

FILED

APR 27 1982

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF DIANA ERCEG AND JOSEPH ERCEG

46

Upon the Petition of	)	
DIANA ERCEG,	)	
Petitioner-Appellee,	)	Filed April 27, 1982
And Concerning	)	
JOSEPH ERCEG,	)	2-107
Respondent-Appellant.	)	2-66909

Appeal from Linn District Court - William R. Eads, Judge.

Respondent husband appeals from the economic provisions of the decree dissolving the parties' marriage asserting: (1) that the property division was inequitable; (2) that the nominal alimony award of \$1.00 per year was unjustified; (3) that the child support award of \$90.00 per week was excessive; and (4) that the award to petitioner of \$1,000.00 for attorney fees was unjustified. AFFIRMED.

Robert C. Nelson, Cedar Rapids, for respondent-appellant.

James L. Chipokas, Cedar Rapids, for petitioner-appellee.

Considered by Donielson, P.J., and Snell, and Johnson, JJ.

DONIELSON, J.

Respondent husband appeals from the economic provisions of the decree dissolving the parties' marriage asserting: (1) that the property division was inequitable; (2) that the nominal alimony award of \$1.00 per year was unjustified; (3) that the child support award of \$90.00 per week was excessive; and (4) that the award to petitioner of \$1,000.00 for attorney fees was unjustified. We affirm.

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 and to determine rights anew from the credible evidence on properly presented and preserved issues. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977). While we give weight to the findings of the trial court, especially where credibility of witnesses is involved, 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). As in all cases of this type, precedent is of little value and our decision must ultimately depend on the particular facts of this case. In re Marriage of Kehrli, 241 N.W.2d 923, 926 (Iowa 1976).

I.

Petitioner Diana Erceg and respondent Joseph Erceg were married in 1953. They have four children, three of whom are now adults. Diana, a clerk at National Oats Company, earns \$11,000 per year. Joseph, a truck driver, earns about \$25,000 per year. At the time of the trial, both were forty-nine years old and in good health.

The trial court awarded Diana custody of the parties' daughter, Stephanie, who was fourteen years old at the time of the trial. The trial court ordered that title to the parties' residence was to remain jointly in both parties. The trial court gave Diana the right to occupy the residence with Stephanie until Stephanie reaches age eighteen or finishes high school. The house will then be sold and the proceeds divided equally. Joseph was directed to pay real estate taxes on the

residence and to insure it, and both parties were directed to contribute equally to repair costs. The mortgage has already been paid off.

Diana was awarded the household furnishings, a 1973 Toyota, 200 shares of MCI stock, any bank accounts in her name, and her clothing and personal items. The trial court also gave Diana the option of keeping the parties' 1979 Cadillac, provided she made the payments due on it.

Joseph was awarded a 1963 Chevrolet, a motorcycle, a boat and boat equipment, a CB scanner, a camera, radios, tools, and his clothing and personal items. He was also made responsible for a \$1,028 Mastercharge bill.

Joseph filed a notice of appeal and Diana filed a notice of cross-appeal. She voluntarily dismissed the cross-appeal, however, after Joseph filed his appellant's brief.

II.

Respondent's first argument is that the trial court's division of property was inequitable. We disagree. The parties' house, their most valuable asset, will eventually be sold and the proceeds equally divided. The other items of property also appear to be divided almost equally between the parties. We find that this division was equitable and affirm the trial court.

III.

Respondent's second argument is that a nominal award of alimony to the petitioner was unwarranted. We see no reason to disturb the trial court's decision with regard to the amount of alimony.

IV.

Respondent's third argument is that the amount of child support ordered by the trial court was excessive. We disagree. In light of the fact that the respondent's income is more than double that of the petitioner's, and the fact that petitioner was awarded only nominal alimony, we find the trial court's award of

\$90.00 per week in child support was not excessive. Therefore, we affirm the trial court.

V.

Respondent's final argument is that the trial court's award to the petitioner of \$1,000.00 for attorney fees was unjustified. 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). The trial court has considerable discretion in awarding such fees at trial. In re Marriage of Winegard, 257 N.W.2d 609, 618 (Iowa 1977). Our review of the financial status of the parties in this case indicates that the trial court's award of attorney fees to petitioner was justified. We therefore affirm the trial court's award.

Furthermore, while we make no determination of what constitutes a reasonable fee, we order respondent to pay petitioner \$500.00 for attorney fees incurred due to this appeal.

AFFIRMED.