IN THE COURT OF APPEALS OF IOWA

FILED
JAN 24 1984
CLERK SUPREME COURT

IN RE THE MARRIAGE OF LOUISE KIRKE AND RICHARD KIRKE

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Upon the Petition of	)	
LOUISE KIRKE,	)	Filed January 24, 1984
Petitioner/Appellant/ Cross-Appellee,	)	3-368 / 2-89005
And Concerning	)	
RICHARD KIRKE,	)	
Respondent/Appellee/ Cross-Appellant.	)	

Appeal from Polk District Court - Harry Perkins, Judge.

Petitioner wife appeals and respondent husband cross-appeals from the decree dissolving the parties' marriage. AFFIRMED.

William Wimer, and Roger J. Hudson, Wimer, Hudson, Flynn & Neugent, Des Moines, Iowa, for respondent-appellee.

Michael J. Galligan, James & Galligan, Des Moines, Iowa, for petitioner-appellant.

Considered by Oxberger, C.J., and Donielson, and Sackett, JJ.

This is an appeal by the Petitioner-Appellant, Louise Kirke and a cross-appeal by Respondent-Appellee, Richard Kirke, from the property and economic provisions of the Decree of Dissolution of Marriage dated August 4, 1982.

The parties were married on February 9, 1968. At that time Louise was 23 years old and Richard was 36 years old. This was Louise's first marriage and Richard's second. Richard had two children by his prior marriage and had child support obligations to them. These children are now emancipated.

Two children were born to Richard and Louise: Todd Palmer Kirke, born January 13, 1970; and Valerie Jean Kirke, born February 10, 1973. The custody of the children was awarded to Louise. Custody is not disputed.

Richard received a degree from the University of Iowa in 1958. He presently is office manager of Dean, Witter, Reynolds, Inc.

Louise received a degree from the University of Iowa in 1965. She had a sales job at the time of the marriage. She was not employed outside the home from 1969, when she became pregnant with Todd, until 1978. She currently owns a business known as Inter Design, Inc. which is a service-type business, engaged exclusively in interior decoration and design.

At the time of the marriage, Richard had some furniture, a Ford Thunderbird and about $9,000 in savings. The $9,000 was used as a down-payment on the home the parties owned at the time of trial, and for appliances. Louise, at the time of the marriage, had some furniture and a car.

Richard has had a good income during the marriage. The parties' tax returns for the past five years show the following income figures:

	Richard	Louise
1977	$53,926	0
1978	71,447	$ 1,844
1979	59,850	2,646
1980	76,737	13,527
1981	101,400	34,700

Richard's earnings have been consistent. Louise's 1981 income does not fairly reflect her earning potential.

In 1978 Louise and an Elaine Asarch started a partnership, Inter Design, which was subsequently incorporated. Richard has family members who control major businesses in the state. As a result of this family connection Louise received substantial business from the Kirke family. The record is clear that Louise will lose that family business. Louise is, however, well-educated and very talented. She was chosen to design a room in a showcase home in Des Moines. She should continue to realize a good income.

At the time of trial the parties had acquired a residential property, two cars, household goods, stocks, and retirement and pension funds.

Louise's mother, Dorothy Jerrel, died in 1970. Her will established a trust whereby income from the trust was to go to Louise's father, Burton, for life. On Burton's death the trust would be divided in thirds and Louise would, subject to the trustee's discretion, receive trust income for five years and would then receive one-third of the corpus of the trust. In 1979 Louise's father gave to Louise and her two sisters certain mineral rights in Elmore County Colorado. Louise's father made several cash gifts to the family totaling $6,000. This money was used by Richard and Louise for a European trip and for family expenses. Louise also inherited $7,500 which went for family expenses.

The family enjoyed a high standard of living. They lived in an expensive home in an affluent part of Des Moines. They belonged to the right clubs. Their children attended private camps and a parochial school. They dressed well. Louise had household help.

The trial judge made a disposition of the assets of the parties.[1]

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[1] The values here are the values we have determined from the record should be allocated to each item. The trial court made no determination of values in its decree.

He awarded the following property to Louise:

Residence property	$ 16,000[2]
All household furnishing and a fur coat	13,000
1975 Mercedes	6,500
Interior design business and accounts receivable (cash)	8,350
Interest in mother's trust	150,000[3]
Idaho mineral rights	—[4]
	$203,850

The trial judge awarded the following assets to Richard:

1980 Cadillac subject to indebtness	$ 3,500
Sears stock in his name	73,367[5]
Sears stock held jointly	70,908[6]
Pain Weber stock	8,063
Bank accounts	900
IRA	8,600
Personal property	3,000
Pension	9,374
	$177,712

Richard was, however, required to pay the following debts:

Lien on Louise's Mercedes	$ 4,933
Margin accounts and Bankers Trust Loans and stocks	99,657
Iowa Des Moines National Bank	2,500
Numerous bills of the parties	9,300[7]
	$116,450

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2 The house was sold after trial. Both parties in their briefs indicated that there was a stipulation as to the net value of the house, although they disagree on the stipulated value. We find no such stipulation in the record, and we adopt the lower agreed value.

3 Louise failed to accurately value her trust interest. Richard's financial statement valued it at $200,000 subject to Burton's life estate.

4 No value is given by either party for the mineral rights. We give them no value here.

5 Market value of stock at time of trial.

6 Market value of stock at time of trial.

7 Approximate amount.

This left Richard with a value of $61,262, out of which he was required to pay Louise $8,350.

The court ordered Richard to pay $350 per month per child as child support through high school or age 18, whichever occurs last, and retained jurisdiction to provide for college education. Richard was granted the tax deduction. Richard was ordered to pay $500 per month alimony until Louise's remarriage or until the child support obligation terminated. He was ordered to maintain medical and hospital insurance on the children and pay medical expenses not covered by insurance. He was ordered to pay $2,500 to Louise's attorney and the court costs.

Despite the fact that Richard filed a cross-appeal, he requests in his brief that the trial court be affirmed and each party pay their own attorney fees. We will therefore consider only the issues of modification raised in Louise's brief.

I. Property Division

Louise contends the property division ordered by the trial is not equitable. The Sears stock increased in value between the time of trial and the time that she submitted her brief. Louise's contention is that we may take judicial notice of commonly published stock prices. She further contends that, by virtue of the change (increase) in assets pending this appeal, we should increase her award. Louise has given us no authority for her position other than an argument of fairness.

In Locke v. Locke, 246 N.W. 2d 246, 252 (Iowa 1976), the supreme court said, "[i]t would appear the date of trial is the only reasonable time at which an assessment of the parties' net worth should be undertaken" [emphasis added].

In In re Marriage of Hitchcock, 309 N.W. 2d 432, 434-36 (Iowa 1981), the court had occasion to discuss valuation dates in dissolution proceedings. The court in Hitchcock discussed the factors of the court receiving and weighing evidence, making findings of facts and forming conclusions of law and indicated that these factors should be used in determining valuation date. The trial court here has performed these functions.

To adopt Louise's contention would require the trial judge to be accountable for the future, and appellate judges to seek constant updates on values. Such is not our procedure; nor could we single out only one asset, such as the Sears stock, to revalue. In our review the assets in this cause, including the Sears stock, are valued as of trial date.

Using these valuations we must determine whether the award made by the trial court to Louise was equitable. We find that it was.

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 to determine rights anew from the credible evidence on issues properly presented and preserved. In re Marriage of Lattig, 318 N.W. 2d 811, 812 (Iowa Ct. App. 1982).

A distribution of assets of the parties in a dissolution proceedings should be based on the guidelines in Schantz v. Schantz, 163 N.W. 2d 398, 405 (Iowa 1968), excluding consideration of reward or punishment on the basis of fault. In re Marriage of Winter, 223 N.W. 2d 165, 169 (Iowa 1974).

The trial judge arrived at a property division which, based on values at the time of trial, resulted a nearly equal division of the property of the parties excepting Louise's trust and mineral rights interest which were properly set off to her. See Iowa Code §598.21 (1981). We find such award to be equitable. While Richard came into the marriage with some cash, Louise received some cash gifts and inheritances. These two seem to balance each other. We therefore affirm the trial court's property division.

II. Alimony

Louise contends the alimony awarded to her was not equitable. When determining the appropriateness of alimony, the trial court must consider the earning capacity of each party and present standards of living and ability to pay balanced against relative needs of the other. In re Marriage of Hitchcock, 309 N.W. 2d 432, 436-37 (Iowa 1981). We recognize that, in awarding alimony,

precedent is of little value and each case must be decided on its own particular circumstances. In re Marriage of Fleener, 247 N.W. 2d 219, 220 (Iowa 1976).

Louise has established herself in a business which in 1981 netted over $32,000. She is talented and educated. While we recognize that the Kirke family business will decrease, Louise does have earning power. She has an established business. She was chosen to design a room in a showcase home in Des Moines. She has recognition. Her children are both in school. Despite her allegations to the contrary, there is no reason for her to be dependent on Richard for support.

In division I of this opinion we affirmed the trial court in an award that set Louise's trust and inherited property aside to her. The fact that she has such interests is a proper factor to be considered in arriving at the net worth of each party, relative needs of the other and the value of the resources of the parties. Locke v. Locke, 246 N.W. 2d 246, 252-53 (Iowa 1976). We therefore consider the availability of the trust and mineral rights in considering the issue of alimony.

Louise is now 39; Richard, 52. Louise has more productive years available than does Richard. While we recognize that the parties have maintained an affluent lifestyle and have therefore incurred substantial obligations, we do not deem this to be a basis to continue an extravagant lifestyle. Considering all factors we affirm the alimony awarded by the trial court.

III. Child Support

Louise's next contention is that the child support awarded is not adequate and that child support should continue through college.

In discussing parental obligations for support, the Iowa Supreme Court has followed the prevailing view that the same legal obligation rests upon both parents, husband and wife, not necessarily equally but proportionately according to their ability and circumstances. In re Marriage of Carney, 206 N.W. 2d 107, 112 (Iowa 1973). There are two children to support here. Richard and Louise both have an obligation to support them. Richard does have superior earning ability.

The children have enjoyed a high standard of living and have every reason to continue to do so.

We have reviewed the criteria set forth in In re Marriage of Zoellner, 219 N.W. 2d 517, 524-26 (Iowa 1974), and find that the child support award is adequate. We accordingly affirm the child support award.

IV. Attorney Fees

Louise requests that she be awarded attorney fees on appeal. Attorney fees are not allowed as a matter of right; any award must depend upon the financial circumstances of the parties. In re Marriage of Burham, 283 N.W. 2d 269, 278 (Iowa 1979). After considering the relative financial condition of the parties, we deny Louise's request for attorney fees. The parties shall be responsible for their own costs on appeal.

AFFIRMED.