FILED
MAY 23 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF RICKIE JOE ZIEGENFUSS AND BEVERLY KAY ZIEGENFUSS

Upon the Petition of)
RICKIE JOE ZIEGENFUSS,)
Petitioner-Appellee,)
And Concerning)
BEVERLY KAY ZIEGENFUSS,)
Respondent-Appellant.)

382

9-37
88-1114

Appeal from the Iowa District Court for Boone County (No. 2448), Dale E. Ruigh, Judge.

The wife appeals from a dissolution decree, challenging economic provisions. **AFFIRMED.**

L. Don Snow of Mershon, Snow & Knock, Cedar Falls, for respondent-appellant.

Kirke C. Quinn of Doran, Courter, Quinn & Doran, Boone, for petitioner-appellee.

Considered by Donielson, P.J., and Sackett and Habhab, JJ.

OONIELSON, P.J. 383

Beverly Ziegenfuss appeals various economic provisions of the dissolution decree. She claims the trial court erred in 1) failing to make a fair and equitable property division and 2) failing to require the petitioner to pay her attorney fees. Beverly also requests attorney fees on appeal.

Beverly and Rickie Ziegenfuss were married in September 1975. At the time of the marriage, Rickie had debts and delinquent support obligations from a previous marriage resulting in a negative net worth in the amount of $6,000. Beverly had a positive net worth of approximately $2,000.

Rickie was employed by the National Guard and stationed in Cedar Falls at the time of the marriage. The parties bought a home in 1977 in Cedar Falls. Rickie was transferred to Boone in November 1982. The parties agreed Beverly would continue to live in Cedar Falls until the homestead was sold. Because the home was located in a DOT right-of-way, they were unable to sell the homestead. The parties continued to visit one another until April 1986 when Rickie informed Beverly he wanted a divorce. Rickie continued to pay the mortgage and taxes on the homestead during the entire marriage. He also had his paycheck sent to Beverly for her use in paying their bills until their separation in April 1986.

A dissolution decree was entered in this matter in June 1988. At the time of the trial Rickie was thirty-eight years old and Beverly was thirty-four years old. Both parties are high school graduates and have received on-the-job training. Beverly had surgery in 1987, which temporarily prevented her from working a part-time job, although she continued her full-time employment. Both parties appear to be in good physical health. In 1987, Rickie's gross income was $43,982, while Beverly's combined income from her secretarial position and a part-time sales position was $21,821.

Scope of Review. Our review of this matter is de novo. Iowa R. App. P. 4. This court gives weight to the trial court's findings of fact, but is not bound by them. Iowa R. App. P. 14(f)(7). Prior cases have little precedential value, and we base our decision primarily on the particular circumstances of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

I. Property Division. Beverly claims the trial court's property division is inequitable because it awarded Rickie $9,600 more of the parties' "net worth" than awarded to Beverly. She asserts the division should have been more equal and the trial court failed to give a reason for awarding Rickie a greater portion of the parties' net worth.

The trial court shall divide the marital property equitably between the parties after considering the factors in Iowa Code section 598.21(1). The statute does not sanction an equal (50-50) division of the property. In re Marriage of Stewart, 356 N.W.2d 611, 612 (Iowa App. 1984). The ultimate issue is "whether the distribution is equitable under the specified facts of the particular case." In re Marriage of Bornstein, 359 N.W.2d 500, 503 (Iowa App. 1984).

The trial court assigned values and divided the assets and liabilities according to the following schedule:

Assets	Rickie	Beverly
1985 Chevrolet Blazer	$ 9,000	
1982 Oldsmobile		$ 4,000
Prudential Life Insurance	928	
Jewelry and collectibles		1,000
Guns and cabinet	600	
Fishing equipment	750	
Boat, trailer, and motor	1,500	
Household furnishings	500	5,000
IDS Growth Fund	1,000	7,348
Pensions	27,274	10,993
Liabilities	(8,811)	(5,200)
NET WORTH	$32,741	$23,141

Additionally, the parties' home is to be sold and the equity divided equally.

Beverly asserts the trial court's distribution fails to consider the criteria set out in Iowa Code section 598.21(1). Specifically, she contends the trial court failed to consider the parties' respective earning capacities and the training necessary to enable her to

become self-supporting at a standard of living comparable to that enjoyed during the marriage. Iowa Code § 598.21(1)(f).

The trial court determined both parties were secure in their employment. However, Rickie's earning capacity far exceeds Beverly's. Rickie's net monthly income at the time of trial was $2,406 per month. Beverly listed net income of $204 per week ($884 per month). However, the trial court determined, and we agree, that figure represents deductions in addition to income tax and FICA withholding. We find Beverly's net monthly income to be approximately $1,100. While there is a wide disparity in the parties' incomes, it is not our prerogative to equalize their incomes following dissolution. This result is equitable under the circumstances since there was a wide disparity in income prior to the marriage and both parties continued to work for their same employers during and after the marriage.

Beverly's second complaint regarding the property division is that the trial court valued the household furnishings in her possession at $5,000, but awarded a certain amount of that to Rickie, thus reducing the property award to her and increasing Rickie's position. While we acknowledge this in fact was done, we find no evidence in the record as to the value of those furnishings in Beverly's possession which were awarded to Rickie. Thus we can find no inequity in this regard.

A large portion of the parties' assets is attributable to their respective pension rights. Pension benefits are treated as marital property in Iowa and are properly subject to equitable distribution. In re Marriage of Howell, 434 N.W.2d 629, 632 (Iowa 1989). The trial court determined the values of the pensions and awarded Rickie his pension in the amount of $27,274 and awarded Beverly her pension in the amount of $10,993. Neither party put on evidence and we find none in the record as to the value of these pensions. However, neither party disputes the trial court's valuation.

Beverly asserts the trial court failed to consider the parties' pension rights in dividing the marital net worth and awarding an equal division of the property. She seems to be arguing that since Rickie has $17,000 more in pension benefits, she should get $17,000 in other assets. We find no merit to this claim. Beverly did not request a share in Rickie's pension benefits, so the trial court divided the pension assets by assigning to each their respective benefits. The pension benefits are not a liquid asset as neither can draw their benefits until age sixty or sixty-five. When we consider only liquid assets, Beverly was awarded $17,348, while Rickie was awarded $14,278. The trial court ordered Rickie to pay $8,811 in liabilities, while Beverly must pay $5,200 in credit card debts amassed solely by her following the parties' separation in April 1986. We find nothing inequitable in this division.

Beverly contends she contributed a positive net worth to the marriage and should be credited for that amount in her property settlement. In a marriage of short duration, it may be appropriate to credit each party for the property brought into the marriage. See In re Marriage of Wallace, 315 N.W.2d 827, 830-31 (Iowa App. 1981). Here, the parties were married for thirteen years. Additionally, neither party brought substantial assets or liabilities to the marriage. The trial court awarded Beverly furniture, including that which she brought into the marriage. We find the trial court's disposition equitable, especially since the trial court included assets Rickie brought into the marriage in determining his share of the marital assets.

The trial court made no determination of the value of the marital residence because the house is in the path of a proposed highway and is under threat of condemnation. Instead, the trial court determined Beverly should continue to be allowed to occupy the home until it is condemned, at which time the equity will be divided equally between the parties. The home had a present value between $36,000 and $50,000 and was encumbered by a mortgage balance of $34,700 at the time of trial. The trial court ordered Rickie to continue paying the entire monthly mortgage payments and taxes until January 1989. After January 1989, both parties are to share equally the liability for the mortgage

installments and taxes. Upon sale, Rickie was to get credit for the mortgage payments made from the date of trial until January 1989.

Beverly contends the decree is inequitable in that it "leaves Beverly in the property in Cedar Falls." Beverly's point is meritless considering she has no obligation for her own housing expenses until January 1989. We find no burden in that respect. Beverly seems to be contending that she should receive alimony in addition to having Rickie pay her housing costs. At trial, Beverly conceded that she wanted alimony for only one year and that she would not request alimony if Rickie would pay the mortgage installments. The trial court ordered Rickie to pay the mortgage installments as part of the property settlement instead of awarding alimony. We find this result equitable under the circumstances.

Beverly also contends the trial court failed to distribute $2,389.60 that was contributed by Rickie to the Federal Employees Retirement System in 1987. The record shows this retirement plan is in lieu of social security withholding. It appears this sum was awarded as part of Rickie's pension.

II. Attorney Fees. An award of attorney fees in a dissolution case is not recoverable as a matter of right, but rests with the sound discretion of the trial court. In re Marriage of Stanley, 411 N.W.2d 698, 702 (Iowa App.

1987). We find the trial court did not abuse its discretion in failing to award Beverly fees under the circumstances. Beverly also requests attorney fees on appeal. We order Rickie to pay $1,500 towards Beverly's appellate attorney fees, with costs assessed equally between the parties.

AFFIRMED.