiff. Plaintiff worked while Defendant was in medical school. Plaintiff was a stay-at-home parent for many years. Defendant, even with her disability has better earnings and likely, better earning capacity than Plaintiff will ever have. Plaintiff remained outside the workforce for several years. Upon her return to the workforce, she began earning far less than the Defendant earns. At age fifty-one (51), her opportunities for advancement are limited. Plaintiff earns fifty-five thousand five hundred fifty dollars and four cents (\$55,550.04) in gross annual income. Defendant, even while working only five to seven days a [month] at the VA earns one hundred twenty-six thousand five hundred eighty-eight dollars and eighty cents (\$126,588.80) in gross annual income. Combined with Defendant's disability payments, her annual pay is two hundred seventy-nine thousand three hundred fifty-eight dollars and four cents (\$279,358.04), some five times higher than that of the Plaintiff. Plaintiff operates on a deficit each month while Defendant has a significant surplusage at the end of each month. Defendant shall pay to Plaintiff the amount of three thousand five hundred dollars (\$3,500.00) per month in alimony until the death of either party, the remarriage [or functional equivalent of remarriage or romantic cohabitation] of the Plaintiff, or the cessation of Defendant's disability benefits.

The circuit court also recited in a footnote to the alimony provision that if Jessica lost employment due to her disability, then the alimony issue would have to be revisited.

The circuit court took great care to point out that, although it would prefer to use the date of the Vermont civil union in 2001 as the date of the marriage for purposes of dividing the property as Meredith had requested, it was "constrained by Arkansas law to use the date of the Arkansas marriage."

Jessica retained the marital residence and was ordered to pay Meredith \$16,524 as her half of the equity, minus \$3,753 that Meredith owed Jessica on some expenses related to the children. The circuit court permitted Meredith to retain the entire value of the

marital vehicle that she kept, a 2015 Honda Odyssey worth \$9,002. The parties agreed to continue to split the costs associated with their oldest daughter's 2018 Kia Optima, and Jessica continued to be responsible for the vehicle she leased, a 2019 Honda Odyssey. The parties had four bank accounts (checking, savings, and money-market accounts) that were collectively valued around \$30,000, which the circuit court evenly divided.

The circuit court made the following findings on division of the parties' retirement, pension, and financial accounts:

I make an equal division of the parties' retirement accounts and financial accounts. To the extent that some of the values in these accounts may have accrued prior to the marriage in Arkansas, and are thus non-marital, I am required to set forth the reason for this equal division.[cites Ark. Code Ann. § 9-12-315(a)(2)] I make this equal division of the non-marital portion of these accounts based on the length of the parties' relationship, the Defendant's occupation, the Defendant's amount and sources of income, the Plaintiff's contribution in acquisition of assets, including her time as a stay at home parent, and the vast disparity in the parties' incomes. The Defendant shall maintain as her sole and separate property her Trust Property at First National Bank, account ending in 0501, as that is inheritance property not subject to division, even as I make an unequal division. There is another account at First National Bank, ending in 3187—this account is the sole property of the oldest child, S.J.

The circuit court ultimately determined that, based on the Arkansas Family Support Chart, Jessica was to pay \$2,306.54 a month in child support to Meredith.² For purposes of the child-support calculation, Meredith's income included the alimony she would receive, and Jessica's monthly income was reduced accordingly.

²One child received \$438 in Social Security disability benefits and \$408 as an adoption stipend each month, which would be directed to Jessica because that child would reside primarily with her. Another child received \$408 as an adoption stipend each month, which would be directed to Meredith because that child would reside primarily with her.

These findings were memorialized in a February 2021 decree as amended in a March 2021 order modifying the decree. This appeal followed.

Jessica's first point on appeal takes issue with the circuit court's equal division of the parties' retirement accounts, including Jessica's nonmarital and unvested accounts. Jessica complains that the circuit court "did not determine which of Jessica's accounts were marital and which were nonmarital property" and "did not even know the value of the assets involved." We disagree.

According to Jessica's Exhibit 39 provided to the circuit court, Meredith had one retirement account worth approximately \$7,814, and Jessica had four retirement accounts worth approximately \$134,294, all of which were listed under the title "Jessica MARITAL Retirement."³ Jessica also listed the existence of a potential federal pension that had not vested and had no value. Each of those accounts was listed in the decree's statement of facts, and those accounts align perfectly with Jessica's exhibit. Also in that exhibit, Jessica listed two retirement accounts associated with CHI that she deemed nonmarital and valued at approximately \$81,567. Those two accounts were also noted in the decree's statement of facts.

Jessica also argues that it was erroneous and reversible error for the circuit court to equally divide Jessica's two nonmarital retirement accounts, which would equate to half of the \$81,567 value. We read the decree much differently than Jessica does. The circuit court recognized the marital and nonmarital character of these accounts, in line with Jessica's

³Jessica made a notation that one of those accounts, valued at approximately \$30,127, was "premarital & marital," although she did not provide calculations to determine what portion was premarital versus marital.

court exhibit, and it explained why it decided to divide those nonmarital accounts. The circuit court cited the relevant statute, Arkansas Code Annotated section 9-12-315(a)(2), which sets forth all the factors to be considered when a court decides not to return premarital property to the person who owned it prior to marriage. The circuit court explained why it was equitable to make this division.

The circuit court is given broad powers to distribute both marital and nonmarital property to achieve an equitable division, and the overriding purpose of the property-division statute is to enable the court to make a division that is fair and equitable. *Perser v. Perser*, 2019 Ark. App. 467, 588 S.W.3d 395. Our property-division statute does not require mathematical precision in property division but only requires that property be distributed equitably. *Id.* We review division-of-marital-property cases de novo, but we will not reverse the circuit court's findings of fact unless they are clearly erroneous or against the preponderance of the evidence. *Id.* A finding is clearly erroneous when the reviewing court, on the entire evidence, is left with the definite and firm conviction that a mistake has been made. *Id.* On de novo review of this record, we are not left with a distinct and firm conviction that a mistake was made.

Jessica also contends that the circuit court “did not specifically except or exclude Jessica’s unvested FERS pension” so that “to the extent that the circuit court divided an account that had not yet vested, that ruling should be reversed.” We hold that Jessica has failed to demonstrate reversible error.

The decree’s language specifically recognized that Jessica “may eventually have” a FERS pension, but Jessica “has not yet vested in that account.” Jessica’s exhibit showed

that her FERS pension was “not vested” and “not divisible,” and she listed no value whatsoever. The decree’s provision titled “Division of Parties’ Retirement, Pension & Financial Accounts” ordered an equal division of Jessica and Meredith’s “retirement accounts and financial accounts.” It did not purport to divide any “pension.”

Jessica’s second point on appeal asserts that the circuit court abused its discretion in awarding Meredith \$3,500 a month in alimony, which she contends is an excessive amount, without adequately considering the length of the marriage, Jessica’s medical needs, or the generous award of child support to Meredith. Jessica asserts that we should reduce this alimony award.

The circuit court may enter an order concerning alimony that is reasonable from the circumstances of the parties and the nature of the case. *Perser, supra*. The purpose of alimony is to rectify the economic imbalance in earning power and standard of living in light of the particular facts in each case, and the primary factors to be considered in determining whether to award alimony are the financial need of one spouse and the other spouse’s ability to pay. *Foster v. Foster*, 2016 Ark. 456, 506 S.W.3d 808. The court should also consider the following secondary factors: (1) the financial circumstances of both parties; (2) the amount and nature of the income, both current and anticipated, of both parties; (3) the extent and nature of the resources and assets of each of the parties; and (4) the earning ability and capacity of both parties. *Kuchmas v. Kuchmas*, 368 Ark. 43, 243 S.W.3d 270 (2006). We will not reverse a circuit court’s decision regarding an award of alimony absent an abuse of discretion. *Perser, supra*.

Our de novo review of the circuit court's extensive findings on alimony lead us to conclude that the circuit court did not abuse its discretion. The circuit court enumerated all the appropriate factors to take into consideration, it acknowledged that the date of the marriage was when the parties married in Arkansas and not that of the Vermont civil union, and it expressed clearly that there was a great disparity in the parties' incomes. This was a marriage of six years. Meredith was a stay-at-home parent for the parties' children from the beginning of their marriage until their separation. Meredith, nine years older than Jessica, reentered the workforce near age fifty. The circuit found that Meredith's opportunities for advancement were limited. The circuit court recognized that the parties had become used to a certain lifestyle because of Jessica's medical decree and disability income, and it specifically stated that the alimony issue might have to be revisited should Jessica's employment income or disability income change. On this record, it is clear to us that the circuit court very deliberately considered the particular facts and circumstances of these parties in this case and exercised its discretion accordingly. We hold that the circuit court's award of alimony does not demonstrate an abuse of discretion.

Affirmed.

GLADWIN and HIXSON, JJ., agree.

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