FILED
JAN 30 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF KRISTI A. LaVINE AND JERRY D. LaVINE

Upon the Petition of)
KRISTI A. LaVINE,) Filed January 30, 1981
Petitioner-Appellant,)
And Concerning)
JERRY D. LaVINE,) 0-327
2-64390
Respondent-Appellee.)

Appeal from Polk District Court - J. P. Denato, Judge.

Petitioner appeals from economic provisions of the parties' dissolution decree, contending: 1) that she should be awarded additional child support and allowed to claim the income tax deduction for the parties' two children; 2) that the award of the parties' house to her should not be subject to a $3000 lien for repayment of an alleged loan from the husband's parents; and 3) that she is entitled to an award of attorney fees for this appeal. AFFIRMED.

Keith E. Uhl and Ann Fitzgibbons of Scalise, Scism, Gentry, Brick & Brick, Des Moines, for petitioner-appellant.

Gerald W. Crawford of Conley, Conley & Crawford, Des Moines, for respondent-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

Petitioner Kristi LaVine appeals from the economic provisions of the parties' dissolution decree, contending: 1) that she should be awarded additional child support and allowed to claim the income tax deductions for the parties' two children; 2) that the award of the parties' house to her should not be subject to a $3000 lien for repayment of an alleged loan from the husband's parents; and 3) that she is entitled to an award of attorney fees for this appeal. We affirm the ruling of the trial court and deny petitioner's request for appellate attorney fees.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. Our responsibility is to review the facts as well as the law and to determine rights anew from the credible evidence on properly presented and preserved issues. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977). While we give weight to the findings of the trial court, especially where the credibility of witnesses is involved, we are not bound by them. In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974); Iowa R. App. P. 14(f)(7). As in all cases of this type, precedent is of little value and our decision must ultimately depend on the particular facts of this case. In re Marriage of Kehrli, 241 N.W.2d 923, 926 (Iowa 1976).

I.

Kristi and Jerry LaVine were married in 1977 when she was nineteen and he was twenty-one. She petitioned to dissolve the marriage in June of 1979 and the decree was entered the following October. It awarded the petitioner custody of the couple's two minor children and child support of $20 per week per child. The decree entitled the respondent to claim both children as income tax deductions so long as he kept up his child support payments. The court awarded a house bought by the parties to the petitioner subject to a $3000 lien for repayment of an alleged loan from the respondent's parents.

The respondent, who is employed by the Iowa Department of Transportation, earns a net monthly income of $531.08 and estimates his monthly expenses at approximately $600. Petitioner is employed by the post office and has a net monthly income of $954.75. She estimates monthly expenses for herself and the children at $1054.54.

II.

Petitioner first contends that she is entitled to additional child support and to income tax deductions for the children. We disagree.

Section 598.21, The Code 1979, which provides statutory authority for child support awards upon dissolution of marriage, is designed to enforce the "legal as well as moral duty of support between parent and child." In re Marriage of Zoellner, 219 N.W.2d 517, 524 (Iowa 1974). Both parents are under the same legal duty to support their children. In re Marriage of Wahl, 246 N.W.2d 268, 272 (Iowa 1976). This obligation, however, is not necessarily to be borne equally, but should be apportioned according to the reasonable ability of each parent to contribute. In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976); Wahl, 246 N.W.2d at 272. While precedent is of little value in determining the extent of the child support obligation and each case is dependent upon its own particular facts, Zoellner, 219 N.W.2d at 525, the Iowa Supreme Court has set forth various criteria to be considered in the determination. Id. With these factors in mind, and noting especially that the respondent husband has a monthly net income of $531.08 and monthly expenses of approximately $600, we conclude that $20 per week per child is justified under the current circumstances. Furthermore, comparing the petitioner's monthly net income of $954.75 to that of the respondent, we conclude that the respondent is justly entitled to the income tax deduction for the children so long as he is current in his child support payments.

III.

Petitioner next contends that the award of the family home should not be subject to a $3000 lien for repayment of an alleged loan from the respondent's parents. Specifically, she alleges that the parties received only $2000 from the respondent's parents and that this amount was a gift. Based on our review of the relevant evidence, we conclude otherwise.

At trial, both the respondent and his mother testified that the parties received $3000 from the respondent's parents and that that amount was intended as a loan. A promissory note signed by the respondent and his parents for that amount was entered into evidence; the note also bore the petitioner's name, which was signed by the respondent in the petitioner's absence. In support of her contention that the amount received was a gift, the petitioner introduced a letter written by respondent's father to the parties' loan company in which $2000 was identified as a gift from the respondent's parents. When asked why this letter was written if the money was intended to be a loan, the respondent's mother testified that respondent and petitioner were negotiating another loan from the loan company at the time and that the company would not have

processed that loan had it been aware that the parties had another outstanding debt. Having carefully considered all the evidence relevant to this question, we concur in the trial court's conclusion that the $3000 received from the respondent's parents was intended as a loan and that responsibility for repayment of the loan is to be equally borne by respondent and petitioner.

IV.

Finally, petitioner contends that she is entitled to receive attorney fees on this appeal. In evaluating a request for attorney fees incurred on appeal, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Erickson, 228 N.W.2d 57, 59 (Iowa 1975); In re Marriage of Stom, 226 N.W.2d 797, 800 (Iowa 1975). Applying these factors to the case at bar, we conclude that the petitioner's request for an award of appellate attorney fees is unjustified.

AFFIRMED.