

IN THE COURT OF APPEALS OF IOWA

No. 3-195 / 12-1701

Filed April 10, 2013

**IN RE THE MARRIAGE OF KIMBERLY K. GRAMPP
AND WILLIAM T. GRAMPP**

**Upon the Petition of
KIMBERLY K. GRAMPP,**
Petitioner-Appellee/Cross-Appellant,

**And Concerning
WILLIAM T. GRAMPP,**
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Scott County, Paul L. Macek,
Judge.

A husband appeals, and a wife cross-appeals, certain economic provisions of the parties' dissolution decree. **AFFIRMED.**

Richard A. Davidson of Lane & Waterman, L.L.P., Davenport, for
appellant.

M. Leanne Tyler of Tyler & Associates, P.C., for appellee.

Considered by Eisenhauer, C.J., Danilson, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

MILLER, S.J.**I. Background Facts & Proceedings**

William (W.T.) and Kimberly (Kim) Grampp were married in 1994. Kim filed a petition for dissolution of marriage on February 22, 2011. The parties have one child, who was seventeen years old at the time of the dissolution hearing in July 2012. The physical care and support of the child were resolved through stipulation, and are not an issue in this appeal.

At the time of the marriage in 1994 W.T. was the sole shareholder in Grampp Realty, Inc., which was valued at \$152,935. His total assets at that time were worth \$408,973, and included an IRA valued at \$42,009. Kim had net assets worth \$83,658. Shortly before the marriage the parties entered into a premarital agreement which provided Kim would retain all the property she then owned, “all appreciation of such property and property substituted therefore, and all property acquired by Kim by her work, earnings, personal service, and by gift or inheritance, either before or subsequent to said marriage.” W.T. retained all his shares in Grampp Realty, “all property acquired by W.T. by gift or inheritance, either before or subsequent to said marriage, and all appreciation of such shares and property and property substituted therefore.” The parties largely kept their finances separate throughout the marriage.

Kim was fifty-one years old at the time of the dissolution hearing. She remained in the marital home with the parties’ child. Kim has a college degree in mechanical engineering and a master’s degree in business administration. She was employed by John Deere & Company, where she had a base annual salary

of \$150,000. She often receives a bonus, and in 2011 her gross salary was \$209,629. She has a defined benefit pension program with John Deere, and participates in a stock purchase program. The district court determined Kim's net worth increased by about \$1,164,000 during the marriage.¹

W.T. was fifty-five years old at the time of the dissolution hearing. He lives in a condominium owned by his mother. He does not pay rent, but pays for utilities, taxes, and association fees. W.T. has been the sole owner of Grampp Realty, located in Davenport, Iowa, since 1985. His company's share of the local real estate market has decreased over time. In recent years W.T. has received a salary of \$75,000 from Grampp Realty. He also receives dividend income, which was \$4950 in 2011. In addition, the company pays for some of his expenses, such as a vehicle. W.T. has two IRAs, one valued at \$161,140 and the other at \$485,664. The court found W.T.'s net worth during the marriage had increased by about \$2,200,000.²

The district court issued a dissolution decree for the parties on August 13, 2012. The parties had stipulated to several issues, and the court approved the

¹ Kim testified her net worth had increased about \$1,164,000 during the marriage. From the parties' joint statement of assets and liabilities, we determine she had assets of \$1,254,415, less the amount she brought to the marriage, \$83,658, which gives her an increase of around \$1,171,000. The district court's findings on the increase in Kim's net worth were based on Kim's testimony.

² Kim also testified W.T.'s net worth had increased \$2,200,000 during the marriage. In looking at the parties' joint statement of assets and liabilities, we find he had assets of \$2,509,983, less the amount he brought to the marriage, \$408,973, which gives him an increase of about \$2,101,000. Again, the court's findings on the increase in W.T.'s net worth were based on Kim's testimony.

parties' stipulation.³ One provision of the stipulation was that Kim would be awarded the marital residence and would reimburse W.T. for one-half of its value. The court also determined it would enforce the parties' premarital agreement. There were two main issues in dispute—whether W.T.'s two IRAs were marital property, subject to division, and whether Kim should receive credit for improvements she made to the marital residence.

The district court found:

The source of the two IRA's present value is a combination of the normal growth of the assets and the respondent's contributions to the asset. No evidence was adduced to demonstrate the precise amount of growth of the approximate \$42,000 respondent brought to the marriage in respect to these IRAs. Further, there was no evidence adduced as to the amount of the respondent's contributions.

The court awarded to W.T. the IRA valued at \$161,140, finding his original IRA of about \$42,000 would have approximately that much value today. The court determined the other IRA, which was valued at \$485,664, should be evenly divided between the parties.

Kim claimed she had made improvements to the marital residence which had cost \$36,505. The district court found "many of the items set forth as improvements could be considered to be routine maintenance." The court also noted that the overall condition of the house was considered to be average, and found that the improvements did not seem to have a consequential effect on the value of the real estate. The court found there was no evidence as to when the

³ The parties stipulated on the issues of custody, physical care, child support, health insurance, alimony, attorney fees, and court costs. They also agreed each would retain the personal property in his or her possession.

improvements had been made. The court additionally found, “[Kim] well knew that any money she spent on this was money that was being devoted to a joint asset.” The court did not give her any credit for the money she had spent on improvements to the marital residence.

W.T. has appealed, and Kim has cross-appealed, the property division made by the district court in the parties’ dissolution decree.

II. Standard of Review

Our review in dissolution cases is de novo. Iowa R. App. P. 6.907; *In re Marriage of Fennelly*, 737 N.W.2d 97, 100 (Iowa 2007). We examine the entire record and determine anew the issues properly presented. *In re Marriage of Rhinehart*, 704 N.W.2d 677, 680 (Iowa 2005). We give weight to the factual findings of the district court, but are not bound by them. *In re Marriage of Geil*, 509 N.W.2d 738, 741 (Iowa 1993).

III. Individual Retirement Accounts

Both parties contest the district court’s distribution of the two IRAs held by W.T. In matters of property distribution, we are guided by Iowa Code section 598.21 (2011). Iowa courts do not require an equal division or percentage distribution. *In re Marriage of Campbell*, 623 N.W.2d 585, 586 (Iowa Ct. App. 2001). The determining factor is what is fair and equitable in each particular circumstance. *In re Marriage of Miller*, 552 N.W.2d 460, 463 (Iowa Ct. App. 1996). In considering the economic provisions in a dissolution decree, we will disturb a district court’s ruling “only when there has been a failure to do equity.” *In re Marriage of Smith*, 573 N.W.2d, 924, 926 (Iowa 1998) (citations omitted).

Furthermore, we “must look to the economic provisions of the decree as a whole in assessing the equity of the property division.” *In re Marriage of Dean*, 642 N.W.2d 321, 325 (Iowa Ct. App. 2002).

A. W.T. claims both of the IRAs should have been awarded to him. He points out that Kim’s income is greater than his. He also points out that he does not have a defined benefit pension plan like Kim, and asserts he is relying upon his IRAs to fund his retirement. He notes that under the premarital agreement Kim was entitled to keep all of the benefits of her employment without exception. He contends it would be equitable to permit him to keep these two IRAs, including the one the district court divided, which was valued at \$485,664.

The evidence shows Kim’s income is greater than that of W.T. Her expenses are also greater, however, because W.T. does not pay rent to live in the condominium owned by his mother and some of his expenses, his vehicle for instance, are paid for by his company. Furthermore, although W.T. points out that Kim has a defined benefit pension plan, while he does not, the facts show that even without this IRA, W.T. had assets worth more than two million dollars at the time of the dissolution, while Kim had about \$1,164,000. We determine that looking at the dissolution decree as a whole, the court acted equitably by determining this IRA should be divided evenly between the parties.

B. In her cross-appeal, Kim claims that the district court should have divided both of W.T.’s IRAs. She asserts that the district court improperly concluded that W.T.’s original IRA valued at \$42,000 would likely have increased to \$161,140 by the time of the dissolution hearing. She points out that there was

no evidence as to whether the increase in value was due to contributions or an increase in market value. Kim states the value of the IRA of \$161,140, less its value at the time of the marriage, \$42,009, is \$119,131. She asks for one-half of this amount, \$59,565.50.

The IRAs are not covered by the premarital agreement, which set aside to W.T. his shares in Grampp Realty and all property acquired by him by gift or inheritance. The IRAs do not represent shares in Grampp Realty, and no one is claiming W.T. obtained them by gift or inheritance.

While there is no legal requirement that premarital property be set aside to the spouse who owned the property prior to the marriage, *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006), in this case the parties agreed that the amount each brought to the marriage would be awarded to that party. At the dissolution hearing Kim agreed with the statement, “the amount the husband brought to the marriage is simply being set aside to him.”

The evidence clearly shows W.T. owned an IRA valued at \$42,009 at the time of the marriage. Kim agreed in her testimony that this IRA would have appreciated in value during the course of the parties’ eighteen-year marriage.⁴ We determine the district court properly awarded to W.T. the IRA valued at \$161,140 at the time of the dissolution hearing.

⁴ Through their testimony the parties agreed that in general an asset would double in value every seven to eight years. The court also noted that the stock market had more than doubled since the parties married. The court considered this evidence in concluding that the original IRA valued at about \$42,000 in 1994 would have a value in excess of \$160,000 today without any contributions from the parties.

IV. House Improvements

Kim asserts she should have been credited for one-half of the amount she paid for improvements to the marital residence. She asserts she paid \$36,505, and asks to be credited with \$18,250. She contends that the improvements to the marital residence were paid for by her earnings from work and her personal service, and states that under the terms of the premarital agreement she should be awarded this amount. She claims the improvements increase the value of the marital residence.

Under the premarital agreement Kim is entitled to “all property acquired by Kim by her work, earnings, personal service, and by gift and inheritance.” Her claim here, however, is not for “property” acquired through her earnings, but for improvements to the marital residence, which was a jointly owned asset. Also, it is clear the parties used their incomes for the day-to-day expenses of running a household, and these types of expenses are not covered by the premarital agreement.

The district court denied Kim’s request to receive credit for the amount she claims she paid for improvements to the marital residence. We agree with the court’s statement “many of the items set forth as improvements could be considered to be routine maintenance.” Her list of improvements include such items as a new dishwasher, a new front door, paint, and new carpeting. In addition, there was no evidence that these improvements increased the value of the home. The court found it “cannot ascertain to any degree of probability a reasonable sum to attribute to the improvements.” Moreover, the court found

Kim “well new that any money she spent on this was money that was being devoted to a joint asset.”

We agree with the district court’s reasoning and its conclusion that Kim is not entitled to receive credit for the amount of money she paid for improvements to the marital residence. The home was a joint asset, and any improvements Kim paid for were for the benefit of both parties. Furthermore, the improvements were in the nature of routine maintenance.

V. Attorney Fees

Kim seeks attorney fees for this appeal. In determining whether to award appellate attorney fees we consider the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). An award of attorney fees rests within the court’s discretion. *Sullins*, 715 N.W.2d at 255.

The record in this case shows the parties have the ability to pay their own attorney fees. We determine the parties should each pay their own appellate attorney fees.

VI. Conclusion

We affirm the decision of the district court on both the appeal brought by W.T. and the cross-appeal brought by Kim. Costs of this appeal are assessed one-half to each party.

AFFIRMED.