

FILED
JUN 30 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JUDITH MARY RUTLEDGE AND WILLIAM
ALBERT RUTLEDGE

Upon the Petition of	)	
JUDITH MARY RUTLEDGE,	)	
Petitioner-Appellant,	)	Filed June 30, 1981
And Concerning	)	
WILLIAM ALBERT RUTLEDGE,	)	1-129
Respondent-Appellee.	)	2-65735

Appeal from Polk District Court - James P. Denato, Judge.

Petitioner wife appeals from various provisions of the parties' dissolution decree and requests attorney fees. AFFIRMED.

James F. Fowler of Wilson, Goodhue & Fowler, Indianola, for petitioner-appellant.

Virgil Moore, Des Moines, for respondent-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

Petitioner wife appeals from various provisions of the parties' dissolution decree and requests attorney fees incurred at trial and from this appeal. We affirm the decree.

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 the 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.

The twenty-year marriage of Judith and William Rutledge was dissolved by a decree entered August 8, 1980. The petitioner wife was awarded custody of the four minor children, then ages 17, 16, 14, and 13 (a fifth child had already attained the age of majority). The respondent husband was required to pay child support of \$150 per month per child until age 18 or graduation from high school, whichever was later. Although both parties were held responsible for the children's higher education expenses, the court decreed that such expenses should "presently" be borne entirely by the respondent. Petitioner was awarded \$550 per month alimony (to terminate upon her death or remarriage), \$700 in attorney fees, a 1976 Monte Carlo, and her own bank accounts. Respondent was awarded his own bank accounts and two older cars and directed to maintain certain insurance policies. He was also granted the right to claim the children as tax deductions. Petitioner was awarded use of the parties' home and household goods and furnishings until the youngest child completes the equivalent of two years of college, at which time those assets were to be sold and the proceeds equally divided between the parties. Until that time, she was to pay the mortgage and other expenses to maintain the home. Additionally, she was allowed to borrow against the equity up to \$2000 per semester for a maximum of eight semesters to meet her own anticipated educational expenses; any such loans were to be paid off from the net proceeds of the sale of the house before distribution of those proceeds to the parties.

The parties' five children were born during a six-year span between 1961 and 1967.

From the time of the marriage in 1960 until 1975, petitioner did not work outside the home. In 1975, she began to work part-time as a records and supply clerk for the Iowa Senate during the legislative session; her 1979 income from this employment was approximately \$5400. At the time of trial, respondent was a director of an insurance company; his 1980 salary was \$39,540 (\$2,203 per month net). This figure does not include the yearly bonus to which the respondent was entitled and which in 1979 amounted to \$5,187. Among the fringe benefits available to him is a pension plan that would provide him upon retirement at age 65 with an income of approximately 60% of the average salary for his most successful three consecutive years.

II.

The petitioner raises numerous issues on this appeal. With respect to child support, she contends 1) that the amount awarded was inequitably low; 2) that the amount should be increased with no proportional decrease as the children leave home; 3) that the decree should have provided for an annual cost of living adjustment; 4) that the respondent should have been made solely responsible for the higher education expenses of the children; and 5) that she should have been allowed a dependency tax deduction for at least one of the children. With regard to alimony, the petitioner contends: 1) that the amount of the award was insufficient and should be increased; 2) that the award should not be terminable upon her remarriage or upon respondent's death; and 3) that the respondent should be required to pay directly the entirety of petitioner's future educational expenses. She makes the following allegations concerning the property division: 1) the division of property was inequitable, considering that one of the assets of the marriage was the respondent's lucrative job and she was denied any interest in that asset; 2) she should be awarded additional cash (payable in installments) and an interest in the husband's pension plan; and 3) she should have been awarded the parties' home and household goods absolutely. Finally, petitioner contends that she should have been awarded more than \$700 in attorney fees and that she should be awarded attorney fees for this appeal.

In reviewing the issues involving child support, we are guided by the criteria set forth in In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974). Principles relevant to review of the alimony and division of property issues are discussed in Schantz v. Schantz, 165 N.W.2d 398, 405 (Iowa 1968) (modified to exclude fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972)). Applying the Winter and Schantz criteria to

the instant case and reviewing the record de novo, we are satisfied that the decree justly and equitably resolves the issues pertaining to child support, alimony, and property division.

In considering the issues petitioner has raised concerning attorney fees at trial, we note that such fees are not recoverable as a matter of right in a dissolution proceeding. In re Locke, 263 N.W.2d 694, 696 (Iowa 1978); In re Marriage of Peterson, 227 N.W.2d 139, 142 (Iowa 1975). The determinative factors are need and ability to pay. Locke, 263 N.W.2d at 696; In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977). The trial court has considerable discretion in allowing attorney fees. Locke, 263 N.W.2d at 696; In re Marriage of Winegard, 257 N.W.2d 609, 618 (Iowa 1977). From our review of the record, we cannot conclude that the trial court's decision to allow petitioner only \$700 in attorney fees was an abuse of discretion.

The petitioner has also requested attorney fees incurred in this appeal. In evaluating such a request, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Erickson, 228 N.W.2d 57, 59 (Iowa 1975); In re Marriage of Stom, 226 N.W.2d 797, 800 (Iowa 1975). We conclude that the circumstances justify an award of appellate attorney fees in the amount of \$800 to the petitioner.

AFFIRMED.