

IN THE COURT OF APPEALS OF IOWA

No. 6-873 / 06-0181
Filed March 14, 2007

IN RE MARRIAGE OF DAWN MARIE HALBACH AND JAMES N. HALBACH

**Upon the Petition of
DAWN MARIE HALBACH**
Petitioner-Appellee,

**And Concerning
JAMES N. HALBACH**
Respondent-Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, James M. Drew, Judge.

James Halbach appeals the property division provisions of the decree dissolving his marriage to Dawn Halbach. **AFFIRMED AS MODIFIED.**

Judith O'Donohoe of Elwood, O'Donohoe, Stochl, Braun & Churbuck, Charles City, for appellant.

Jacqueline Conway of Heiny, McManigal, Duffy, Stambaugh & Anderson, P.L.C., Mason City, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MILLER, J.

James Halbach appeals the property division provisions of the decree dissolving his marriage to Dawn Halbach. He claims the district court erred in (1) “failing to recognize his pre-marital equity in 1112 Division Street and give him credit for it,” (2) “giving Dawn credit for her claimed pre-marital equity in [her] Mason City house,” and (3) not “properly identify[ing] only the marital portion of the parties’ retirement benefits.”

I. BACKGROUND FACTS

The parties married on June 27, 1996, after dating for about nine years. Each had previously been married and divorced. Dawn was forty years of age and James was forty-nine. Dawn had physical care of two of three of her children, ages seventeen and fifteen, the other being an adult. James had visitation with one of his three children, a fourteen-year-old, the other two being adults. At the time of their marriage Dawn and James each had worked for Kraft Foods for nine years.

The trial court found that each party brought certain property to the marriage. It found Dawn brought \$33,000 in equity in a home in Mason City, and a vehicle and household goods valued at \$11,000 and \$2,500 respectively. These items total \$46,500. It found James brought \$64,000 in equity in a home (1118 Division Street), \$4000 in cash, \$2500 in construction inventory and equipment, \$2500 in household goods, a 1996 Buick worth \$6000, a 1993 Dodge van worth \$8000 (and subject to a \$7000 debt), a motorcycle valued at \$3000, and \$500 worth of guns. These items total a net of \$83,500.

The trial court also found, in part:

Both Dawn and James have retirement accounts through their employment at Kraft. All of James' account, which is currently \$49,247, was accumulated prior to the marriage. Dawn's accounts have a current value of \$119,700.55. At the time of the marriage her accounts were worth approximately the same as James'. Her additional funds were accumulated during the marriage through contributions and earnings.

Following the parties' marriage Dawn continued to work at Kraft Foods, and remained employed there at the time of trial. Over those years her salary increased from about \$40,000 per year to \$69,000 per year. James worked for Kraft Foods for about one-half of 1996, earning \$19,132. He then became engaged in construction, building homes and duplexes. The parties' income tax returns reflect net business income of only about \$1,600 per year on average from James's construction activities; however, his work has been primarily responsible for the equity of \$148,864 the parties had in duplexes at the time of trial. A few months before trial James became employed as a trucker. At the time of trial he earned a net of \$2,364.19 per month in that employment.

II. THE DISTRICT COURT DECISION

The district court awarded Dawn assets at a net value of \$129,765, and assigned her responsibility for \$9,424 in debts, an award of \$120,341. It then applied a "credit" of \$33,000 for the home equity she had brought to the marriage, resulting in a tentative property award of \$87,341. The court awarded James assets at a net value of \$440,103, and assigned him responsibility of debts of \$56,532, an award of \$383,571. It then applied a "credit" of \$77,000 for the home equity and some other assets James had brought to the marriage, resulting in a tentative property award to him of \$306,571. Finally, and "[i]n order to make the property division equitable," the court ordered James to pay Dawn

\$105,000 and entered judgment for that amount. James appeals, raising the issues noted above.

III. SCOPE AND STANDARDS OF REVIEW

In this equity case our review is de novo. Iowa R. App. P. 6.4. We examine the entire record and adjudicate rights anew on the issues properly presented. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). We give weight to the fact-findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(g). This is because the trial court has a firsthand opportunity to hear the evidence and view the witnesses. *In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992).

IV. MERITS

Before addressing the three issues presented, we note briefly some general principles concerning property division. Iowa is an equitable distribution state, which means the partners in a marriage that is to be dissolved are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Robison*, 542 N.W.2d 4, 5 (Iowa Ct. App. 1995). Iowa courts do not require an equal division or percentage distribution. *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.* When distributing property we take into consideration the criteria codified in Iowa Code section 598.21(1) (2005). *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa Ct. App. 1983).

Further, what we stated in a prior case has significant applicability to the issues concerning property division presented on appeal in this case.

Property which a party brings into the marriage is a factor to consider in making an equitable division. Iowa Code § 598.21(1)(b). In some instances, this factor may justify a full credit, but does not require it. Antenuptial agreements are available to preserve premarital assets. See Iowa Code § 598.21(1)(l). A premarital asset is not otherwise set aside like gifted and inherited property. Instead, it is a factor to consider, together with all the other circumstances, in making an overall division. Its impact on the ultimate distribution will vary with the particular circumstance of each case. Furthermore, in considering accumulations to premarital assets, we do not limit our focus to the parties' direct contributions to the increase. Instead, we broadly consider the contributions of each party to the overall marriage, as well as all other factors. Iowa Code § 598.21(1). Financial matters make up but a portion of a marriage, and must not be emphasized over the other contributions made to a marriage in determining an equitable distribution.

In re Marriage of Miller, 552 N.W.2d 460, 465 (Iowa Ct. App. 1996).

A. James's Pre-Marital Equity In 1112 Division Street

We have listed the property the trial court found each party had brought to the marriage. The evidence shows that James also brought to the marriage a home he had constructed at 1112 Division Street. The evidence shows, without any substantial dispute, that he had invested \$90,000 in materials in the home, the home was subject to a \$60,000 mortgage, and the home had been built on a lot he owned before the marriage. An apparently equivalent lot cost \$10,000 not long after the parties' marriage. We find that James brought to the marriage an additional \$40,000 in property not considered by the trial court.

B. Dawn's Equity In Her Mason City House

James complains that Dawn is not entitled to "credit" for the \$33,000 in equity in her Mason City house that she brought to the marriage. In determining

what constitutes a fair and equitable property division we consider the overall property division, rather than the treatment of a particular item or items in isolation. See, e.g., *In re Marriage of Pittman*, 346 N.W.2d 33, 37 (Iowa 1984) (“In considering the overall property division . . . we conclude the property division was equitable.”). We note the district court gave James “credit” for \$77,000 of the \$83,500 of property it found he had brought to the marriage. We find nothing unfair or inequitable in the trial court giving Dawn “credit” for \$33,000 of the \$46,500 it found she had brought to the marriage.

C. The Parties’ Retirement Benefits

Both Dawn and James have retirement accounts through their employment at Kraft Foods. At the time of trial Dawn had a pension plan and a 401(k) account, and James had what has generally been referred to as a “TIP” account, but has at other places been referred to as a 401(k) account. Prior to the trial the parties apparently attempted to stipulate as to the pre-marital values of some of these accounts, and agree that some portion of certain accounts would be set aside or “excluded” as pre-marital assets. The record made at trial leaves it unclear as to whether any agreement in fact existed and, if so, the exact nature and extent of any agreement. To the trial court’s credit, it did the best it could with the unclear evidence concerning any pre-marital values of the accounts and unclear nature of any agreement.

The record seems to indicate that the parties attempted to stipulate that James’s TIP account was the result of pre-marital contributions and subsequent growth, that at the time of marriage Dawn had an amount in a 401(k) account that was approximately equal to the amount James had in his TIP account, and

that thus the present amount of James's TIP account and an equivalent amount of Dawn's 401(k) account or her pension account should be excluded as pre-marital assets or as pre-marital assets plus subsequent earnings thereon.¹ As previously noted, however, the exact nature and extent of any such agreement cannot be determined from the record made by the parties.

The evidence does show that at the time of trial Dawn had a pension plan with a calculated present value of \$92,544; Dawn had a 401(k) account with a value of \$81,877.14, subject to a loan balance of \$8,448.59, and a resulting net value of \$73,428.55; and James had a TIP account with a value of \$49,247.31.²

The trial court awarded Dawn's accounts to her at a value of \$119,700.55.³ The accounts, however, in fact have a combined value of \$165,972.55. We thus find the trial court in fact awarded Dawn \$46,272 more than it stated.

D. SUMMARY

The trial court concluded, in part: "Aside from the premarital credits allowed by the court, a relatively equal property division is appropriate." We find no inequity in the trial court's decision to award somewhat more property to James than to Dawn through "premarital credits" because James brought

¹ At some points the record seems to suggest that James's TIP account be set aside, and that either an equal amount of Dawn's 401(k) account, one-half of her pension plan, or both, be set aside as pre-marital assets.

² The trial court's finding that "all of James' account . . . was accumulated prior to the marriage" is not supported by the record, but was perhaps induced by the parties' failed attempt at a stipulation which would treat the account as pre-marital property. An agreed-to post-trial submission shows that as of January 1, 1999 James's account had a balance of \$35,273.13. It is clear the \$49,247.331 is thus the product of not only pre-marital contributions and earnings but also post-marital earnings.

³ It seems clear this figure consists of her \$92,544 pension plan plus her \$73,428.55 401(k) account less one-half (\$46,272) of her pension plan. This \$46,272 reduction in value may be an attempt by the trial court to implement its understanding of the parties' attempt at a partial stipulation.

considerably more property to the marriage than did she. We conclude, however, that in order to take into account the fact James brought to the marriage \$40,000 more in property than considered by the trial court he should be awarded somewhat more property, through a reduction in his cash payment to Dawn, than was awarded by the trial court.

We also conclude the fact Dawn is receiving \$46,272 more in pension accounts than found by the trial court justifies a further reduction in James's cash payment to Dawn.

The trial court also concluded, in part: "While there was much testimony during trial about each party's individual contributions to the marriage, the court declines the invitation to engage in that type of analysis." Our review of the record indicates that at least one of the parties approached trial of the case by attempting to trace each major asset, debt, and financial transaction throughout the almost ten-year marriage. Our concern in property division in a case such as the one presently before us is much narrower. "Our law does not contemplate a division of property . . . as though the marriage is a business venture." *In re Marriage of Briggs*, 225 N.W.2d 911, 913 (Iowa 1975). Our inquiry focuses heavily on the following questions: (1) what property did the parties bring to the marriage?; (2) what property do they have now?; and (3) what is a fair and equitable property division in light of the factors listed in Iowa Code section 598.21(1) (2005) and relevant case law?

The parties' property at the time of trial exists as a result of a combination of property brought to the marriage, subsequent appreciation in value of both some property brought to the marriage as well as later-acquired property, the

parties' labors on and investments in various properties, and the parties' earnings during the marriage. We, like the trial court, decline to engage in an analysis akin to a ten-year accounting upon dissolution of a business venture. Upon our de novo review we conclude the trial court's decree should be modified by reducing the cash payment James is ordered to make to Dawn as ordered below and, as modified, should be affirmed.

V. DISPOSITION

We modify the trial court's decree by reducing from \$105,000 to \$70,000 the cash payment James is ordered to make to Dawn. In all other respects the trial court's decree is affirmed. Costs on appeal are taxed two-thirds against Dawn and one-third against James.

AFFIRMED AS MODIFIED.