

IN THE COURT OF APPEALS OF IOWA

No. 6-712 / 05-1825
Filed December 13, 2006

IN RE THE MARRIAGE OF JOYCELYN WOLFE AND DOUGLAS WOLFE

**Upon the Petition of
JOYCELYN WOLFE,**
Petitioner-Appellee/Cross-Appellant.

**And Concerning
DOUGLAS WOLFE,**
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Cedar County, David E. Schoenthaler, Judge.

Douglas Wolfe appeals and Joycelyn Wolfe cross-appeals from the provisions of the decree dissolving their marriage. **AFFIRMED.**

Karen Volz of Ackley, Kopecky & Kingery, Cedar Rapids, for appellant.

Daniel Bray of Bray & Klockau, P.L.C., Iowa City, for appellee.

Heard by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

EISENHAUER, J.

Douglas Wolfe appeals from the provisions of the decree dissolving his marriage to Joycelyn (Joy) Wolfe. Douglas contends the district court erred in distributing certain gifted and inherited assets. Joy cross-appeals, alleging the court erred in (1) not awarding her traditional spousal support, (2) valuing the farm, and (3) failing to order Douglas to pay \$15,000 of her trial attorney fees. Joy also requests appellate attorney fees.

We review the parties' claims de novo. Iowa R. App. P. 6.4. However, we accord the district court considerable latitude in making an equitable distribution of property and will disturb the ruling only when there has been a failure to do equity. *In re Marriage of Spiegel*, 553 N.W.2d 309, 319 (Iowa 1996). We give weight to the district court's findings of fact, especially when considering the credibility of the witnesses, but we are not bound by those findings. Iowa R. App. P. 6.14(6)(g); *In re Marriage of Anliker*, 694 N.W.2d 535, 539 (Iowa 2005).

Douglas and Joy were married on June 1, 1974, and three children were born of the marriage. The children have all reached the age of majority and there are no issues involving them in this appeal.

Following trial, the district court divided the parties' assets and liabilities and awarded property valued at \$1,206,885 to Joy and \$1,048,660 to Douglas. This resulted in Joy receiving fifty-four percent of the property subject to division and Douglas receiving forty-six percent. Douglas also retained inherited property consisting of three trusts valued at \$816,010. The

trusts were established by Douglas's parents in 1993, 1997, and 1999, prior to their deaths. Factoring in the inherited property, Douglas received sixty-one percent of the total property and Joy received thirty-nine percent. The district court found this to be a fair and equitable division.

Property Division

Douglas asserts the district court erred in distributing the law office (\$169,828), the AIG Sun-America life insurance policies (\$11,176), 100 shares of Mount Vernon Bank stock (\$17,400), and the farm (\$476,490). Douglas contends this property was either gifted to or inherited by him; therefore, it should have been excluded from the property division.

The parties in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa Ct. App. 1991). The determining factor is what is fair and equitable in each particular circumstance. *Id.*

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.

Iowa Code § 598.21(6) (Supp. 2005). In determining whether it would be equitable to divide inherited or gifted property, in addition to the length of the marriage, we consider the following factors: (1) contributions of the parties toward the property, its care, preservation or improvement; (2) the existence of any independent close relationship between the donor or testator and the spouse of the one to whom the property was given or devised; (3) separate

contributions by the parties to their economic welfare to whatever extent those contributions preserve the property for either of them; (4) special needs of either party; (5) any other matter which would render it plainly unfair to a spouse or child to have the property set aside for the exclusive enjoyment of the donee or devisee. *In re Marriage of Goodwin*, 606 N.W.2d 315, 319 (Iowa 2000); *In re Marriage of Oler*, 451 N.W.2d 9, 11 (Iowa Ct. App. 1989).

Douglas contends the law office is not subject to equitable division because he had no ownership in it until his father died in 2002 and the title passed to him as the trust beneficiary. Douglas and his father, R.B. Wolfe, who was also an attorney, practiced law together in the law office until R.B.'s retirement. Douglas continues to use the law office for his practice. The district court found that the law office was subject to distribution because "for the past many years [the law office] has been treated by Doug as though [it] were in his individual name rather than in the name of the R.B. Wolfe Trust."

Prior to Douglas obtaining title, the law office was held in the Richard B. Wolfe Trust, established in 1997. The trust provided the law office was to be distributed to Douglas if he was living at the time of his father's death. He survived his father and gained title to the law office upon his father's death. However, the trust also provided the trust was "concluded" if the distribution occurred when Douglas had obtained the age of forty, which he had. Therefore, although the law office was inherited property, Douglas's inherited interest was present and enforceable and the property was subject to division if refusal to divide the property was inequitable to Joy. See Iowa Code §

598.21(6); *In re Marriage of Hoffman*, 493 N.W.2d 84, 90 (Iowa Ct. App. 1992).

The parties were married for thirty-one years. Although Joy did not directly contribute to the law office's care, preservation or improvement, she ceased working outside the home in 1979 to raise the parties' three children while Douglas developed his law practice. At the time of trial, Joy, fifty-two, was working for the Mount Vernon School District, earning an annual gross salary of \$15,825.60. On the other hand, Douglas, born June 27, 1950, had a law degree and had been practicing since 1976. His average income for his legal practice in the five years preceding trial was \$71,461. He also earned income from his position on the board of directors at Mount Vernon Bank. In considering the district court's entire division of property, we find it would have been inequitable to exclude the law office from the division of property.

The trial court awarded the three AIG Sun-America life insurance policies with a total value of \$11,176 to Douglas, but classified them as "marital assets" "because of the length of time they have been in existence." Douglas's father purchased the policies in 1953 and Douglas became the owner of the policies in 1971. Douglas never paid any premiums on the policies. Thus, the policies were gifted to Douglas and may have been subject to division only if refusal to divide the property was inequitable to Joy. As with the law office, we find the district court's division of the life insurance policies was equitable.

Douglas claims he purchased 100 shares of Mount Vernon bank stock with funds given to him by R.B. and therefore the stock should not have been subject to equitable division. The district court found the 100 shares “have been in the family for a considerable period of time and will be considered as marital assets to help with the division between the parties.” Even if the stock was gifted to Douglas, we agree with the district court that the stock was subject to division. The 100 shares at issue were purchased in 1986 as part of a single transaction of 250 shares, 150 of which were undisputedly paid for with marital assets. The Wolfes purchased the stock in order for Douglas to be appointed to the bank’s board of directors, which he was in 1988. The stock was subject to division because it would have been inequitable to exclude it.

Douglas also asserts the appreciation of the stock should be excluded from distribution. When Douglas purchased the stock, it was valued at \$41.25 per share; its value at the time of trial was \$174.00 per share. The appreciated value of assets may be divided where the increase is due to the talent, time, and effort of the marital partners. *In re Marriage of Friedman*, 466 N.W.2d 689, 693 (Iowa 1991). Homemaking may be considered a tangible contribution to a marriage. *In re Marriage of Grady-Woods*, 577 N.W.2d 851, 853 (Iowa Ct. App. 1998). Douglas contributed to the appreciation of the value of the stock through his position on the bank’s board of directors. Joy contributed as a homemaker. The district court’s division of the appreciated stock value was equitable.

Douglas's final argument is that the farm property, valued at \$476,490, should not have been subject to equitable distribution. Douglas acquired the farm, which consists of 226.9 acres, as a result of several transactions. In 1982, after Douglas's uncle died, Douglas received a portion of the property because his father disclaimed his interest. When R.B. disclaimed, the property passed to Douglas and his sister Dorothy. Douglas then acquired his sister's share of the disclaimed property through a contract drafted by R.B. The contract provided Dorothy would receive \$40,000 and, in exchange, the property would be titled in Douglas's name. Douglas testified the \$40,000 was paid either directly by R.B. to Dorothy, from R.B. to Douglas to Dorothy, or by farm income. He stated no marital funds were used to pay the contract. The remainder of the property still owned by Douglas's parents was deeded to Douglas after a series of transactions. A deed was prepared prior to Douglas's mother's death conveying the property to Douglas and Joy. There is some discrepancy whether Joy's name was added after the deed was prepared, but we need not resolve such discrepancy and we assume Joy held title. On December 10, 1996, Joy conveyed her interest back to Douglas, placing the property solely in his name. The two deeds were recorded in December 1996. Considering the length of the marriage, even if the farm was a gift or inherited by Douglas, it would have been inequitable for the court not to include it in the distribution of assets.

We find the district court's division of property to be fair and equitable. We affirm the property distribution as set forth by the district court.

Fair Market Value

Joy asserts on cross-appeal that the district court erred in determining the fair market value of the farm was \$476,490, a value provided by Douglas's appraiser. Joy's appraiser testified the highest and best use of the farm was for residential lots and valued the property at \$570,000. Douglas's appraiser appraised the farm as agricultural land and testified the property was not eligible to be subdivided so he did not appraise it as residential lots. The district court accepted Douglas's appraiser's valuation, finding Douglas's appraiser "to be more credible" and that the highest and best use of the property was as farm land. The district court's valuation was within the permissible range of the evidence, and we give weight to the district court's credibility determination. See *In re Marriage of Vieth*, 591 N.W.2d 639, 640 (Iowa Ct. App. 1999); *In re Marriage of Driscoll*, 563 N.W.2d 640, 643 (Iowa Ct. App. 1997). Consequently, we will not disturb the district court's valuation on appeal.

Alimony

Joy contends the district court erred in not awarding her traditional alimony rather than transitional alimony, and the alimony award of \$750 per month for sixty months should have been for a greater amount and longer duration. An award of alimony depends on the circumstances of each particular case. *In re Marriage of Dieger*, 584 N.W.2d 567, 570 (Iowa Ct. App. 1998). When determining the appropriateness of alimony, the court must consider the statutory factors enumerated in Iowa Code section

598.21A. The court also considers each party's earning capacity, as well as the parties' present standards of living and ability to pay balanced against the relative needs of the other. *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997). Alimony awards are appropriate following a marriage of long duration, especially where there is a great disparity in earning capacity. *Id.*

In awarding Joy alimony, the district court reasoned:

[Joy] will accrue Social Security credits with her employment. Based upon her earning capacity, the property settlement which consists primarily of cash being awarded to Joy, and her only debt being approximately \$13,000 on the life insurance policy, and recognizing that the parties did not enjoy a lavish lifestyle, the Court finds that she should be awarded transitional alimony of \$750 per month for 60 months, until the death of either party, or Joy's remarriage, whichever first occurs.

We accept and approve this reasoning. In considering the entire division of property, we find the alimony award was equitable. See *In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa Ct. App. 1995) (finding appellate court considers property division and alimony together in evaluating their individual sufficiency).

Attorney Fees

Joy asserts the district court erred in not awarding her \$15,000 in trial attorney fees. An award of attorney fees lies within the discretion of the trial court. *In re Marriage of Guyer*, 522 N.W.2d 818, 822 (Iowa 1994). Whether attorney fees should be awarded depends on the respective abilities of the parties to pay. *Id.* The district court denied Joy's request for additional attorney fees. (A portion of Joy's attorney fees were charged to a credit card

which was paid from other proceeds.). The trial court did not abuse its discretion.

Joy also requests appellate attorney fees. An award of appellate attorney fees is not a matter of right but rests within our discretion. *In re Marriage of Scheppele*, 524 N.W.2d 678, 680 (Iowa Ct. App. 1994). In determining whether to award appellate attorney fees, we consider 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 decision of the trial court on appeal. *Id.* We decline to award Joy appellate attorney fees.

AFFIRMED.