FILED
DEC 27 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ANN MARIE BENTON AND CLARENCE BENTON

Upon the Petition of)

ANN MARIE BENTON,) Filed December 27, 1979

Petitioner-Appellee,)

And Concerning)

CLARENCE BENTON,) 314
2-63306

Respondent-Appellant.)

Appeal from Appanoose District Court - Dick R. Schlegel, Judge.

Respondent-husband appeals economic provisions of dissolution decree. - Affirmed.

Roger D. Vos, Mitchellville, for respondent-appellant.

John N. Moreland, Ottumwa, for petitioner-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Respondent-husband appeals the economic provisions of a dissolution decree, asserting that the evidence did not support the alimony award to petitioner, that the trial court erred in providing that respondent's monthly child support obligation be reduced from $200 to $125 when the eldest of the two minor children turned eighteen, and that the evidence did not support the trial court's award of attorney fees to petitioner. We affirm.

Our review is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of fact, especially regarding the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

In determining whether an award of alimony is fair and equitable, we consider the guildelines of Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except fault. In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972). Significance is attached to the needs of one party versus the other party's ability to pay. In re Marriage of Freese, 226 N.W.2d 800, 802 (Iowa 1975). The Schantz factor of the earning capacity of each party is also of particular significance in the case at bar. The trial court found that petitioner's net monthly income was approximately $200, while respondent's was almost $1000. Petitioner's monthly financial obligations included the mortgage payment on the house, real estate taxes, home-owner's insurance, house maintenance and upkeep, and utilities. These obligations alone amounted to over $300 per month. In light of this evidence, we conclude that the trial court's award of $200 per month alimony to petitioner was fair and equitable.

The trial court ordered respondent to pay $200 per month for the support of the parties' two minor children. The decree provided for the reduction of that amount to $125 per month when the eldest child either attained age eighteen, married, or died. Respondent contends that this provision for differing amounts of child support per child is in error. Such a provision, however, is not unusual. See In re Marriage of Zoellner, 219 N.W.2d 517, 520, 526 (Iowa 1974). The trial court apparently concluded that the cost per child of raising a single child was greater than the cost of raising two. We do not think such a conclusion was erroneous.

Respondent contends that the trial court's award of $600 to petitioner for attorney fees incurred at trial was not supported by the evidence nor was it justified in

light of the property settlement. Attorney fees are not recoverable as a matter of right in a dissolution proceeding. Locke v. Locke, 263 N.W.2d 694, 696 (Iowa 1978); In re Marriage of Peterson, 227 N.W.2d 139, 142 (Iowa 1975). The elements to be considered in determining reasonable attorney fees are set out in In re Marriage of Jennerjohn, 203 N.W.2d 237, 245 (Iowa 1972) and In re Marriage of Jayne, 200 N.W.2d 532, 534 (Iowa 1972). The primary factors to be considered 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 the allowance of 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 abused its discretion in its award of attorney fees to petitioner.

Costs on appeal are taxed to respondent.

AFFIRMED.