IN THE COURT OF APPEALS OF IOWA

FILED
JUN 26 1990
CLERK SUPREME COURT

No. 0-197 / 89-617

IN RE THE MARRIAGE OF JUDITH H. SOUTTER AND JOHN W. SOUTTER

Upon the Petition of

JUDITH H. SOUTTER,

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Appellant,

And Concerning,

JOHN W. SOUTTER,

Appellee.

Appeal from the Iowa District Court for Polk County, Theodore H. Miller, Judge.

Wife appeals a dissolution decree, challenging its economic provisions. **AFFIRMED.**

Gerald W. Crawford, John H. Stoner, and Brent A. Cashatt, of Neiman, Neiman, Stone & Spellman, P.C., Des Moines, for the appellant.

James E. Brick, of Brick, Seckington, Bowers, Swartz & Gentry, P.C., Des Moines, for the appellee.

Considered by Oxberger, C.J., and Hayden and Habhab, JJ.

HABHAB, J. 280

Appellant Judith H. Soutter appeals from the decree of the district court dissolving the parties' marriage. Judith asserts: (1) the trial court erred in not awarding her rehabilitative alimony; (2) the trial court failed to equitably divide the marital property; (3) the trial court erred in not awarding her attorney fees. Judith also seeks attorney fees for this appeal. We affirm as modified.

The parties were married on May 24, 1982. No children were born of this marriage, but both parties have children from previous marriages. John, forty-seven years old at the time of trial, has worked at Iowa Power for twenty-two years and earned $42,863 in income in 1987. Judith, forty-five years old at the time of trial, has worked part-time cleaning houses, doing demonstration promotional work, and some telephone sales work. Her income in 1988 from these positions totaled approximately $3,400. Judith contends her rheumatoid arthritis affliction will retard her employability in the future.

The district court awarded the net proceeds, approximately $22,300, of the sale of the marital home to John. Judith was awarded a house she had owned prior to the marriage. This property has a $1,500 mortgage and was used as rental property during the marriage. The net value of this house is approximately $42,000. The district court further awarded John all of his employment pension plan and all stock obtained through a profit-sharing arrangement

with his employer. Judith was awarded $1,215 as her share of the stocks acquired during the marriage and $768 for the increase in value of John's pension plan during the marriage. Both of these amounts reflect 50% of the value of the increases in the respective assets.

Additionally, John was awarded the motor vehicles and various personal property. He also was awarded certain U.S. savings bonds valued at slightly more than $1,000, which he owns jointly with his children. The district court also ordered John to assume all the parties' unsecured debts, totaling approximately $12,000. Judith, in addition to the assets previously mentioned, was awarded one automobile and various personal property.

Our scope of review is de novo. Iowa R. App. P. 4. Although not bound by the trial court's determination of factual findings, we will give considerable weight to them, especially those pertaining to the credibility of witnesses. Iowa R. App. P. 14(f)(7). Prior cases, though helpful, have minimal precedential value since we must base our decision here primarily on the particular circumstances of the parties before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

I.

We consider alimony and property awards together in assessing their sufficiency. In re Marriage of Dahl, 418 N.W.2d 358, 359 (Iowa 1987). Alimony is not an absolute right; an award depends upon the circumstances of each

particular case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3). See In re Marriage of Hayne, 334 N.W.2d 347, 350 (Iowa App. 1983).

This is a relatively short-term marriage. Neither party has economically benefited at the expense of the other. Upon review of the record and those factors listed in Iowa Code section 598.21(3), we conclude Judith is not entitled to rehabilitative alimony. Judith's 1988 income, while quite meager, was based solely on a part-time effort. We also note she has a house which has yielded rental income in the past.

II.

Judith also challenges the district court's property division. Specifically, she asserts the trial court erred in awarding the net proceeds from the sale of the marital home to John. She also asserts she should have been awarded one-half the value of the savings bonds and the two automobiles awarded to John.

The partners in the marriage are "entitled to a just and equitable share of the property accumulated through their joint efforts." In re Marriage of Havran, 406 N.W.2d 450, 452 (Iowa App. 1987). The distribution of the property of the parties should be that which is equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(1). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983).

We find the trial court's property division to be equitable and will not disturb it upon appeal. The record indicates that John paid the down payment on the marital home and also financed $10,000 worth of repairs to the property with a second mortgage on his premarital home. We additionally note he assumes all of the parties' marital debts, including over $7,000 in loans on the 1981 Lincoln and 1979 Dodge motor home. Under such circumstances, we deem the property division equitable.

III.

Judith also challenges the denial of attorney fees by the district court. Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). To overturn an award the complaining party must show that the trial court abused its discretion. Id. Awards of attorney fees must be for fair and reasonable amounts, In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977), and based on the parties' respective abilities to pay. In re Marriage of Lattig, 318 N.W.2d 811, 817 (Iowa App. 1982). We find no abuse of discretion by the trial court in not awarding Judith's attorney fees.

IV.

Judith also seeks attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390

(Iowa App. 1987). We conclude the parties should pay their own appellate attorney fees. Costs are assessed to appellant.

AFFIRMED.