IN THE COURT OF APPEALS OF IOWA

No. 0-19 / 89-257

IN RE THE MARRIAGE OF BETH KELLY FITZPATRICK
and MICHAEL P. FITZPATRICK

109

Upon the Petition of
BETH KELLY FITZPATRICK,

Appellant,

And Concerning
MICHAEL P. FITZPATRICK,

Appellee.

FILED
MAR 27 1990
CLERK SUPREME COURT

Appeal from the Iowa District Court for Scott County, Edward B. de Silva, Jr., Judge.

The wife appeals from the economic provisions of a district court decree of dissolution. She contends the district court erred in: (1) awarding inadequate child support and alimony; (2) inequitably dividing the parties' assets and liabilities; and (3) failing to award her attorney fees. **AFFIRMED.**

Patrick W. Driscoll of Stanley, Rehling & Lande, Davenport, for appellant.

Harold C. Lounsberry, Davenport, for appellee.

Considered by Donielson, P.J., and Sackett and Habhab, JJ.

DONIELSON, P.J.

Beth Fitzpatrick appeals from a district court decree of dissolution awarding her child support, nominal alimony and dividing the assets and liabilities of the parties. Beth and Michael Fitzpatrick were married on June 5, 1965. Six children were born of the marriage, five of whom were under twenty-two years of age at the time the dissolution decree was rendered.

At the time of the decree, Beth was forty-seven and employed by the Davenport Community School System with a gross income of $1,558 per month and a net income of $1,225 per month. During the marriage, Beth was primarily a homemaker. At the time of the district court hearing in January 1989, Michael was employed by Prudential Insurance. He planned to quit that employment three weeks after the trial and assume employment as a teacher. He planned to be a full-time substitute teacher and anticipated receiving a full-time position with a salary comparable to Beth's in the fall of 1989.

Following the hearing, the district court entered its decree of dissolution. Joint custody of the parties' children was awarded with the primary physical care of the children placed with Beth. Michael was awarded reasonable visitation. Michael was ordered to pay $27 per week per child (or approximately $585 per month) in child support until each child completed his or her education. The parties were awarded their own personal property. Until

such time as Michael could acquire hospitalization insurance through work, Beth was required to carry insurance for the children. Any uninsured medical expenses for the children were to be divided equally between the parties. Beth was allowed to reside in the parties' home until Michael's support obligation ceased, at which time the property would be sold and the proceeds divided equally less any credit to Beth for amounts she paid on the principal subsequent to entry of the decree. Michael was required to pay Beth a total of $3750 in $750 per year installments as her share of the tax shelter annuity owned by Michael. Michael was also ordered to pay $1 per year for alimony. Provisions for life insurance, debts and other assets were also made. The parties were required to pay their own attorney fees. Beth has now filed this appeal.

I. **Scope of Review.** To resolve the issues presented by the parties we turn to well-established principles. Our scope of review is de novo. Iowa R. App. P. 4. Although not bound by the trial court's determination of factual findings, we will give considerable weight to them. Iowa R. App. P. 14(f)(7). Prior cases, though helpful, have little precedential value since we must base our decision primarily on the particular circumstance of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

II. Child Support. It is well established both parents have a legal obligation to support their children. In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976). The obligation to support should be apportioned according to the ability of each parent to contribute. In re Marriage of Bornstein, 359 N.W.2d 500, 504 (Iowa App. 1984). In establishing child support the courts are to consider the financial resources of the children; the financial resources of both parents; the standard of living the children would have enjoyed had there not been a dissolution; the desirability of awarding the family home or the right to live in the family home for a reasonable period to the party having physical care of the children; the cost of day care if it is needed; the physical and emotional health needs of the children; the children's educational needs; the tax consequences to each party; the amount and duration of any spousal support orders; and such other factors that the court may determine to be relevant in an individual case. Iowa Code § 598.21(4) (1989).

Beth claims she was awarded inadequate child support, and in her brief she indicates Michael should be required to make support payments of $200 per week, which is the

amount of temporary support he made prior to entry of the decree.[1]

Beth is correct in that a person's support obligation is not diminished by a voluntary reduction in income or assets. In re Marriage of Cerven, 335 N.W.2d 143, 146 (Iowa 1983). However, from our review of the record and Michael's January 11, 1989, affidavit of financial status, it appears Michael's change in employment only minimally affected his level of income. His decision to leave the insurance business and teach school will end the uncertainty of working on a commission basis and will allow him to receive a steady, consistent income.

In light of the parties' similar levels of income, the number of children, and the property division, we find the district court's child support award to have been equitable, and we affirm it.

III. **Alimony.** Alimony is an allowance to the ex-spouse in lieu of a legal obligation to support that person. In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981). Alimony is not an absolute right; its award depends upon the unique circumstances of each particular case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa

1. We note Beth's request would not be consistent with the child support guidelines adopted by our supreme court on September 29, 1989. Strict application of the guidelines would, in fact, reduce Michael's support obligation to approximately $410 per month. As Michael has not sought reduction of the court's support order in a cross-appeal, we decline to reduce it in this action.

1976). In making an award of alimony the courts are to consider those factors codified in Iowa Code section 598.21(3).

In light of the similar level of the parties' incomes and the property division, a higher level of alimony is not warranted. Beth has a demonstrated ability to support herself, and Michael's child support and property obligations are such that the circumstances do not justify a higher award of alimony.

IV. **Property.** We consider property division and alimony together in evaluating their individual sufficiency. In re Marriage of Dahl, 418 N.W.2d 358, 359 (Iowa App. 1987). 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 Havran, 406 N.W.2d 450, 452 (Iowa App. 1987).

The criteria governing property division are now contained in Iowa Code section 589.21(1). The determination as to what constitutes an equitable property division cannot be reduced to precise mathematical formulas. The courts strive to make a just and equitable award under the unique circumstances of each case. Among the factors to be considered are the parties' respective incomes, educations, and earning capacities; the length of the marriage; the contributions and sacrifices made by each toward the acquisition of the property during the marriage; the sources of the property; the respective parties' needs;

heir social position and living standards both before and luring the marriage; their physical and mental health and life expectancies; the tax consequences to each party; and such other factors as may reasonably enter into any division. See In re Marriage of Wallace, 315 N.W.2d 827, 830 (Iowa App. 1981).

Beth challenges the property provisions of the lissolution decree. She claims Michael should not be an wner of the children's life insurance policies and she hould be named as the beneficiary of Michael's policy hich currently lists their children as the beneficiaries. We find no merit in either of Beth's claims.

Beth contends she should have been awarded more of Michael's tax shelter annuity. In light of the favorable property division awarding Beth the family home and most of its furnishings, we find the division of the annuity to be equitable. While the annuity is estimated to be worth approximately $11,000, Michael would incur considerable tax expense if he cashed it in. The prorated approach adopted by the trial court awards Beth an equitable amount in light of the rest of the property and liability distributions.

The trial court properly awarded the parties their respective IRA accounts. Beth claims Michael's IRA should be liquidated and the proceeds applied to the parties' property taxes. We note the district court addressed the issue of back property taxes and equitably divided this obligation between the parties.

Finally, Beth challenges various liability provisions of the decree including the division of the parties' charge card debt, payment of the children's noninsured medical expenses, and her liability for home repairs. We have examined each of these and conclude the district court's decision regarding these debts and expenses was equitable and should not be disturbed on appeal.

V. Attorneys Fees. Beth claims the trial court should have awarded her attorney fees. Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). To overturn an award the complaining party must show that the trial court abused its discretion. Awards of attorney fees must be for fair and reasonable amounts, In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977), and must be based on the parties' respective abilities to pay. In re Marriage of Lattig, 318 N.W.2d 811, 817 (Iowa App. 1982). Guided by these general legal principles, we find the trial court did not abuse its discretion in making each party responsible for his or her own attorney fees.

AFFIRMED.