

IN THE COURT OF APPEALS OF IOWA

FILED

AUG 26 1982

CLERK SUPREME COURT

IN RE THE MARRIAGE OF KAREN RACHELLE TORREZ and TERRY LEE TORREZ

Upon the Petition of)

KAREN RACHELLE TORREZ,)

Plaintiff-Appellee,)

And Concerning)

TERRY LEE TORREZ,)

Defendant-Appellant.)

Filed August 26, 1982 447

2-193
2-67429

Appeal from Black Hawk District Court - Peter Van Metre, Judge.

Respondent-husband appeals from the economic provisions of the decree dissolving his marriage to petitioner-wife, asserting that the child support and award of attorney fees to petitioner were excessive. AFFIRMED WITH MODIFICATION.

John S. Pieters of Pieters & Pieters, Waterloo, Iowa, for plaintiff-appellant.

Thomas W. Langlas of Gallagher, Langlas & Gallagher, Waterloo, Iowa, for defendant-appellant.

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

Respondent-husband, Terry Lee Torrez, appeals from the economic provisions of the decree dissolving his marriage to petitioner-wife, Karen Rachelle Torrez. He asserts that the child support and attorney fees awarded to petitioner are excessive. We affirm with modification.

The parties were married approximately six years. One child was born on February 24, 1977, and was four and one-half years of age at the time of trial. The parties had one child each by their respective prior marriages. Petitioner earned approximately \$190 per week gross income; respondent's gross earnings for 1980 were \$38,581. The parties' major asset, their residence, had an equity ranging from \$15,000-\$19,000, of which respondent is to receive \$7,000 plus 10% interest per year upon sale. Respondent was ordered to pay \$90 per week child support and \$1,250 towards petitioner's attorney fees.

I. Scope of Review. Our review is de novo. Iowa R. App. P. 4. We review the facts as well as the law and determine anew those rights properly presented and preserved. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977). We give weight to the findings of the trial court, especially where credibility of witnesses is involved, but 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).

II. Child Support. Respondent asserts that the \$90 per week child support ordered by trial court is excessive and asks this court to modify that decree by reducing the amount of his obligation to \$60 per week. In further support of his argument for reduction, respondent points out that petitioner requested only \$65 per week, with increases of \$7.50 per week annually.

The principles guiding child support awards are set forth in section 598.21, The Code 1981. Under these guidelines, the relative economic circumstances of the parties must be weighed. We first note that trial court is not bound by the amount of support requested by the custodial parent. In re Marriage of Vrban, 293 N.W.2d 198, 203 (Iowa 1980).

Reviewing the evidence in this case, we find that petitioner has a gross income of \$190 per week, is required to make a \$342 per month mortgage payment, and pays approximately \$180 per month babysitting expenses. Respondent has a net monthly income of \$1,400, living expenses of approximately \$700 per month, plus a child support obligation for a child of a former marriage which, at the time of trial, was to increase to \$325 per month. Respondent also must pay the parties' debts. In light of these facts, we believe his child support should be reduced to \$65 per week. Further, instead of approving the \$7.50 per week annual increase requested by petitioner, we think the method established in In re Marriage of Stamp, 300 N.W.2d 275, 277-80 (Iowa 1981), is preferable and appropriate in this case. We therefore modify trial court's decree, set respondent's child support obligation at \$65 per week, and include the following provision in the decree:

On or before each anniversary date of this decree, the parties shall file a stipulation with the clerk of court providing for increased or decreased child support payments based upon the following: Child support payments shall be increased or decreased by the same percentage as the percentage change in the National Consumer Price Index as published by the United States Department of Labor for the most recent twelve month period for which data is available, provided that respondent's gross income for the like period has increased by at least the same percentage. If respondent's gross income increased by a lesser percentage, then the payments to petitioner shall increase by this lesser percentage. In the event respondent claims the benefit of the above limitation, he shall submit sufficient proof of his actual gross salary to petitioner for the relevant years. If the parties are unable to stipulate to the correct adjustment amounts, either may request that the court determine the same, either itself or by appointment of a special master. The cost of such proceedings shall be shared equally by the parties and any adjustment made shall relate retroactively if necessary to the appropriate anniversary date.

III. Attorney Fees. Respondent also argues that the \$1,250 award of attorney fees to petitioner was excessive in light of the property division and his

support obligation. An award of attorney fees is within the trial court's discretion and is based upon the relative financial abilities of the parties. In re Marriage of Williams, 303 N.W.2d 160, 167 (Iowa 1981). Balancing these factors in the present case, we find no abuse of discretion in trial court's award.

We therefore affirm trial court's decree with modification.

AFFIRMED WITH MODIFICATION.