IN THE COURT OF APPEALS OF IOWA

No. 3-1118 / 13-0697
Filed January 23, 2014

IN RE THE MARRIAGE OF THERESA LYNN CALHOUN AND JOSEPH ALLEN CALHOUN

Upon the Petition of
THERESA LYNN CALHOUN,
Petitioner-Appellee/Cross-Appellant,

And Concerning
JOSEPH ALLEN CALHOUN,
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Jefferson County, Lucy J. Gamon, Judge.

A husband appeals the economic provisions of the district court's dissolution decree. The wife cross-appeals. **AFFIRMED.**

Michael R. Brown of Brown Law Office, P.C., Fairfield, for appellant.

J. Terrence Denefe of Denefe, Gardner, & Zingg, P.C., Ottumwa, for appellee.

Considered by Danilson, C.J., and Vaitheswaran and Potterfield, JJ.

DANILSON, C.J.

Joseph Calhoun appeals the economic provisions of the dissolution decree and the ruling on a motion to enlarge and amend. Specifically, he appeals the district court's award to him of twenty-five percent of the appreciation in farmland. He also appeals the court's distribution of property. Theresa Calhoun cross-appeals the economic provisions. She contends it was inequitable for the court to award any of the appreciation of the farmland to Joseph. She contends the equalization payment to Joseph was inequitable. We conclude Joseph contributed to the increase in the value of the farmland with his monies and labor but determine the overall property distribution was equitable to both parties. Upon our de novo review, we affirm.

I. Background Facts and Proceedings.

Theresa and Joseph were married on September 8, 2011. The parties had no children together. Theresa filed a petition for dissolution on November 29, 2011. Trial was held on February 15, 2013, and the district court filed the dissolution decree on February 25, 2013.

At the time of the dissolution hearing, Theresa was forty-three years old and employed by Hy-Vee, where she earned $9.00 per hour. She worked between eight and eighteen hours per week and took care of her father with her remaining time. Joseph was fifty-three years old and was unemployed. He received social security disability benefits in the net amount of $1200 per month.

Prior to the parties' marriage, Theresa received gifts of two farms from her father. The Packwood farm was purchased for $200,000 shortly before the

parties married, although testimony at the dissolution hearing indicated the property was worth $278,500 at the time Theresa and Joseph married. The Henry County farm was purchased for $212,000, although testimony indicated it was worth $262,000 at the time the parties married in September 2011.

It was undisputed that during the parties' marriage, Joseph expended considerable time and money to convert the farms for row crops. As the district court summarized:

> When the parties were married, both farms were primarily pasture ground, and the home on the Packwood farm was in need of improvements. Respondent expended considerable time and money to convert these farms for row crops use, a use which he claimed makes the farms more profitable. With respect to the Packwood farm home, Respondent cleaned around the home and outbuildings, removed fences and trees, hauled away trash and debris, helped to construct a pole barn, did general landscaping, and performed other jobs as shown on Respondent's Exhibit D. With respect to the 37 acres of pasture on the Packwood farm, Respondent removed all fencing, old farm equipment, old tires in the pasture, helped tile and terrace the pasture, spread lime and fertilizer in the pasture, and generally prepared it for row cropping purposes. Respondent also paid out cash to effectuate these general improvements in the total sum of $21,212.80.
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> With respect to the Henry County farm, Respondent cleared the railroad area on the edge of the property, cleared the fence, cut all trees out of the fence line, repaired the fence, cut out old tree limbs and brush, and repaired waterways. He then cleared the fields, including removing rocks, filling in ditches, removing weeds and brush, and mowing and spraying the fields. Respondent also paid out cash to effectuate these general improvements in the total sum of $4,507.21.

Undisputed testimony at the dissolution hearing showed the value of the farmland increased dramatically during the parties' short marriage. Dwight Duwa, an auctioneer with thirty-seven years' experience in selling farm real estate testified the Packwood farm was worth $354,112.50 at the time of trial. He

testified the Henry County farm was worth $397,500. He attributed the increase in value to both the general increase in farmland prices over the time period as well as the improvements made to the properties by Joseph.

In the dissolution decree, the court awarded Joseph fifty percent of the appreciation in value or $105,556.25. Following the decree, Theresa filed a motion to enlarge or amend, claiming it was "wholly unjust" for Joe to receive any money from the "fortuitous increase in value of the two inherited and gifted farms." In response, the court reduced Joseph's award to twenty-five percent of the appreciation in value, or $52,778.12. The court noted the short duration of the marriage, but balanced Joseph's role in the increased value as well as his inability to work full time in making its determination.

Joseph appealed. He argues the court's initial award of fifty percent of the appreciation in value was equitable because of his role in the increased value. He also claims various items awarded to Theresa were gifts he had received and argues the items were not marital property to be divided. He claims a Harley Davidson motorcycle can be traced to premarital funds and is premarital property rather than marital property as determined by the district court. Theresa cross-appeals, contesting the amount of appreciation Joseph was awarded.

II. Standard of Review.

We review equity proceedings de novo. *In re Marriage of Olson*, 705 N.W.2d 312, 313 (Iowa 2005). We give weight to the district court's findings, especially regarding the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.904(3)(g). "Precedent is of little value as our determination must

depend on the facts of the particular case." *In re Marriage of White*, 537 N.W.2d 744, 746 (Iowa 1995).

III. Discussion.

A. Improvements and Appreciation of Farmland.

On appeal, Joseph maintains the district court's decision to award him twenty-five percent of the increase in value of the farmland was inequitable. He asks that we amend the decree to award him half of the increase instead. In her cross-appeal, Theresa maintains it is inequitable for Joseph to receive any of the increase in value and asks that we amend the decree accordingly.

Joseph does not claim the two farms should be subject to division as marital assets. He admits both properties were gifts given to Theresa by her father prior to the parties' marriage. *See* Iowa Code § 598.21(6) (2011) ("Property inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage.") Rather, Joseph argues he should receive half the increase in value because a significant portion of the appreciation was due to his efforts.

Although the marriage was very short in duration, it would be inequitable to award Joseph none of the appreciation of the property, as proposed by Theresa. It is undisputed that Joseph made contributions to the farmland by expending money and labor improving the property—improvements which increased the value. Furthermore, although the marriage was not lengthy, the

parties used the Packwood farm as the marital home and Joseph managed the farms as part of the parties' livelihood, even after the couple separated. *See In re Marriage of Geil*, 508 N.W.2d 738, 741 (Iowa 1993) ("Pertinent factors bearing [on whether inherited property is subject to division] include the length of the marriage; contributions made by either party towards the property's care, preservation or improvement; and the impact of the property on the parties' standard of living."). While we agree that Joseph's labors did not convert the properties into marital assets to be divided, the appreciation of the properties during the time of the marriage is a marital asset. *See In re Marriage of White*, 537 N.W.2d 744, 746 (Iowa 1995) (holding that for the purposes of dividing marital property, inherited property may be set off based on the property's value at the time it was received). However, because the marriage was short, and because Joseph admits a significant portion of the increase in value occurred because of rising farm value, independent of his actions, it is inequitable to award him half the increase in value, as he requests. We also note some of the increase was attributed to a new pole barn installed on one of the properties. Thus, we affirm the district court's award of twenty-five percent of the appreciation in value to Joseph.

B. Division of Property.

On appeal, Joseph lists several items the district court determined were subject to division that Joseph claims were either gifts in whole or part he received or were items he owned prior to marriage that should not have been divided. *See In re Marriage of Schriner*, 695 N.W.2d 493, 496 (Iowa 2005)

("Under our statutory distribution scheme, the first task in dividing property is to determine the property subject to division."). First, we note "[p]roperty may be 'marital' or 'premarital,' but it is all subject to division except for gifts and inherited property." *In re Marriage of Fennelly*, 737 N.W.2d 97, 103 (Iowa 2007). Any claim that Joseph made that an item was premarital and thus not subject to division is inaccurate.

Joseph claims the 2000 Dodge Ram truck, the Hairigator, the Kewanee disk and TYM tractor, and the all-terrain vehicle were items given to him as gifts by either Theresa or her father. Other than his own testimony, he provided no evidence of such an intent, and both Theresa and her father disputed his testimony at the dissolution hearing. *See In re Marriage of McDermott*, 827 N.W.2d 671, 679 (Iowa 2013) ("The donor's intent and the circumstances surrounding the inheritance or gift are the controlling factors used to determine whether inherited property is subject to division as marital property.").

Joseph also contends the truck was purchased in part by a trade-in of an old pickup truck he owned plus $3600 that Teresa gifted him. Teresa claimed she purchased the truck prior to marriage and Thomas failed to pay her the purchase price of $3600.

The district court found Theresa and her father's testimony disputing the gifts was more credible than that of Joseph. Although we are not bound by them, we give weight to the district court's findings, especially regarding the credibility of witnesses. Iowa R. App. P. 6.904(3)(g). We find that Theresa and her father

did not intend any of the enumerated items to be gifts to Joseph, so the items were properly considered as part of the property division.

Joseph also claimed the purchase price of the 2013 Harley Davidson motorcycle could be traced to premarital funds and should not have been considered a marital asset. However, we find the evidence too nebulous to support Joseph's claim. Moreover, even if some of the funds used to purchase the motorcycle were premarital funds, we conclude the overall property distribution to the parties was equitable.

Costs of this appeal are assessed one-half to each party.

AFFIRMED.