

IN THE COURT OF APPEALS OF IOWA

No. 0-395 / 09-1479
Filed June 30, 2010

**IN RE THE MARRIAGE OF STEVEN LAUDE
AND WENDY LAUDE**

**Upon the Petition of
STEVEN LAUDE,**
Petitioner-Appellant,

**And Concerning
WENDY LAUDE,**
Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, Mary E. Howes,
Judge.

Steven Laude appeals from the property division provisions of the decree
dissolving the parties' marriage. **AFFIRMED.**

Robert S. Gallagher of Gallagher, Millage & Gallagher, P.L.C., Davenport,
for appellant.

Catherine Cartee and Christine Frederick of Zamora, Taylor, Woods &
Frederick, Davenport, for appellee.

Considered by Vaitheswaran, P.J., and Doyle and Tabor, JJ.

DOYLE, J.

Steven Laude appeals from the property division provisions of the decree dissolving the parties' marriage. He claims the district court erred in awarding Wendy Laude all of the proceeds from a medical malpractice settlement received during the marriage. Upon our de novo review, we affirm the judgment of the district court.

I. Background Facts and Proceedings.

Steven and Wendy Laude were married in July 1982. Steven had graduated that summer from Drake University with a master's degree in business administration. He obtained a job in Des Moines as a fixed-income analyst earning approximately \$21,255 gross per year. By the time he left that company in 1989, he was earning \$88,867 gross per year.

Steven and Wendy moved to Chicago in 1989 where Steven obtained employment with another large company doing investment work. When his employment with that company ended in 1997, he was earning \$280,367 gross per year. Wendy's career was secondary to Steven's during the early part of their marriage. The most she earned was \$22,940 in 1989. After Steven and Wendy's son was born in 1993, Wendy chose to stay home with him and has not worked since.

In November 1995, Wendy was diagnosed with stage four cervical cancer. She immediately underwent a radical hysterectomy. At her six-week post-operative appointment, she learned that three of her annual pap smears had been misread, allowing her cancer to progress to its advanced stage.

In April 1996, Wendy became ill and drove herself to the emergency room. She discovered cancer had developed on one of her ovaries, which had then burst, filling her abdomen with fluid. Surgery was performed immediately. Both of her ovaries were removed, causing premature menopause. After the surgery, Wendy underwent radiation and chemotherapy treatments for one year. The chemotherapy caused severe side effects, such as nausea, vomiting, and loss of hair. Steven did not attend any of Wendy's treatments.

While Wendy was undergoing chemotherapy, she and Steven filed a medical malpractice lawsuit against the hospitals and laboratory where her pap smears were misread. Wendy requested compensation for her physical injuries, pain and suffering, and medical expenses while Steven requested compensation for loss of consortium. Steven and Wendy ultimately settled the lawsuit in January 1998 for \$3.5 million dollars. After attorney fees and expenses were deducted, they received \$2,735,063.89.

Steven placed that money into an Edward Jones account with an existing balance of \$147,000. He and Wendy moved to Minnesota where Steven worked for a short time until deciding to move back to Iowa. Upon returning to Iowa in 1999, Steven chose to not seek any employment aside from a part-time adjunct teaching position at a community college. He earned a few thousand dollars per year from that position until 2005 when he stopped working altogether. After Steven ceased working, he and Wendy had to purchase private health insurance for their family at a cost of about \$10,000 per year.

Steven filed a petition for dissolution of marriage in October 2008. He moved out of the parties' home and into an apartment. Wendy took out a

\$274,000 loan on the Edward Jones account, which she used to purchase a new home for herself and the parties' child. Steven and Wendy realized \$651,884 from the sale of their home in June 2009. That money was placed into Wendy's attorney's trust account pending the dissolution trial, which was held in September 2009.

At the time of the trial, the parties had \$1,999,839 remaining in the Edward Jones account plus Wendy's loan of \$274,000. Steven credited himself with obtaining and preserving the money from the settlement, testifying:

[S]o what I came up with was a settlement offer that was premised on a couple of key points. One, that we would get enough money in the settlement to pay the lawyers per the retainer agreement and net out enough money that it could be invested conservatively in a manner that would produce enough annual income for us to live off of.

. . . .
. . . I immediately invested it consistent with the way that amount was negotiated and have managed it that way ever since and have protected the integrity of those assets for over a ten-year period so that they would, in fact, be there and available . . . and we have lived off those assets for a ten-plus-year period. . . .

Wendy, however, testified that she believed the settlement proceeds would be used for her future medical expenses, not as the family's primary source of income. She testified she never dreamed that Steven would not pursue another job after they received the settlement.

Following the trial, the district court entered a decree dissolving the parties' marriage and awarding Wendy all but \$147,000 of the Edward Jones account, finding most of the settlement proceeds should go to her because (1) it was "awarded based on Wendy's blood, sweat and tears from misdiagnosis of a very severe and aggressive form of cervical cancer"; (2) "Steve had a loss of

consortium claim and has had the benefit of that claim by not working for the last nine years”; (3) “Steve has an excellent education as compared to Wendy. . . . and thus, much higher earning capabilities than Wendy”; and (4) “[t]here are ample other liquid assets to award Steve so his standard of living should remain the same until he can find employment in his field.” The court found \$147,000 of the account should go to Steven because this “was mainly his work earnings that were accumulated during the marriage.” Steven’s asset award totaled \$806,876, while Wendy was awarded more than \$2.5 million in assets.

Steven appeals.

II. Scope and Standards of Review.

Our scope of review is de novo. Iowa R. App. P. 6.907 (2009); *In re Marriage of Fennelly*, 737 N.W.2d 97, 100 (Iowa 2007). Although not bound by the district court’s factual findings, we give them weight, especially when assessing the credibility of witnesses. Iowa R. App. P. 6.904(3)(g); *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006).

III. Discussion.

In *In re Marriage of McNerney*, 417 N.W.2d 205, 208 (Iowa 1987), our supreme court held that proceeds of a personal injury claim are marital assets subject to equitable distribution. The court concluded it is “more just to allow a trial court the flexibility to divide the property equitably on a case-by-case basis. . . . Settlement proceeds thus do not automatically belong to either party.” *McNerney*, 417 N.W.2d at 208. This approach allows courts to consider the statutory factors used in reaching an equitable distribution of all property, including “the age and physical health of the parties, earning capacity of the

parties, economic circumstances of each party, including future interest, and any other relevant factors.” *In re Marriage of Schriener*, 695 N.W.2d 493, 499 (Iowa 2005); see also Iowa Code § 598.21(5) (2007). “These factors authorize the court to consider the disability of an injured spouse and could support an award of a larger portion of property to a disabled spouse, including a larger portion, or all,” of the proceeds from a personal injury claim. *Schriener*, 695 N.W.2d at 499.

In the end, the award, one way or the other, is a product of both the items of property included in the divisible estate and all other relevant factors that impact the equitable distribution of that property. An equitable distribution does not mean an equal division.

Id. With these principles in mind, we conclude the district court’s unequal division of the settlement proceeds in this case was equitable.

Steven first argues he is entitled to one-half of the remaining settlement proceeds because “it is clear that [he] had an interest in the lawsuit and a portion of the settlement was meant to compensate him for any injuries he suffered, as well as those suffered by the marital estate.” Because the parties settled their medical malpractice action, there is no evidence in the record as to what percentage of the \$3.5 million settlement was meant to compensate Steven for his loss of consortium claim. However, it is reasonable to assume, as the district court did, that only a small percentage of the award would have been allocated to Steven for that claim because he

was not the kind of spouse that never left his ill wife’s side. He continued to work during his wife’s illness, although he did take some time off, and [the parties’ child] and his wife were basically cared for by her relatives and someone hired to help . . . during her extreme illness. At this point in time, it is Wendy that has to live with the 11-inch scars, pain and suffering, and the inability to have

a normal intimate relationship with another person following the dissolution.

See *Spaur v. Owens-Corning Fiberglas Corp.*, 510 N.W.2d 854, 869 (Iowa 1994) (“Damages for consortium compensate ‘for the loss of such intangible elements as company, cooperation, affection and aid.’” (citation omitted)). The court concluded, and we agree, that Steven received the benefit of his loss of consortium claim by not working and living off the settlement proceeds for the latter portion of the parties’ marriage. It seems equitable to award the amount remaining from the settlement to Wendy so that she is adequately compensated for her physical injuries, pain and suffering, and future medical expenses.

Steven nevertheless argues he is entitled to a greater portion of the settlement proceeds because he helped preserve the money through his investing acumen. In support of this argument, he cites the factors used to determine whether inherited or gifted property should be included in the marital estate. See *In re Marriage of Goodwin*, 606 N.W.2d 315, 319 (Iowa 2000) (stating one such factor is the contributions of the parties toward the property, its care, preservation or improvement). Regardless of whether these are appropriate factors to consider in equitably dividing proceeds from a personal injury claim, we wholeheartedly agree with the district court upon our de novo review of the record that Steven’s “proposition that the money is still there due to his financial mastery is exaggerated.” As the district court stated,

Certainly the money was invested conservatively and [Steven] had a say in that. However, the money is with Edward Jones and the investments are made in consultation with their Edward Jones consultant . . . who managed the portfolio. . . . There is no proof what the amount would be if Steve had not helped in the investing. The Court also considers the fact if he continued to work the

couple's assets would be significantly more to argue against this reasoning of Steve's.

Steven finally argues that because he and Wendy enjoyed a substantial rise in their standard of living as a result of the settlement proceeds, the money should be divided equally between them. This argument is again based on the factors used in determining whether inherited or gifted property should be divided. See *id.* at 320 (“[W]here the parties have enjoyed, over a lengthy period of time, a substantial rise in their standard of living as the result of gifts or inheritances, then any division of property should enable the parties to continue that lifestyle, even if that goal requires the division of gifted property.”). We find other factors used in making an equitable division of property more relevant here. Those include the age and health of the parties and their respective earning capacities. See Iowa Code § 598.21(5)(d), (f).

As the district court found, Steven was only fifty years old and in extremely good health at the time of the trial. After he stopped working, he spent the majority of his time training for and running in marathons, often exercising for three hours a day, six days a week. Wendy, on the other hand, lives with the specter of cancer in her life. Routine medical problems for other individuals are much more serious for Wendy due to her medical history. Although she has been cancer-free for a significant period of time, she continues to suffer serious physical side-effects from her surgeries that affect her daily and require her to take medication.

In addition to being in better physical health than Wendy, Steven also has a much greater earning capacity. He has a master's degree in business

administration and grossed \$280,367 in 1997 when he was last fully employed. Wendy does not have a college degree and at her highest paying job earned only \$22,940. She has not worked since 1993 when the parties' child was born. We agree with the district court that Steven is

very capable of supporting himself in future years. He is only 50 years old, and although there is a recession in the financial field, based on his education, abilities and previous work experience, there is no reason that he could not find employment.

The substantial amount of assets awarded to Steven—approximately \$806,876—will allow him to maintain the standard of living he has become accustomed to until he is able to find a job in his field. See Iowa Code § 598.21(5)(f).

Finally, we consider the fact that Wendy should have the settlement funds available to her should her cancer return. See *id.* § 598.21(5)(m). Wendy testified she worries “every day that I will have a cancer recurrence. We have got a \$1,000,000 lifetime max. I’m scared all the time that I will either be uninsurable or be having to pay incredible out-of-pocket costs.” Wendy needs these funds, as she is in a much more vulnerable financial position than Steven given her physical ailments, lower earning capacity, and potentially large future medical expenses.

IV. Conclusion.

For the foregoing reasons, we affirm the district court's division of the settlement proceeds the parties received from Wendy's medical malpractice claim.

AFFIRMED.