FILED
OCT 27 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

KIMBERLY ANN SCHRIER,)
Petitioner-Appellee,) Filed October 27, 1981
vs.)
DARYL SCHRIER,) 1-236
Respondent-Appellant.) 2-65374

Appeal from Cass District Court - Leo Connolly, Judge.

Respondent-husband appeals from economic provisions of the decree dissolving his marriage to petitioner-wife asserting that trial court 1) erred in determining the parties' net worth, 2) inequitably divided the property, and 3) improperly ordered respondent to pay $1,500 toward petitioner's attorney fees at trial and all court costs. AFFIRMED WITH MODIFICATION.

David Jungmann and C. W. Carlberg of Don Carlos & Carlberg, Greenfield, Iowa, for respondent-appellant.

Larry Seckington and Ann Fitzgibbons of Scalise, Scism, Gentry, Brick & Brick, Des Moines, Iowa, for petitioner-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Respondent-husband, Daryl Schrier, appeals from the economic provisions of the decree dissolving his marriage to petitioner-wife, Kimberly Ann Schrier. He asserts that trial court 1) erred in determining the parties' net worth, 2) inequitably divided the property, and 3) improperly ordered respondent to pay $1,500 toward petitioner's attorney fees at trial and all court costs. We affirm with modification.

The parties were married on July 30, 1977, and separated July 17, 1979. At the time of the marriage, both were 19-year-old high school graduates. Prior to and throughout the marriage, petitioner worked as a legal secretary and was earning approximately $5,000 per year. She, however, desired to stop working and had been admitted to the Palmer College of Chiropractic in Davenport, Iowa. Respondent began a farming operation prior to the marriage and continued it during the marriage. Shortly prior to the marriage, respondent purchased a house for $9,000.

Trial court found the parties' net worth to be $36,000. The court awarded petitioner a 1977 Chrysler LeBaron automobile, a substantial amount of the household furnishings, all Series E savings bonds, and $10,000 as a cash property settlement. Respondent received the residence, with a net equity of between $5,100 and $7,600, the farm equipment and livestock, two pickups, a motorcycle, and one-half of the remainder of the household goods not specifically awarded to petitioner. Respondent also was ordered to pay the parties' indebtedness of some $66,000 and $1,500 towards petitioner's attorney fees at trial.

I. Scope of Review. Our review is **de novo.** Iowa R. App. P. 4. We will examine the entire record and determine anew those rights on issues properly presented. In re Marriage of Horstmann, 263 N.W.2d 885, 888 (Iowa 1978) (quoting In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974)). While we give weight to the trial court's findings, especially with regard to credibility of witnesses, we are not bound by them. Iowa R. App. P. 14(f)(7).

II. Determination of Net Worth. Respondent challenges trial court's finding that the parties' net worth is $36,000. He claims that the evidence is insufficient for a fair determination of this issue. We disagree. Although there was a wide discrepancy in the valuations submitted by the parties, as noted by trial court in its findings of fact, we believe trial court's determination of net worth is within the permissible range of the evidence contained in the record and we will not disturb it. In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973).

III. Division of Property. Respondent's primary challenge is to the $10,000 cash award he was ordered to pay petitioner in two $5,000 installments. We agree that trial court's award was inequitable. Since the decree in this matter was entered prior to July 1, 1980, we are guided by the principles set forth in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), excluding consideration of fault. In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972).

At the time of the marriage, respondent contributed assets of approximately $19,000 and petitioner contributed $3,900. Setting aside to each party the value of his or her contribution, the net increase during the marriage is approximately $13,000. Based on the award of the various assets, and the requirements that respondent assume the substantial debts of the parties, we believe petitioner received an inequitable share. We also recognize that petitioner estimated expenses of $8,000 to obtain her degree. However, petitioner did not sacrifice any major career opportunities to enter into the marriage. Thus, giving her the major portion of the parties' net accumulation, even to pay these educational expenses, is inequitable. We thus conclude that trial court's decree should be modified by ordering respondent to pay petitioner a cash property settlement of $2,500 in lieu of the $10,000 ordered by trial court. This payment should be made within sixty days after issuance of procedendo in this case and should bear interest as established by trial court's decree. Trial court's division of property is affirmed in all other aspects.

IV. Attorney Fees. Respondent also challenges trial court's order requiring him to pay $1,500 towards petitioner's attorney fees at trial. We disagree. Attorney fees are not recoverable as a matter of right, but depend upon one party's financial needs and the other party's ability to pay. In re Marriage of Burham, 283 N.W.2d 269, 278 (Iowa 1979). Trial court has considerable discretion in awarding such fees. In re Marriage of Winegard, 257 N.W.2d 609, 618 (Iowa 1977). Given the parties' respective resources, petitioner's lack of substantial liquid assets, and respondent's greater ability to assume this obligation, we find no abuse of discretion in trial court's award. We also find no reason to disturb trial court's assessment of all costs of the action at trial against respondent.

Except for the modification in the cash property award, we affirm trial court's judgment. Costs of this appeal are assessed equally against the parties.

AFFIRMED WITH MODIFICATION.