1 of 100 DOCUMENTS

In Re the Marriage of: Robert Grant Jacobson, petitioner, Respondent, v. Patricia Marie Jacobson, Appellant

No. C8-87-1159

Court of Appeals of Minnesota

1987 Minn. App.

December 30, 1987, Decided
January 12, 1988, Filed

NOTICE: [*1] THIS OPINION WILL BE UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINNESOTA STATUTES.

PRIOR HISTORY: Appeal from District Court, Winona County, Hon. S. A. Sawyer, Judge.

COUNSEL: Steven R. Peloquin, Winona, MN, for appellant.

Ronald W. Benson, Winona, MN, for respondent.

JUDGES: Heard, considered and decided by Randall, Presiding Judge, Huspeni, Judge, and Stone, Judge. *

* Acting as judge of the court of appeals by appointment pursuant to Minn. Const. art. 6, § 2.

OPINION BY: STONE

OPINION

NONPUBLISHED OPINION

STONE, Judge

FACTS

The marriage of appellant/respondent, Patricia Marie Jacobson, (appellant), and respondent/petitioner, Robert Grant Jacobson, (respondent), was dissolved on December 19, 1984 after 18 years and 9 months of marriage.

Appellant devoted her married life to caring for their children and actively advancing her husband's career.

Appellant suffers from Fibromyalgia Syndrome, also known as Fibrositis, an arthritis-like condition causing diffuse pain in various muscles restricting the types of employment to which she is suited. pursuant to the divorce decree and subsequent court orders, rehabilitative maintenance was to cease on June 30, 1987. [*2] From the termination of her maintenance, Patricia Jacobson appeals.

ANALYSIS

The standard of review on appeal is whether the trial court abused its discretion in not awarding permanent maintenance. *Deliduka v. Deliduka, 347 N.W.2d 52, 57 (Minn. Ct. App. 1984) pet. for rev. denied* (Minn. July 26, 1984). Any doubt as to whether the award should be temporary or permanent is to be resolved in favor of permanency. Minn. Stat. ? 518.552, subd. 2 (1986). As a clarification of existing law rather than a substantive change, the statutory revision is to be applied retrospectively. *Nardini v. Nardini, 414 N.W.2d 184, 196 (Minn. 1987).*

At the time of dissolution there was general agreement by everyone involved that, with suitab1e training, appellant would be employable and able to support herself without assistance. However, under the very recently decided *Nardini* case (five months after the order here), employability is not the relevant question.

That [the spouse] is an intelligent and capable person is, however, only a partial answer to the question. * * * Being capable of employment and being appropriately employed are not synonymous, a fact recognized in statutory [*3] systems such as workers' compensation and unemployment compensation. Twenty-nine years after leaving the labor market to because a homemaker, Marguerite must reenter the labor force at age 56, possessed of only a high school education and without special employment skills of any kind. Although both homemaking and volunteer work undoubtedly contribute to the development of a good many skills, it is safe to say

that few employers regard them as marketable skills or credit the homemaker/volunteer with work experience. Training will further delay entry into the labor market.

414 N.W.2d at 197.

Here, appellant, a 53-year-old woman with a high school education, has effectively been out of the job market for 21 years. She is currently employed, but the type of work for which she is qualified does not pay sufficiently for her to support herself, let alone to support herself in the affluent lifestyle she and her husband had created for themselves during their marriage. Given her skills, her chances of obtaining appropriate employment and becoming self-sutficient are highly speculative.

As the supreme court stated in *Nardini*:

An award of temporary maintenance is based on the assumption [*4] that the party receiving the award not only should strive to obtain suitable employment and become self-supporting but that he or she will attain that goal. * * * [A] petition for modification does not comfortably fit the statutory format. * * * [T]he person who cannot secure employment or who can become only partially self-supporting is hard pressed to meet the burden of proving either that the petitioner's earnings have decreased or his or her need has increased. The actual fact is that the change in the petitioner's circumstances is insufficient or nonexistent, yet by the terms of the decree maintenance is to cease.

Nardini, 414 N.W.2d at 198-99.

Where there is ample evidence, as there is here, that appellant is unable to meet her financial needs or find appropriate employment after a long-standing traditional marriage, a request for permanent maintenance must be given every consideration. If appellant should become self-supporting, her husband can always petition the court for a modification in maintenance.

DECISION

Reversed and remanded for reconsideration of the maintenance award in light of the *Nardini* decision.