

IN THE COURT OF APPEALS OF IOWA

No. 0-221 / 09-1450
Filed May 26, 2010

IN RE THE MARRIAGE OF SANDRA K. MARTIN AND PAUL J. MARTIN

Upon the Petition of

SANDRA K. MARTIN,
Petitioner-Appellee/Cross-Appellant,

And Concerning

PAUL J. MARTIN,
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Harrison County, Jeffrey Larson,
Judge.

Respondent appeals and petitioner cross-appeals, challenging certain
economic provisions of the decree dissolving their long-term marriage.

AFFIRMED AS MODIFIED.

Stephen C. Ebke of Porter, Tauke & Ebke Law Firm, Council Bluffs, for
appellant.

Sarah J. Millsap of Peters Law Firm, P.C., Council Bluffs, for appellee.

Heard by Sackett, C.J., and Eisenhauer and Mansfield, JJ.

SACKETT, C.J.

Paul Martin appeals, and Sandra Martin cross-appeals, challenging certain economic provisions of the decree dissolving their long-term marriage. Paul contends that in making the property division, the district court should have considered Sandra's withdrawal of money from a joint account during the parties' separation as property credited to her. He also contends the court should have ordered the parties' airplane sold and the proceeds divided rather than allocating the asset to him. In addition, he disputes the court's treatment of gifted property and the court's alimony award. Sandra on cross-appeal argues the alimony award should be increased. We affirm as modified.

I. SCOPE OF REVIEW. Our review of the economic provisions of a divorce decree is de novo. Iowa R. App. P. 6.907 (2009). We examine the entire record and adjudicate anew the issues properly presented on appeal. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact-findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.904(3)(g); *In re Marriage of Grady-Woods*, 577 N.W.2d 851, 852 (Iowa Ct. App. 1998). We approach this issue from a gender-neutral position avoiding sexual stereotypes. *In re Marriage of Pratt*, 489 N.W.2d 56, 58 (Iowa Ct. App. 1992); see also *In re Marriage of Bethke*, 484 N.W.2d 604, 608 (Iowa Ct. App. 1992).

II. BACKGROUND. The parties were married in 1961. At the time of marriage the parties were each eighteen years old. At the time of the dissolution hearing in June of 2009, they were both sixty-six. Both parties were employed

during the marriage. Their current health is good and they are each capable of continuing to be employed. Paul, a structural engineer, was working on a part-time basis at the time of the dissolution hearing. Sandra, who held various clerical positions including one for the United States Department of Transportation, had retired in 2007. They had substantial assets and few debts. During the marriage, Paul earned a bachelor's degree in civil engineering and a master's degree in professional management, and Sandra took secretarial training. They each had received gifts from their families but other than the gifts, the balance of the assets were acquired by them during their marriage.

III. PROCEEDINGS. Sandra filed a petition for dissolution on October 2, 2008. The parties separated and purchased separate homes. The matter came on for trial on June 25, 2009. On July 16, 2009, the district court filed a decree dissolving the marriage.

The court found that Paul had monthly income of between \$7868 and \$8168 composed of a John Deere pension of \$957 a month, an ADM retirement payment of \$711 a month, a salary of \$4000 to \$4300 a month, and social security of \$2200 a month.

The court found the parties had \$1,075,000 in assets and a credit card debt of \$6388. The assets include the parties' two homes, an airplane, several vehicles, retirement accounts and other personal property, as well as certain investment property. The credit card amount, which apparently Sandra had accumulated in making home improvements, was made Sandra's responsibility.¹

¹ Sandra had agreed to be personally liable for this account.

The court then arrived at what it determined to be the value of the parties' shared property, including the home where each party resided, at \$848,843, excepting gifted property, and gave each party one-half thereof, or \$424,421.50.

The court gave Paul some credit for a gift from his mother and gave Sandra credit for a gift that came from her father. The court ordered Paul to pay alimony of \$2000 a month commencing August 1, 2009, to continue until Sandra died or remarried.

On July 27, 2009, Paul filed a motion to enlarge or amend findings of fact and conclusions of law. He contended that Sandra should be charged with a substantial withdrawal from the parties' joint checking account that was made during the parties' separation, that their airplane should have been ordered sold rather than allocated to him, that each party should be awarded gifts from their family, and that the alimony award was not equitable. Sandra resisted the motion. The district court denied Paul's motion in all respects except for his challenge to the alimony award. The court recognized that Paul was at retirement age and the lifetime alimony awarded to Sandra was not equitable. The court amended the award of alimony to provide that Paul pay Sandra \$2000 a month commencing August 1, 2009, for twenty-four months and then pay \$1000 a month until Sandra dies, remarries or cohabitates. Paul now appeals the property division and spousal support award. Sandra cross-appeals, challenging the court's reduction of the alimony award.

IV. DIVISION OF ASSETS. Before making an equitable distribution of assets in a dissolution, the court must determine all assets held in the name of

either or both parties, as well as the debts owed by either or both. See *In re Marriage of Driscoll*, 563 N.W.2d 640, 641-42 (Iowa Ct. App. 1997); *In re Marriage of Brainard*, 523 N.W.2d 611, 616 (Iowa Ct. App. 1994). The assets should then be given their value as of the date of trial. *Locke v. Locke*, 246 N.W.2d 246, 252 (Iowa 1976); *In re Marriage of McLaughlin*, 526 N.W.2d 342, 344 (Iowa Ct. App. 1994). The assets and liabilities then should be equitably, not necessarily equally, divided after considering the criteria delineated in Iowa Code section 598.21(5) (2009). See *In re Marriage of Hoak*, 364 N.W.2d 185, 194 (Iowa 1985). In general, the division of property is based upon each marriage partner's right to a just and equitable share of the property accumulated as a result of their joint efforts. *In re Marriage of Hitchcock*, 309 N.W.2d 432, 437 (Iowa 1981); *In re Marriage of Dean*, 642 N.W.2d 321, 323 (Iowa Ct. App. 2002).

Paul contends the property division was not equitable because (1) of the date some property was valued, (2) the airplane was not ordered sold and the proceeds divided, and (3) he did not receive sufficient credit for property gifted to him.

(a) Date of Valuation of Property. Paul argues that money Sandra withdrew from joint funds after their separation should have been considered, at least in part, as property that went to her. Sandra had withdrawn approximately \$45,000 from an account held jointly by the parties after they separated and were living in separate residences. Paul argues Sandra admitted she used at least \$30,000² of the money to improve the home that was awarded to her. The

² He contends he submitted evidence showing the home improvements totaled \$37,914.

parties had agreed to have both homes appraised. The appraisals were made prior to Sandra improving her home. Sandra made the improvements prior to trial and the earlier appraisal used by the district court to value the house that went to Sandra did not include these improvements. The district court used these appraisals in structuring the property division.

Paul appears to make two arguments. The first is that because the parties were separated when Sandra withdrew the money, at least a portion of it should be charged to Sandra. His second argument is that the improvements made with the funds increased the value of her house and that increase in valuation should have been considered. Sandra, however, argues that during the same period Paul spent \$7000 for repairs on the airplane that was awarded to him, and he spent \$650 a month for hanger rent and insurance on the plane. She contends that she will not benefit from these expenditures and they were not allocated to Paul in the property distribution. She believes, like the airplane expenses, neither party should be held individually accountable for the home improvements.

In dividing marital property, we generally consider the net worth of the parties at the time of the dissolution hearing. *In re Marriage of Muelhaupt*, 439 N.W.2d 656, 661 (Iowa 1989). We have recognized that there may be situations where the date of trial is not the fair date to determine values. See *In re Marriage of Campbell*, 623 N.W.2d 585, 587-88 (Iowa Ct. App. 2001); *Driscoll*, 563 N.W.2d at 642.

(b) Treatment of Airplane. Paul contends the court should have ordered the airplane sold and the proceeds divided rather than allocating it to him at a

value of \$80,000, which is its current list price. He contends that the \$7500 he paid for repairs and maintenance on the airplane did not increase its listed value.

We find the district court's division of these assets to be equitable and make no modification of these provisions of the decree.

(c) Gifted Property. Paul contends Sandra should not have received a share of his gifted property. Paul owned land in Nebraska with his mother. It was sold in 2006 and he received \$400,000. The parties donated a portion of this money to charities and also paid the capital gains tax attributable to the sale of it. Paul deposited the balance in a joint account with Sandra, leaving the balance of the account at about \$326,000. At the time of the dissolution it was reduced by expenditures made to \$210,427. The court found, "it would be inequitable to award Paul the entire share of these funds under the circumstances" and awarded Sandra \$50,000 of the \$210,427.

Iowa Code section 598.21(6) provides in part that "gifts received by either party prior to or during the course of the marriage" are not subject to property division unless the refusal to divide the property is inequitable to the other party or the children. Section 598.21(6) is substantially a codification of the premise established by earlier case law that property inherited by or gifted to one marriage partner is not subject to division unless the failure to do so would be unjust. See *In re Marriage of Thomas*, 319 N.W.2d 209, 211 (Iowa 1982); *In re Marriage of Byall*, 353 N.W.2d 103, 105-06 (Iowa Ct. App. 1984). In *Thomas*, the court delineated a number of factors that might bear on a claim inherited or gifted property should be divided. 319 N.W.2d at 211. These include:

(1) contributions of the parties toward the property, its care, preservation or improvement;

(2) the existence of any independent close relationship between the donor or testator and the spouse of the one to whom the property was given or devised;

(3) separate contributions by the parties to their economic welfare to whatever extent those contributions preserve the property for either of them;

(4) any special needs of either party;

(5) any other matter which would render it plainly unfair to a spouse or child to have the property set aside for the exclusive enjoyment of the donee or devisee.

Id. The court also noted:

Other matters, such as the length of the marriage or the length of time the property was held after it was devised or given, though not independent factors, may indirectly bear on the question for their effect on the listed factors.

Id. Still other matters might tend to negate or militate against the appropriateness of dividing the property under a claim that it falls within the exception. *Id.* The district court did not specifically address these factors.

Paul argues that the entire value of property Sandra received in Florida as a gift from her father was excluded from the marital estate and that the proceeds from the sale of the property he received from his mother should have been treated similarly.³ Paul contends there was no support for the district court's conclusion that it would be inequitable to award all of those funds to him. He said he presented evidence of the federal and state tax liabilities paid on the sale and deducted them from the amount he claimed, as well as deducting charitable contributions that were made from those funds. While admitting that this has been a long-term marriage, he noted that the sale of the ground did not occur

³ According to Sandra's proposed distribution of assets, the Florida lot had a value of \$10,608.

until 2006, less than two years prior to the filing of the petition for divorce at issue here. He argues that Sandra had no contact with the land, which was in Nebraska, she did nothing towards its care, preservation, or improvement, and the only impact it had on their standard of living was that they were able to make some charitable contributions. Sandra did view it after her father-in-law's funeral, and when asked why she should have an interest in the property, her response was, "Well, everything we have is together, so it was just ours."

Sandra made no contribution to the property and there is no evidence she had such a close relationship with her mother-in-law that her mother-in-law would have intended she receive a portion of it. Sandra is receiving free of any claim by Paul the Florida property that was gifted to her. In addition she is receiving substantial assets and will have monthly income that exceeds her reported monthly needs. Furthermore, Paul has not held the property for an extensive period. We therefore modify the decree and strike the provision that Sandra be awarded \$50,000 of the \$210,427. Subject to this modification we affirm the property division made by the district court.

V. SPOUSAL SUPPORT. Paul contends he should not have been ordered to pay Sandra alimony of \$2000 a month for twenty-four months and \$1000 a month thereafter. Sandra, on cross-appeal, contends she should have lifetime alimony of \$2000 a month and the district court should not have decreased the award in ruling on Paul's motion to enlarge or amend.

Spousal support is provided for under Iowa Code section 598.21A. Whether spousal support is justified is dependent on the facts of each case. See *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976). Entitlement to spousal support is not an absolute right. *Id.*

We look not only at the parties' earnings but also at their earning capacity, as directed by section 598.21A(1). See *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). Consequently, if both parties are in reasonable health, as here, they need to earn up to their capacities in order to pay their own present bills and not lean unduly on the other party for support. See *In re Marriage of Wegner*, 434 N.W.2d 397, 399 (Iowa 1988).

This is a long-term marriage where Paul earned two college degrees while married to Sandra that enhanced his earning capacity. The parties, through their joint earnings, have accumulated substantial assets and each will have income in retirement sufficient to provide them with a comfortable standard of living. Sandra's income at the time of the dissolution hearing was less than Paul's, although she had retired and he had not. Both parties receive social security and neither would have a reduction in benefits if they were in the job market. Paul works on a part-time basis and in all probability will soon be retiring. In modifying its original award, the district court reduced the initial alimony award, which Sandra on cross-appeal contends should not have happened, from \$2000 for Sandra's lifetime to \$2000 for twenty-four months and then to \$1000 per month thereafter.

Paul contends the district court underestimated Sandra's monthly income and failed to consider the fact she would receive one-half of his pensions. He contends her income includes a government pension of \$927 a month, social security benefits of \$312,⁴ and one-half of the defined benefit pensions he accrued during the marriage (John Deere and ADM) which will be \$833 a month. In addition, she has assets that if they earned two percent interest per annum, would give an additional \$389 a month.

We affirm the award of \$2000 a month for two years, recognizing that Paul temporarily until he ultimately retires will have monthly income in excess of Sandra's. We have considered Sandra's claim on cross-appeal that she receive \$2000 alimony a month for life but find no reason to give her additional alimony. Rather, we deny her request and modify the decree to strike the provision of the award that provided for Sandra to receive the \$1000 a month alimony after the two years. Sandra has received one-half of the assets the parties accumulated and she shares in Paul's pensions. She will leave the marriage with assets and income in excess of what she contends are necessary to meet her individual needs and that will allow her to maintain a standard of living similar to that which she enjoyed during the marriage.

VI. HOLDING. We strike the provision that Sandra be awarded \$50,000 of the \$210,427 that remains from the sale of Paul's gifted property and affirm the balance of the property division. We affirm the award to Sandra of twenty-four

⁴ She and Paul have been married in excess of ten years and if she does not remarry she can obtain benefits on Paul's account, which in all probability would exceed the amount she now draws.

months of alimony at \$2000, but modify to strike the provision that Paul pay her \$1000 a month thereafter. We award no appellate attorney fees as the parties have ample assets to pay their attorneys. Costs on appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.