

IN THE COURT OF APPEALS OF IOWA

No. 3-130 / 12-0765
Filed July 10, 2013

**IN RE THE MARRIAGE OF CINDY LEE HARTER
AND STEVEN WAYNE HARTER**

**Upon the Petition of
CINDY LEE HARTER,**
Petitioner-Appellee,

**And Concerning
STEVEN WAYNE HARTER,**
Respondent-Appell.

Appeal from the Iowa District Court for Pottawattamie County, Timothy O'Grady, Judge.

A husband appeals the property division and spousal support provisions of a dissolution decree. **AFFIRMED AS MODIFIED.**

Joseph J. Hrvol of Joseph J. Hrvol, P.C., Council Bluffs, for appellant.

John W. Kocourek, Council Bluffs, for appellee.

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

VAITHESWARAN, P.J.

Steven Harter appeals the economic provisions of a decree dissolving his marriage to Cindy Harter. He contends the court acted inequitably in (A) awarding Cindy credit for half the fair market value of the marital home, (B) failing to find that a recreational vehicle, or some portion of it, was a gift to him, (C) awarding rehabilitative spousal support “in an excessive amount and for an excessive duration,” and (D) ordering him to maintain a life insurance policy to secure the spousal support obligation.

I. Background Facts and Proceedings

Cindy and Steven married in 1991. They had two children who were adults at the time of the divorce proceedings and are not a subject of this appeal.

Steven’s parents owned a company that employed both Cindy and Steven for a period of time. They gave Steven large amounts of cash “to make ends meet.” Steven’s father also purchased a \$92,500 home for the couple in Treynor and Steven’s mother funded the purchase of a recreational vehicle.

Steven’s parents eventually sold the company and placed their assets into a trust for the benefit of their children and grandchildren. After their death, the trust began making disbursements to Steven of \$6000 per month and, later, \$10,000 per month. The couple’s sole source of income was this trust disbursement.

In 2011, Cindy petitioned for a dissolution of the marriage. Following trial, the district court divided the property and ordered Steven to pay Cindy an equalizing payment of \$133,270. The court also awarded Cindy rehabilitative spousal support of \$3500 per month for one hundred and twenty months, with

the payments to “immediately cease” upon the death of either party or Cindy’s remarriage. In a subsequent order, the court directed Steven to purchase and keep in effect a declining life insurance policy naming Cindy as beneficiary. The policy was to secure his spousal support obligation. The court also ordered Steven to pay \$4000 toward Cindy’s attorney fees. Steven appealed.

II. Analysis

A. Home

As noted, Steven’s parents paid \$92,500 to purchase a home for the parties. Steven and Cindy obtained a home equity loan to make improvements. They ultimately paid off the loan with trust funds. At trial, Cindy requested an equal division of the home’s fair market value.

The district court found that the home was a gift from Steven’s father to both Cindy and Steven and was subject to division. The court reasoned as follows:

The Closing Statement stated that the Buyers were Steven and Cindy L. Harter. Cindy and Steven were the contracting parties in the Purchase Agreement The Deed . . . was issued to Steven W. Harter and Cindy L. Harter, Husband and Wife, as Joint Tenants with full rights of survivorship and not as tenants in common. Steven and Cindy lived at the Treynor property for fifteen years and they raised their children there. Taxes and expenses to maintain the Treynor property were paid from marital funds after 1996.

In its subsequent order the court also noted:

An agreement reached with the Trustee when the encumbrances against the house were paid off in 2007 was a joint agreement between Steven and Cindy and the Trustee.

The court valued the home at \$172,160 and ordered its sale and an equal division of the proceeds.

On appeal, Steven contends the district court “erred in awarding Cindy . . . one half the fair market value” because “it is undisputed” the home was a gift to him from his father. See Iowa Code § 598.21(6) (2011) (stating property gifted solely to one of the parties is not subject to division). Steven further contends Cindy should not have received credit for the pay-off of the improvement loan because that money came from a trust distribution. He argues \$167,885.15 comprised of the original value of the home (\$92,500) plus the remodeling mortgage pay-off (\$75,385.15) should have been placed on his side of the ledger “with the balance of approximately \$4300 to be divided between the parties.”

The overwhelming evidence of record, ably summarized by the district court, establishes that the home was not an exclusive gift to Steven. But, even if it were, the home was used by the couple through most of their lengthy marriage and was improved with marital funds, rendering it inequitable to set aside the property to Steven. *Id.*

B. Recreational Vehicle

The district court also ordered the sale of the recreational vehicle, with the proceeds to be divided equally. Steven argues that the RV was a gift that should have been set aside to him. The record does not support his assertion. Steven’s mother wrote a check to Cindy for the purchase of the recreational vehicle. The RV belonged to both parties and the sale proceeds were subject to division, as the district court determined.

C. Spousal Support

As noted, the district court ordered Steven to pay Cindy rehabilitative spousal support of \$3500 per month for 120 months. The court reasoned as follows:

This has been a twenty year marriage. Steven is sixty years of age and he has some health issues. Steven is retired and he is not likely to receive any income other than distributions from his Trust. Distributions from the Trust have exceeded Trust income over recent years, and at the present pay-out rate, the Trust may only last another eleven years or so. Cindy is forty-six years of age and she is in good health. There were no prenuptial agreements. Neither party brought many assets into the marriage. Cindy was a stay at home mother when the children were young. Neither Steven nor Cindy worked outside the home after 2002, and they enjoyed a lifestyle of leisure and travel. The marital assets are being equally divided. The evidence shows that both parties contributed to the family and household. Steven has been the primary source of family funds both while he was working and after 2002. Steven presently receives distribution from his Trust in the amount of \$10,000 per month. Cindy works full time at minimum wage—gross wages of around \$1,421 per month. There is a significant disparity in ages between Cindy and Steven. There is no likelihood Cindy can achieve the lifestyle on her own that she has enjoyed during the marriage. It is equitable to provide spousal support for Cindy.

In its subsequent order, the court stated:

Steven asks that the alimony award to Cindy be set aside. For the reasons explained in the Decree, including the length of the marriage, the age and health of both parties, the source of the family and household income over the past ten years, the parties' lifestyle over the past ten years, and the ability of each party to earn in the future, the award of alimony to Cindy was proper. Steven's trust is a spendthrift trust and the corpus of the trust cannot be divided or assigned to Cindy as a marital asset. However, Steven's legal obligation to pay spousal support under the Decree and under Iowa law is personal. Once Steven has received a distribution from the trust, the money in his hands is subject to his obligation to pay spousal support. If the trust distributions increase, decrease or stop altogether, Steven's income will change. The same circumstances would apply to Steven and Cindy if they remained married—the amount of the monthly distribution rests with the

Trustee and the duration of the monthly distributions rest with the vagaries of the market and the amount of the monthly distributions. A change in the amount of the monthly distributions in the future may or may not constitute a change of circumstances—but \$10,000 per month is Steven’s income now. The award of alimony based on Steven’s current income and the amount of the award are supported by the evidence and the law.

Steven contends the court’s award is “an excessive amount and for an excessive duration.” On our de novo review of the record, we find evidentiary support for the district court findings. We conclude there was no failure of equity in the court’s award. See *id.* § 598.21A(1) (setting forth criteria for determining spousal support); *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005) (setting forth standard of review).

D. Life Insurance

Following trial, Cindy asked the court to consider protecting her interest in future spousal support by ordering life insurance to secure the support. The district court ordered Steven to “purchase and keep in effect a declining benefit life insurance policy, naming Cindy as beneficiary to secure the spousal support he is ordered to pay.”

Steven claims the order was inequitable because he had no life insurance and no employer, and there is no evidence “concerning his insurability or the cost of coverage for a 60 year-old smoker with high blood pressure.”

In an unpublished opinion, *In re Marriage of Weber*, No.98-1688, 2000 WL 278535, at *9-10 (Iowa Ct. App. Mar. 15, 2000), this court stated:

[A] requirement to maintain life insurance to secure spousal support is permissible. However, because spousal support normally ends upon the death of either party and because there may be substantial costs involved, such a requirement should be imposed only when the cost is known or can be reasonably estimated and

the cost is neither unduly burdensome nor out of proportion to the benefits of providing such security. Further, there should be some significant reason for imposing such a requirement. Possible reasons might include a substantial prior refusal or failure to pay, or some demonstrated need to provide funds beyond the obligor's death.

We are not persuaded that insurance was necessary in this case. The district court ordered Steven to pay spousal support for 120 months and the spousal support was slated to end if either party died. For these reasons, we modify the decree to eliminate the insurance requirement.

E. Appellate Attorney Fees

Cindy seeks an award of appellate attorney fees. An award is discretionary. *In re Marriage of Berning*, 745 N.W.2d 90, 94 (Iowa Ct. App. 2007). Because Steven prevailed on the insurance issue, we decline to award Cindy appellate attorney fees.

III. Disposition

We affirm the property division and spousal support provisions of the dissolution decree. We modify that portion of the decree requiring Steven to carry life insurance to secure the spousal support.

AFFIRMED AS MODIFIED.