

IN THE COURT OF APPEALS OF IOWA

No. 7-539 / 06-1089
Filed November 15, 2007

**IN RE THE MARRIAGE OF LOLITA MARGARET McGRUDER
AND HENRY CLARENCE McGRUDER**

**Upon the Petition of
LOLITA MARGARET McGRUDER,**
Petitioner-Appellee,

**And Concerning
HENRY CLARENCE McGRUDER,**
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Peter A. Keller,
Judge.

Henry McGruder appeals from the property division provisions of the
decree dissolving the parties' marriage. **AFFIRMED.**

Patricia K. Wengert, Des Moines, for appellant.

John P. Roehrick of Roehrick Law Firm, P.C., Des Moines, for appellee.

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

ZIMMER, J.

Henry McGruder appeals from the provisions of the decree dissolving the parties' marriage. He claims the court erred in not granting his motion for mistrial. He further claims the district court erred in ordering him to purchase a vehicle for Lolita McGruder. Upon our de novo review, we affirm the judgment of the district court.

I. Background Facts and Proceedings.

Henry and Lolita McGruder were married in 1981. Two children were born of this marriage, both of whom are now adults. In July 2005 Lolita moved out of the marital home in Sioux City, Iowa, and moved in with her mother and two sisters in Des Moines, Iowa. Lolita filed a petition for dissolution of marriage in July 2005, and trial on the petition commenced April 6, 2006.

Henry obtained a bachelor's degree in theology in 1985. He has been a minister at the Mount Olive Baptist Church in Sioux City, Iowa, since 1987. At the time of the trial, Henry claimed he earned no appreciable income as a minister. He testified he lived "day to day by faith." However, the parties' tax returns for 2002, 2003, and 2004 show Henry earned approximately \$18,000 each year as a minister.

Lolita has not been employed outside of the home since 1987 when she contracted lupus, which was in remission at the time of trial. She also suffers from fibromyalgia. Due to her health problems, Lolita receives Social Security disability benefits of \$767 per month.

In the late 1990s or early 2000, Henry and Lolita established a used car dealership known as International Auto Brokers, Inc. in South Sioux City,

Nebraska.¹ The 2003 and 2004 tax returns for the corporation list Henry as the sole shareholder. Lolita testified that she assisted Henry with the bookkeeping for the church and the dealership. Henry, on the other hand, testified Lolita was completely in charge of all of the finances for the family and the dealership. He claimed ignorance regarding the details of the parties' joint tax returns and the tax returns for the corporation, stating Lolita would take "everything to the tax preparer" while he "would just go and sign" the tax returns without "really read[ing]" them.

The parties' joint tax returns from 2002, 2003, and 2004 do not report any income from the corporation. At the time of trial, Henry initially maintained he did not earn any money from the dealership, testifying the corporation "show[s] a loss every year." However, he later admitted the dealership "pays, you know, for the house note and bills. I don't . . . show an income, it's not an income, it pays expenses . . . [a]t home and the business." He then acknowledged he "usually" earned "3 to 400 a week" from the dealership. The dealership also apparently provided the family with transportation. Lolita testified that Henry would "come home" with "whatever kind of car he wanted to drive" from the dealership.

When the parties separated, Lolita was driving a 1998 Lincoln Navigator. She took that vehicle with her when she moved from Sioux City to Des Moines. At some point, Henry drove to Des Moines and picked up the Navigator, which he later sold "on payments." He left a 1994 Jeep Cherokee in its place on a lot next door to Lolita's mother's house. Lolita testified the Cherokee would not start, and it was eventually towed because it was on her neighbor's property.

¹ The dealership is incorporated in Iowa.

Following cross-examination of Henry by Lolita's counsel, the trial judge questioned Henry concerning apparent discrepancies between his testimony, the corporation's tax returns, and the parties' joint tax returns. Henry's counsel objected to the court's questioning. A recess was taken, during which Henry's counsel moved for a mistrial, stating her client was not "getting a fair trial because of [his] color."² The court denied the motion and proceeded with the trial.

In a decree entered on June 8, 2006, the district court divided the parties' property and awarded Lolita spousal support. The court valued the marital residence, which was encumbered by two mortgages totaling \$55,986.58, at \$70,000. The court awarded the parties' home to Henry and ordered him to pay the debt associated therewith. The court found it could not "determine the value of the corporation from the evidence, nor can it determine if there is any value to the stock for purposes of establishing its value for distribution." The court awarded all of the assets and liabilities of the corporation, "whatever its value may be," to Henry.

Henry was ordered to pay Lolita a property settlement of \$31,500. From this amount, the court directed him to provide Lolita with a "1999 or newer model" vehicle "worth Blue Book trade-in value of no less than \$11,500 nor more than \$13,000." Finally, the court ordered Henry to pay Lolita \$500.00 per month in spousal support "for the remainder of [her] life"

Henry appeals. He has framed the issues he presents on appeal in the following manner:

² The record reveals that Henry and Lolita are African-Americans.

- I. The court erred in not granting Respondent's motion for mistrial.
- II. The substantial evidence in the record shows there were no assets for distribution as the court ordered; the court erred in ordering respondent to purchase a vehicle for petitioner when the record is clear the parties owned no vehicles, and further petitioner had admittedly wasted an asset, a vehicle respondent had provided her for transportation.

II. Scope and Standards of Review.

Our review of the district court's denial of the motion for mistrial on the basis of judicial impartiality is for abuse of discretion. *State v. Cuevas*, 288 N.W.2d 525, 532 (Iowa 1980).

We review Henry's challenge to the property division provisions of the decree de novo. Iowa R. App. P. 6.4. Although not bound by the district court's factual findings, we give them weight, especially when assessing the credibility of witnesses. Iowa R. App. P. 6.14(6)(g).

III. Discussion.

A. Judicial Impartiality.

There is a constitutional right to have a neutral and detached judge. *In re Marriage of Ricklefs*, 726 N.W.2d 359, 362 (Iowa 2007). "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases." *Id.* (quoting *In re Murchison*, 349 U.S. 133, 136, 75 S. Ct. 623, 625, 99 L. Ed. 942, 946 (1955)). Henry claims he was denied a fair trial in this case when the district court judge engaged in a line of questioning that he asserts demonstrated racial bias. He asks that we order this case to be retried.

“The authority of a judge to question witnesses is well established.” *In re S.P.*, 719 N.W.2d 535, 539 (Iowa 2006). However, our supreme court has cautioned judges who decide to question witnesses, stating,

We do not encourage judges to enter the fray with their own interrogation of witnesses. And when cause to do so exists, restraint must be used. By engaging in the examination of witnesses the court becomes vulnerable to a multiplicity of criticisms; bias, prejudice or advocacy are some of those.

Cuevas, 288 N.W.2d at 533.

In this case, the record reveals the trial court asked Henry a series of questions in an attempt to learn the true financial picture of Henry’s used auto dealership.³ Henry’s counsel eventually objected, and a recess was taken during which counsel expressed her concern about the “tone and tenor of the questioning by the Court of Mr. McGruder” and the “Court’s attitude towards my African American client.” Henry’s counsel then moved for a mistrial because she did not believe the judge could render “a fair decision for my African American minister.” At one point Henry’s counsel asked, “Why, why don’t we have one of the African-American judges deciding this case?” Lolita’s counsel resisted the motion for mistrial and stated that he “had seen nothing from the Court’s demeanor or the Court’s questions . . . that would in any way indicate the need for the Court to recuse itself.” The judge denied the motion for mistrial and request for recusal, assuring counsel he could render “an equitable, fair decision in this case.”

³ It is fair to say that Henry’s testimony regarding the parties’ financial circumstances is difficult to reconcile with information contained in the parties’ tax returns, particularly the corporate balance sheet. It is also fair to say that the trial court was skeptical of much of Henry’s testimony regarding financial matters.

According to the Iowa Judicial Code, a judge must recuse himself in any proceeding where his impartiality might reasonably be questioned. See Iowa Code of Judicial Conduct, Canon 3C(1). “Before recusal is necessary, actual prejudice must be shown.” *State v. Biddle*, 652 N.W.2d 191, 198 (Iowa 2002). “The test is whether a reasonable person would question the judge’s impartiality.” *Id.* “The burden is on a party seeking recusal to establish the basis for it, and the determination is committed to the judge’s discretion.” *In re Marriage of Clinton*, 579 N.W.2d 835, 837 (Iowa Ct. App. 1998). A judge has an obligation not to recuse himself “when there is no occasion for him to do so” because of the “‘ever mounting sea of litigation’ and the need to maximize all available judicial power.” *State v. Mann*, 512 N.W.2d 528, 532 (Iowa 1994).

After reviewing the entire record and the context of the judge’s questions, we disagree with Henry’s assertion that the judge’s questions exhibited racial bias.⁴ The judge acted only to clarify the nebulous evidence regarding Henry’s income from the corporation. He explained to the parties that he questioned Henry in order “to find the truth to be able to render an equitable decision in this case.” The underlying evidence of Henry’s income from the corporation had already been presented. The judge’s questions were an attempt to “straighten the record out” in light of the serious contradictions presented by Henry’s testimony and the tax returns for the parties and the corporation. See *Cuevas*, 288 N.W.2d at 533 (finding the court’s questioning of a medical examiner in order to clarify his testimony regarding the time of death was appropriate because the

⁴ In her brief on appeal, Lolita again argues that her former spouse has failed to demonstrate any bias or prejudice on the part of the trial court.

court “did not undertake the introduction of evidence”). The judge acted within his “power to clarify evidence through the questioning of witnesses when in the exercise of sound discretion it is reasonably deemed necessary.” *Id.*

We also do not believe Henry established he was prejudiced by the judge’s refusal to recuse himself. The judge attempted to divide the parties’ property “as equal as possible” given the conflicting evidence before him and taking into account his assessments of credibility. The court awarded Henry the parties’ home and the corporation⁵ while Lolita was awarded a property settlement and alimony. For the reasons addressed in the next section of this opinion, we find such a distribution to be fair and equitable under the circumstances. See *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa Ct. App. 1991).

We reject Henry’s contention that the property division provisions of the parties’ decree reflected any bias on the part of the district court judge. Therefore, we conclude the judge did not abuse his discretion in denying the motion for mistrial and refusing to recuse himself at the end of a two-day trial.

B. Property Settlement.

In allocating the parties’ assets and debts, the court strives to make a division that is fair and equitable under the circumstances. *Id.* Iowa courts do not require an equal division or percentage distribution; rather, the decisive factor

⁵ Although the district court did not place a value on the corporation, we note the 2004 tax return for the corporation shows that at the end of the tax year the corporation owned assets in the amount of \$74,857 and had no liabilities. See *In re Marriage of Moffatt*, 279 N.W.2d 15, 19 (Iowa 1979) (stating the intrinsic value of closely-held corporations should be determined through the admission of evidence of the assets and liabilities of the corporation).

is what is fair and equitable in each particular case. *Id.* In determining what division would be equitable, courts are guided by the criteria set forth in Iowa Code section 598.21(5) (Supp. 2005). *In re Marriage of Goodwin*, 606 N.W.2d 315, 319 (Iowa 2000). “Equitable distributions require flexibility and concrete rules of distribution may frustrate the court’s goal of obtaining equitable results.” *In re Marriage of Driscoll*, 563 N.W.2d 640, 642 (Iowa Ct. App. 1997).

Henry argues the district court erred in awarding assets “that are non-existent” because the parties “owned no vehicles to distribute.” He further argues the court erred in ordering him to purchase a vehicle for Lolita as a part of the property settlement. We do not agree. We first note that “[a]lthough our review is de novo, we will defer to the trial court when valuations are accompanied with supporting credibility findings or corroborating evidence.” *In re Marriage of Vieth*, 591 N.W.2d 639, 640 (Iowa Ct. App. 1999). The court determined that some of Henry’s testimony regarding financial matters was not credible. We give “strong deference to the trial court which, after sorting through the economic details of the parties, made a fair division supported by the record.” *Id.* at 641.

The record reflects Henry owned and operated a used car dealership, which the parties used as a source for their personal vehicles throughout their marriage.⁶ Lolita testified her Social Security disability benefits were used to

⁶ It appears this is a case where the parties are confused about corporate ownership. Henry listed the Navigator and the Cherokee as marital assets on his financial affidavit. Marital funds were used to make payments on the Navigator, and Henry used the proceeds from the sale of the Navigator to pay Lolita’s temporary alimony. Yet he testified at trial that the vehicles were owned by the dealership. We note that Henry does not argue the district court erred in including these vehicles in the marital estate. Nor does he argue the district court erred in including a certificate of deposit valued at

make payments on the Navigator, which she drove during the parties' marriage. Henry "repossessed" and sold that vehicle, leaving in its place the Cherokee that would not start.⁷ At trial, he agreed to provide Lolita with a vehicle, testifying, "I'll do my best to provide her with transportation." Given the unique circumstances presented by this case, we are not inclined to disturb the district court's decision to order Henry to provide Lolita with a vehicle as a part of the property settlement.

IV. Conclusion.

We conclude the district court judge did not abuse his discretion in denying the motion for mistrial and refusing to recuse himself on the basis of judicial impartiality. Given the unique circumstances presented by this case, we are not inclined to disturb the district court's decision to order Henry to provide Lolita with a vehicle as a part of the property settlement. The judgment of the district court is accordingly affirmed.

AFFIRMED.

\$39,000, which he listed as a marital asset on his financial affidavit but testified at trial was owned by the dealership, in the marital estate. Therefore, we will not address whether the district court correctly characterized these items as marital assets.

⁷ We reject Henry's contention that Lolita "wasted" marital assets by allowing the Cherokee to be towed. He parked it on a neighbor's property. Lolita testified she attempted to move the vehicle, but it would not start. She told Henry to "come and get it because somebody will tow it away."