IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF LARRY R. EICK AND NANCY EICK

FILED
OCT 28 1987
CLERK SUPREME COURT

Upon the Petition of)

LARRY R. EICK,)

Petitioner-Appellant,) Filed October 28, 1987

And Concerning) 7-520 / 87-592

NANCY EICK,) 60

Respondent-Appellee.)

Appeal from the Iowa District Court for Linn County (No. DM 13878), William L. Thomas, Judge.

Petitioner husband appeals from the decree dissolving the parties' marriage. **AFFIRMED.**

Richard D. Raymon of Cedar Rapids for appellant.

Stephen B. Jackson of Hines, Pence, Jackson, Day & Powers, Cedar Rapids, for appellee.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ. Snell, J., takes no part.

PER CURIAM

The petitioner, Larry Eick, appeals the decree dissolving the parties' marriage. He asserts on appeal that the property distribution is inequitable. The respondent, Nancy Eick, also requests attorney fees on appeal. We affirm.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. We review the facts and law and determine the parties' rights anew. In re Marriage of Phipps, 379 N.W.2d 26, 27 (Iowa App. 1985). We give weight to the findings of the trial court, especially where the credibility of witnesses is involved, but are not bound by them. Iowa R. App. P. 14(f)(7).

The sole issue on appeal is whether the trial court's property division is equitable. Larry argues the division is inequitable because Nancy was awarded the marital residence free and clear of any interest of Larry's. He argues the home should be sold and the net proceeds divided evenly between the parties.

The court stated the award was made after considering Nancy's child support obligations, her desire to maintain the family residence if the minor child decided to return to Iowa, the court's prior termination of any cause of action Nancy may have had for interference with custodial rights, and the factors in Iowa Code section 598.21(1), particularly a, c, and f. The court also ordered Nancy to pay the entire indebtedness and taxes on the home.

Iowa Code section 598.21(1)(m) allows the trial court to consider "[o]ther factors the court may determine to be relevant in an individual case." The trial court in this case felt it was important to put an end to an ugly marital and custodial battle. In one of the contempt proceedings, the trial court dismissed any cause of action Nancy may have had for interference with custodial rights against Larry arising from his conduct during the separation period. The court stated this was done to put an end to this matter and that it would be taken into account in determining the property division.

When viewing the entire property settlement and considering the relevant Iowa Code sections, we believe the trial court's property division is fair and equitable. Nancy was awarded the home, plus the $41,630 mortgage and taxes, partly because of her desire to maintain the home if the minor child should decide to return to Iowa, and partly as relief from the trial court's termination of her cause of action. Under these circumstances, we do not feel the trial court considered anything improper, and that the distribution was fair and equitable.

Nancy Eick also requests attorney fees for this appeal. In a dissolution action, attorney fees are not awarded as a matter of right. In re Marriage of Butler, 346 N.W.2d 45, 47 (Iowa App. 1984). We look at the respective parties' ability to pay. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). In this case, both parties have the ability to pay their own attorney fees, and therefore, Nancy's requests for fees is denied.

AFFIRMED.