IN THE COURT OF APPEALS OF IOWA

No. 2-008 / 11-0144
Filed March 14, 2012

IN RE THE MARRIAGE OF LARRY G. CHARTIER AND JUDITH D. CHARTIER

Upon the Petition of
LARRY G. CHARTIER,
Petitioner-Appellee,

And Concerning
JUDITH D. CHARTIER,
Respondent-Appellant.

Appeal from the Iowa District Court for Carroll County, Gary L. McMinimee, Judge.

Judith Chartier appeals from the economic provisions of the parties' dissolution decree. **AFFIRMED.**

Alice S. Horneber of Horneber Law Firm, Sioux City, for appellant.

Julie G. Mayhall of Green, Siemann, and Greteman, P.L.C., Carroll, for appellee.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

DANILSON, J.

Judith Chartier appeals from the economic provisions of the parties' dissolution decree. She contends the court's division of the parties' property is inequitable, and specifically that she should have been awarded the entirety of the retirement funds held in her name. Judith also argues she should have been awarded alimony and attorney fees. We affirm the property division and agree with the district court that alimony is not appropriate in this case. We reach this decision after considering many factors, including the length of the parties' marriage; their relative ages, incomes, expenses, assets, debts, earning capacities and health conditions; and the fact Judith was awarded a greater share of the assets. We affirm the court's decision declining to award trial attorney fees to Judith, and we decline to award appellate attorney fees.

I. Background Facts and Proceedings.

Larry and Judith Chartier married in 1975, separated in April 2010, and divorced in December 2010. Larry is sixty-three years old. Currently, his health is stable, but he has experienced serious health issues, including cancer, a stroke, and depression. He has been hospitalized for mental health issues. Judith is sixty-six years old. She is not in good health. She has suffered a heart attack, recently had a kidney transplant, and states she takes approximately fifty pills a day. She has been determined to be disabled and receives social security disability payments.

This was the second marriage for both parties. Larry had three children in his prior marriage, and he paid child support for those children during his

marriage to Judith. Judith had two children in her prior marriage, which the parties raised together after they married. Larry and Judith had one child together, who is now an adult. Larry and Judith both reside in Carroll: Judith lives in a condominium that was the parties' marital home, and Larry rents an apartment.

Both parties worked throughout the marriage and are now retired. Larry is a high school graduate. He opened the Army reserve unit in Carroll in 1974 and left the military in 2006. In 1977, he began working for Farmland Foods, where he accepted a management position in 1983, and worked until he retired in 2006. Larry has worked sporadically since that time, including mowing for the City of Carroll, babysitting his grandchild, and working for Wal-Mart and Graphic Edge. He currently does "odd jobs" for his apartment complex in lieu of paying rent and earns an additional $100 per month. He states his health would not allow him to work full-time. Larry receives a lifetime pension payment of approximately $1252 per month from his employment with Farmland Foods, as well as social security in the amount of $1532 per month. He does not have health insurance and claims he cannot afford it.

Judith has a G.E.D. She worked for General Electric for nineteen years and then for Delevan until 2009. She receives approximately $950 per month in lifetime pension payments from those employers and $1140 per month in social security disability payments (after deductions for Medicare and prescription drug insurance, and federal tax withholding).

During the first few years of the parties' marriage, Judith managed the parties' finances. When the family encountered financial difficulties, Larry took over payment of the bills. Larry paid bills and family expenses out of the family account where he deposited his income. Judith sometimes contributed to the family account, but for the most part kept her income separate, contributing heavily to her retirement and savings accounts. However, Larry's income was not sufficient for the family's lifestyle, and he began incurring debt which grew with the years, even though during 2007 and 2009, he cashed in his IRA containing nearly $80,000 to pay down debts incurred by the family's expenses.

In 1975, when the parties married, they purchased a home in Carroll for $35,500. Judith sold the home she had received in the dissolution of her first marriage and used the $10,000 net proceeds as a down payment on the parties' home. The parties later moved into a different home, and then in 2005, they purchased the condominium where Judith now resides. In 2007, Judith upgraded the kitchen and bathroom, which she paid for out of her retirement accounts. In 2010, she remodeled the spare bathroom. In January 2010, the parties refinanced the condominium, and paid off $20,006 in credit card debt, and $12,744 owed on a Saturn car loan. The condominium is worth $125,000 and has a $97,983 mortgage. The monthly payment on the condominium is $881.

At the dissolution trial, Larry requested the court divide Judith's retirement and investment accounts equally between the parties. Judith had an Edward Jones account worth $15,738, a Cincinnati Insurance account worth $103,272, and a UBI IRA worth $47,225. Larry stated "all of those assets were earned

during the marriage" and should "be considered marital property." Larry further testified he "paid all the bills, family bills" for many years and "didn't get any money" from Judith, while Judith "has always had her own money" and "the topic" of where Judith's money went was "not allowed" to be brought up. Larry admitted he did not have any 401Ks or retirement accounts left because he had to "cash them out" over the years to pay family debts.

Judith requested the court award her "all of her own accounts." She stated she "chose to save [her] money throughout the years," whereas Larry "chose to spend all his." She explained the accounts include "the money that [she] set aside for retirement" and that they "are just in [her] name." She further stated she felt Larry "did not manage his money well," and she did not think she "should have to give him part of [her] retirement for him to squander."

Judith further stated Larry should be required to pay her alimony in the amount of $350 for 120 months. She explained that Larry had the ability to earn some kind of money on a part-time basis, whereas her health did not permit her to work. She stated she was required to take money out of her investment account in order to pay monthly expenses. Larry requested the court refrain from awarding Judith alimony. He explained he had incurred a "substantial amount of debt post-separation" to take care of monthly bills, whereas Judith was "able to utilize her savings account and retirement account to avoid incurring that kind of debt." He also believed Judith was "able to provide for herself."

The parties agreed Judith would take over the condominium, but Judith alleged that in doing so, she was "also taking over [approximately] $35,000 worth

of debt which was Larry's" for the Saturn vehicle and credit card debts, which her "name was not on." Specifically, Judith stated she disagreed with the parties' use of the funds received from refinancing the condominium in January 2010 to pay off the $12,744 car loan on the Saturn vehicle and $20,006 in credit card debt, because the Saturn was Larry's vehicle, and the credit cards were not in her name. She alleged Larry had "long planned" to get money from the refinance to pay off bills before asking her for a divorce. Therefore, Judith stated she should receive a "credit for paying [Larry's debts] for him" to "balance out any equity he might have in the home."

In December 2010, the district court entered its decree dissolving the parties' marriage. The court divided the parties' personal property according to the party in possession, as the parties (for the most part) had agreed. The court divided the debt that was incurred during the parties' marriage for the benefit of the family, and separated the credit card debts the parties agreed were non-marital. The court awarded the condominium with indebtedness to Judith, finding the monies received by the 2010 refinance were used to pay marital debts, and declined to award Judith a credit she requested.

The court divided Judith's retirement and investment accounts (the Edward Jones account worth $15,738 and the Cincinnati Insurance account worth $103,272) equally between the parties. The court further ordered Judith receive five percent and Larry receive ninety-five percent of the UBI IRA worth $47,225 that was solely in Judith's name. In reaching these conclusions, the court noted:

> Judith appears to contend that the court should divide the property in accordance with the assets a party has controlled and the debts a party has incurred during their marriage. Although the parties did not jointly manage their finances, there is no evidence that either party wasted assets or did not attempt to manage finances for the benefit of the parties. Accordingly, the court considers their management style of minimal significance.

The court declined to award alimony to Judith as she requested. The court observed:

> Considering the parties' long term marriage, their relative ages, their relative health conditions, their relative incomes, the sources of their incomes, and their relative expenses and debt, awarding Judith a somewhat greater share of the property in lieu of alimony is appropriate.

As the court further noted:

> Considering the length of the marriage and the respective contributions of the parties to the marriage, together with the lack of an alimony award herein, an equitable distribution of the parties' net worth should be a distribution that approximates an equal division, but also takes into consideration Judith's health and that Larry still enjoys some earning capacity.

The court's property division resulted in Judith receiving net assets of $106,832 and Larry receiving net assets of $97,700, a disparity of $9132. The court denied Judith's request that Larry be required to pay her attorney fees and ordered each party to pay his or her own attorney fees. Judith now appeals.

II. Scope and Standard of Review.

An action for dissolution of marriage is an equitable proceeding, so our review is de novo. Iowa R. App. P. 6.907; *In re Marriage of Fennelly*, 737 N.W.2d 97, 100 (Iowa 2007). In equity cases, we give weight to the fact findings of the district court, especially on credibility issues, but we are not bound by the court's findings. Iowa R. App. P. 6.904(3)(*g*). We examine the entire record and

adjudicate anew rights on the issues properly presented. *In re Marriage of Ales*, 592 N.W.2d 698, 702 (Iowa Ct. App. 1999).

III. Property and Alimony Issues.

Property division and alimony should be considered together in evaluating their individual sufficiency. *In re Marriage of Trickey*, 589 N.W.2d 753, 756 (Iowa Ct. App. 1998). Alimony is not an absolute right; an award depends upon the circumstances of the particular case. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). In making an award of alimony, the court considers the factors set forth in Iowa Code section 598.21A(1) (2009). *See In re Marriage of Olson*, 705 N.W.2d 312, 315 (Iowa 2005).

A. Property Division.

The ultimate goal of the property division is to divide all property equitably between the parties. *See* Iowa Code § 598.21(5). "Equitable distribution depends upon the circumstances of each case." *See In re Marriage of Hansen*, 733 N.W.2d 683, 702 (Iowa 2007). An equitable division is not necessarily an equal division. *Anliker*, 694 N.W.2d at 542.

Judith contends the district court's distribution of the parties' assets and debts is inequitable. She alleges the court "awarded the condominium and indebtedness to Judith, basically divided the personal property according to the party in possession, and divested Judith of almost one-half of the value of the four retirement securities accounts in her sole name." Specifically, Judith claims the "most problematic" portion of the decree is the court's divesting her of her interest in: fifty percent of the Cincinnati Insurance account; fifty percent of the

Edward Jones account, and ninety-five percent of the UBI IRA. She also argues the court failed to account for her contribution to the down payment for the parties' first home and "significant other assets" she brought into the marriage. She alleges Larry strategically waited to bring this dissolution action until after he could "obtain $35,000 in home equity money" from the condominium refinance to pay off his debts, at which time he filed for dissolution "so as to also obtain Judith's retirement monies." Judith also states the record "is replete with evidence that Larry squandered monies he earned both while working and as a result of his retirement."

Upon our de novo review of the contentions Judith has raised on appeal, we conclude the district court's property division is equitable under the facts and circumstances in this case. Both parties claimed the other wasted assets. In reaching its decision, the district court considered the testimony of the parties and specifically concluded that despite the fact "the parties did not jointly manage their finances, there is no evidence that either party wasted assets or did not attempt to manage finances for the benefit of the parties." The court also found the parties' "management style" of their marital finances "of minimal significance," and did not agree with Judith's request that the court "should divide the property in accordance with the assets a party has controlled and the debts a party has incurred during their marriage."

Specifically, one of Judith's complaints is she is being "forced to pay" for the "$35,000 windfall" Larry obtained in condominium equity. Contrary to Judith's assertion at trial, the district court construed this $35,000 debt as marital debt.

Moreover, if the $35,000 in marital debt had not been paid by refinancing the condominium, the debt would still exist. If the debt had still existed at the time of trial and the decree had allocated the debt to Larry, he would have been entitled to more assets than he was awarded by the district court to offset the additional debt. Thus, we do not agree that Larry obtained a "windfall."

In respect to the Judith's premarital assets, her vehicle and the contribution to the down payment of the parties' first home, the district court stated: "Considering the length of the marriage and that the parties have lived in several homes and had several vehicles, premarital property is of minimal significance."

Section 598.21(5) requires the court to divide "all property, except inherited property or gifts received by one party" equitably between the parties. "This broad declaration means the property included in the divisible estate includes not only property acquired during the marriage by one or both of the parties, but property owned prior to the marriage by a party." *In re Marriage of Schriner*, 695 N.W.2d 493, 496 (Iowa 2005) (citing *In re Marriage of Brainard*, 523 N.W.2d 611, 616 (Iowa Ct. App. 1994)).

Premarital property is not set aside like gifted and inherited property. *Fennelly*, 737 N.W.2d at 102; *In re Marriage of Miller*, 552 N.W.2d 460, 465 (Iowa Ct. App. 1996). The district court should not separate a premarital asset from the divisible estate and automatically award it to the spouse who owned it prior to the marriage. *Fennelly*, 737 N.W.2d at 102; *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). Rather, property brought into the marriage by a party is

merely a factor among many to be considered under section 598.21(5). *Schriner*, 695 N.W.2d at 496. "This factor may justify full credit, but does not require it." *Miller*, 552 N.W.2d at 465. Other factors under section 598.21(5) include the length of the marriage, contributions of each party to the marriage, the age and health of the parties, each party's earning capacity, and any other factor the court may determine to be relevant to any given case. *See Fennelly*, 737 N.W.2d at 102. Here, we agree that in view of the substantial length of the marriage and the fact the vehicle and the home upon which the down payment was furnished have long been sold, Judith's premarital financial contributions should not be given great weight. Substantially equal property awards to each spouse are generally appropriate in long-term marriages. *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993).

We give strong deference to the court which, after sorting through the testimony and economic details of the parties, made a fair division supported by the record. *See In re Marriage of Vieth*, 591 N.W.2d 639, 641 (Iowa Ct. App. 1999).

> This deference to the trial court's determination is decidedly in the public interest. When appellate courts unduly refine these important, but often conjectural, judgment calls, they thereby foster appeals in hosts of cases, at staggering expense to the parties wholly disproportionate to any benefit they might hope to realize.

In re Marriage of Benson, 545 N.W.2d 252, 257 (Iowa 1996). After careful review of the evidence, we find the distribution was equitable. We will not disturb it on appeal.

B. Alimony.

Judith argues the district court erred in failing to grant her request of $350 per month in alimony for ten years. Judith contends an award of alimony is appropriate in this case, considering she "will never physically be able to work or increase her income," whereas Larry "is capable of, and does, earn up to $18 per hour." She further alleges that "[i]f the trial court awarded her a greater share of the property in lieu of alimony, that greater share is of little note." The alimony Judith requests is best characterized as traditional spousal support, payable so long as Judith is "incapable of self-support" to allow her to "maintain the same standard of living she enjoyed during the marriage." *See In re Marriage of Becker*, 756 N.W.2d 822, 826-27 (Iowa 2008). Although our review is de novo, the district court is given considerable latitude in determining spousal support. *See Anliker*, 694 N.W.2d at 540. "We will disturb that determination only when there has been a failure to do equity." *Id.*

Despite Larry's ability to earn some amount of money in his retirement, we agree an award of alimony is not appropriate in this case. Larry is sixty-three years old and has had serious health issues. He testified these health issues prevent him from having full-time employment. As the court observed, Larry is able to do some "odd jobs" at his apartment complex, which pays for his rent ($475 per month) plus approximately $100 per month. According to the evidence in the record, Larry is barely able to meet his own monthly financial obligations and is unable to afford health insurance.[1]

[1] His financial affidavit reports his net monthly income is approximately $2500 and his monthly expenses are approximately $2700.

Although Judith cannot work due to her health, she receives pension payments each month, as well as social security disability. She has health insurance. We acknowledge her financial difficulties but find there is minimal disparity between the parties' earning capacities, and considering the assets and realistic needs of the parties, Larry is financially unable to pay spousal support to Judith in this case. *See* Iowa Code § 598.21A(1); *Becker*, 756 N.W.2d at 826; *In re Marriage of Stark*, 542 N.W.2d 260, 262-63 (Iowa Ct. App. 1995) (balancing recipient's need with payor's ability to pay). We conclude the court's decision was equitable.

IV. Attorney Fees.

Judith argues the court erred in failing to award her attorney fees and costs. Attorney fee awards are not a matter of right but rather rest within the discretion of the court. *Benson*, 545 N.W.2d at 258. An award of trial attorney fees is reviewed for an abuse of discretion. *Sullins*, 715 N.W.2d at 255. Considering the parties' respective financial conditions and abilities to pay attorney fees at the time of trial, we conclude the district court did not abuse its discretion in ordering the parties to pay their own fees and share the costs. *See id.*

Judith also contends she should receive appellate attorney fees. When determining whether to award such fees, "we look to the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal."

In re Marriage of Romanelli, 570 N.W.2d 761, 765 (Iowa 1997). Here, we decline to award Judith any appellate attorney fees.

V. Conclusion.

We affirm the property division and agree alimony is not appropriate in this case. We reach this decision after considering many factors, including the length of the marriage; the parties' relative ages, incomes, expenses, assets, debts, earning capacities, and health conditions; and the lack of evidence either party wasted assets or did not attempt to manage finances for the benefit of the parties during their marriage. We affirm the court's decision declining to award trial attorney fees to Judith. We further decline to award appellate attorney fees. Costs of appeal are assessed to Judith.

AFFIRMED.