FILED
JAN 26 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF DEBORAH L. BERSTLER AND CARL J. BERSTLER

Upon the Petition of)

DEBORAH L. BERSTLER,)

Petitioner-Appellant,)

And Concerning)

CARL J. BERSTLER,)

Respondent-Appellee.)

Filed January 26, 1983

2-385
67916

Appeal from Linn District Court - Ansel J. Chapman, Judge.

Petitioner appeals from economic provisions of the decree dissolving the parties' marriage. AFFIRMED.

James W. Affeldt, Cedar Rapids, for petitioner-appellant.

Tim A. Estlund, Cedar Rapids, for respondent-appellee.

Considered en banc.

PER CURIAM

On appeal from the decree dissolving the parties' marriage petitioner asserts that the child support award was inadequate and should have been made subject to an annual cost of living adjustment, that she should have been awarded alimony, and that she should be awarded attorney fees on appeal. Respondent's cross-appeal was voluntarily dismissed.

Iowa Code section 598.21(4) sets out the factors to be considered in determining the reasonableness of a child support award while Iowa Code section 598.21(3) sets out the factors to be considered in determining whether an award of alimony is appropriate.

Petitioner appellant's financial statement shows she and the children have monthly expenses of $900. The appendix does not reveal any testimony to demonstrate needs in excess of that amount. Judicial notice is not an appropriate procedure to determine needs in excess of petitioner's statement of needs.

Petitioner in her brief urges an increase in child support because respondent has an ability to pay more. We reject the argument that support should be based solely on ability to pay.

Upon de novo review, we find the record insufficient to demonstrate that the needs of petitioner and the children listed at $900 per month cannot adequately be met by her income of $600 per month as supplemented by the trial court's award of $400 per month in child support. We further find that adding an annual cost of living adjustment to the child support award would be inappropriate in this case because petitioner did not ask for it in her petition nor offer any evidence on the issue. See In re Marriage of Stamp, 300 N.W.2d 275 (Iowa 1980). Consequently we affirm the trial court.

Without attempting to fix the total value of the services of counsel for petitioner, we hold that respondent shall pay the amount of $800 to apply toward petitioner's attorney fees on appeal. Costs are taxed one-half to each party.

AFFIRMED.