

IN THE COURT OF APPEALS OF IOWA

No. 7-554 / 07-0086
Filed September 19, 2007

IN RE THE MARRIAGE OF TONIETTE L. RICHARDSON AND RICKIE D. RICHARDSON

**Upon the Petition of
TONIETTE L. RICHARDSON,**
Petitioner-Appellee/Cross-Appellant,

**And Concerning
RICKIE D. RICHARDSON,**
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Pottawattamie County, J. C. Irvin,
Judge.

Rickie Richardson appeals, and Toniette Richardson cross-appeals, each
challenging various economic provisions of the decree dissolving their marriage.

AFFIRMED AS MODIFIED.

Lloye Bergantzel, Council Bluffs, for appellant.

Jon Heisterkamp, Council Bluffs, for appellee.

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

MILLER, J.

Rickie Richardson appeals, and Toniette (Toni) Richardson cross-appeals, each challenging various economic provisions of the decree dissolving their marriage. Rickie claims the district court abused its discretion by (1) failing to properly compute premarital and inheritance “setoffs,” (2) not dividing property equitably, and (3) awarding Toni an excessive amount of attorney fees. Toni claims the court erred in (1) undervaluing sixty acres of farm ground, and (2) failing to award spousal support to her. Toni requests an award of appellate attorney fees and costs. We affirm as modified on both the appeal and the cross-appeal.

I. BACKGROUND FACTS

The parties married on October 27, 1990, when Toni was thirty-five years of age and Rickie was thirty-six. Each had been married before and each had three boys. At the time of trial Toni was fifty-one years of age, Rickie was fifty-two, the eldest of Toni’s three boys was deceased, and the parties’ other five boys were twenty-four years of age or older.

The parties’ marriage resulted in twin girls, born in April 1991, and fifteen years of age at the time of the August 2006 trial. The parties reached an agreement, accepted and ordered by the district court, for joint custody, joint physical care, child support, and other matters concerning the twins, and the provisions concerning the twins have little or no bearing on the issues presented on appeal.

Toni completed tenth grade, and did not get a high school diploma. She is in good health. At the time of the parties’ 1990 marriage Toni was employed as

an area supervisor for Casey's General Stores, supervising about twelve stores and earning \$22,000 per year. She left that job in July 1991 to stay home with the parties' infant daughters.

For the next twelve years Toni engaged in a variety of part-time and intermittent employments, such as for Wal-Mart, operating a self-employed seasonal business, working for Harvey's Casino, baby sitting, cleaning a theater, and working in her brother's business. She did not report some of her income for income tax purposes.

In 2003 Toni returned to work at Casey's General Stores, where she remained employed at the time of trial. She earns gross pay of about \$36,000 per year, consisting of about \$32,000 in salary, plus bonuses.

Rickie has a two-year associates degree in electronic technology. He is in good health. Rickie completed twenty-one years of military service, consisting of eight years of active duty and thirteen years of Army Reserves. He had ended his military career some time early in the parties' marriage. Rickie has earned military retirement benefits that he cannot begin to draw until age sixty, twenty-six percent of which were earned during the parties' marriage.

Rickie is employed as a tractor/semi-trailer driver for UPS, for which he has worked for twenty-one years. He earns gross pay of about \$75,000 per year.

The district court found that Toni contributed to the marriage a residence in Carson, Iowa, subject to a contract balance, with a net value of \$30,000; an AIG account worth \$54,000; and household goods and a motorcycle. The AIG account had appreciated substantially during the marriage, Toni had withdrawn

about \$83,000 to \$90,000 from the account during the marriage, and the account had a balance of \$61,765 at the time of trial.

The district court found that Rickie contributed guns, tools, and a UPS rollover account of \$2,200 to the marriage. Rickie's father died in March 2002 and Rickie inherited \$87,621, consisting of \$31,178 in the form of an undivided interest in fifty-nine and one-half acres of farmland and \$56,443 in cash. The farmland was valued at \$124,712. Rickie applied \$38,139 of his cash inheritance toward purchase of the other interests in the farmland, used \$6,900 of his inheritance to purchase an ATV and a mower deck, and spent the remaining \$11,404 for an air conditioner and furnace for the Carson residence and for other family purchases or expenses.

During their marriage the parties' acquired additional household goods, and Rickie acquired one or two additional guns. When they separated their household goods largely remained with Toni, and following their separation Rickie separately acquired some household goods, including some appliances.

II. THE DISTRICT COURT DECISION

The district court found the worth of the household goods and motorcycle brought into the marriage by Toni had been approximately the same as the worth of the guns and tools brought into the marriage by Rickie. It awarded each party the household goods in that party's possession; awarded Rickie his guns and tools; awarded each party any bank accounts, life insurance policies, and other assets titled in the party's name and not otherwise awarded; and awarded each party one-half of a coin collection and one-half of a baseball card collection. All of these items appear to be of relatively limited value compared to the other

assets owned by the parties. The court also ordered that Toni receive thirteen percent (one-half of the twenty-six percent earned during the marriage) of any military pension Rickie eventually receives.

None of the items mentioned in the immediately preceding paragraph are at issue on appeal. Neither party suggests that their disposition affects the issues presented. The remainder of our discussion therefore focuses on the remaining assets and debts of the parties.

After noting the property brought to the marriage by each party and the inheritance received by Rickie, the district court concluded in part: "A total of \$60,000 should be set off to [Toni] as premarital property." It also concluded in part: "A total of \$63,000 of the inherited and premarital assets should be set off to [Rickie]."

Based on the district court's determinations of values of the parties' assets and amounts of their debts, the court awarded Toni \$196,269 in assets and Rickie \$201,077 in assets. It ordered that Toni be responsible for \$24,223 of debts and Rickie be responsible for \$76,607 of debts.¹ The court ordered that Rickie's UPS 401(k) plan, worth \$133,328 at the time of trial, be divided between the parties according to the formula set forth in *In re Marriage of Benson*, 545 N.W.2d 252 (Iowa 1996). The court did not state what percent of the formula's fraction was to be awarded to Toni. However, the entire balance of the account had been accumulated during the marriage, Rickie appears to assume the court intended fifty percent, and Toni appears to agree. We will therefore make the same assumption. The result is that each party would receive one-half, \$66,664.

¹ These assets and debts include the Carson residence and its mortgage, the AIG account, and the farmland and its mortgage.

The district court's division of assets and assignment of responsibility for debts thus resulted in a property award to Toni of \$238,710 and a property award to Rickie of \$191,134.

Toni requested spousal support of \$1,000 per month "for a minimum period of ten years." The district court denied her request. It ordered Rickie to contribute \$3,000 toward Toni's attorney fees and taxed court costs to him.

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 issues presented, we note briefly some general principles concerning property division and spousal support. 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) (Supp. 2005). *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa Ct. App. 1983). Property division and spousal support should be considered together in evaluating their individual sufficiency. *In re Marriage of Trickey*, 589 N.W.2d 753, 756 (Iowa Ct. App. 1998).

A. Property Division

1. Asset Valuation

The district court valued the Carson residence at \$108,000 and found that Toni had equity in the residence of \$30,000 at the time of the parties' marriage. Rickie asserts the residence is worth \$141,000, the figure it was recently assessed for real estate tax purposes. He also appears to argue that Toni had only \$12,000 in equity in the residence at the time of the marriage. Both the court's finding of \$30,000 in equity and its \$108,000 evaluation are fully supported by the evidence and will not be disturbed on appeal. See *In re Marriage of Vieth*, 591 N.W.2d 639, 640 (Iowa Ct. App. 1999) (noting that even in de novo review we defer to the trial court's valuations when accompanied by credibility findings or corroborating evidence).

The district court valued the farmland at \$147,780. Toni argues it had a value of \$166,980, as suggested by an appraisal done for her by Orton Realty the day before trial. The evidence shows that an appraisal for the parties by Stan Orton just over a year earlier valued the farmland at \$147,780. The Orton appraisals would thus seem to suggest that although the farmland increased in value only \$23,000 in the three years following March 2002, it increased another \$19,000 in just over one more year. The district court may well have believed

that an appraisal prepared for one party on the eve of a pending trial was entitled to considerably less weight than an apparently unbiased appraisal prepared under different circumstances about one year earlier. The court's valuation of the farmland is within the range of the evidence presented at trial and will not be disturbed on appeal. *See id.*

2. AIG Account

During the marriage Toni used \$5,000 of the AIG account withdrawals for a loan to her brother and \$2,500 for graduation presents for each of her three sons. Rickie argues that in dividing property Toni should be charged with the \$12,500.

Toni's brother had previously made loans to help her and she in turn made the \$5,000 loan in question to him when he needed financial assistance. The district court did not consider the \$5,000 loan, and Rickie filed no motion asking that it do so. He has not preserved error concerning the loan and we will not further consider it.

The evidence shows that Toni used monies withdrawn from the AIG account not only for graduation presents for her three sons, but also for graduation parties and presents for Rickie's sons, to make child support payments for Rickie, and for many family and household expenses and purchases. We find no inequity in the district court not charging Toni with the \$7,500 in question.

3. “Setoffs” for Premarital and Inherited Property

Rickie asserts Toni brought to the marriage an AIG account of \$54,000, the Carson residence with equity of \$12,000,² furniture worth \$1,500 and a motorcycle worth \$600, and argues she should therefore have a “setoff” of \$68,100. He points out that he brought to the marriage guns worth \$4,000 and a UPS account of \$2,200, and he inherited \$87,621. He argues he should thus receive a “setoff” of \$93,821. For several reasons we disagree in part and agree in part with Rickie’s figures and arguments, and for these and other reasons discussed later conclude that modification of the district court’s property division is necessary.

As previously noted, the district court found that the household goods and motorcycle brought to the marriage by Toni and awarded to her had been of approximately the same value as the guns and tools brought to the marriage by Rickie and awarded to him. These findings are unchallenged. We therefore give neither these items, nor the additional, later-acquired, small amounts of household goods awarded to each party, any further consideration.

What was stated in a prior case concerning property brought to a marriage is relevant 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)(f). A premarital asset is not otherwise set aside like gifted and inherited property. Instead, it is a factor to consider, together with all the

² We have earlier affirmed the district court’s finding that Toni brought to the marriage \$30,000 in equity in the residence.

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).

All property of the marriage that exists at the time of the divorce, other than gifts and inheritances to one spouse, is divisible property. Importantly, "the property included in the divisible estate includes not only property acquired during the marriage by one or both of the parties, but property owned prior to the marriage by a party."

In re Marriage of Sullins, 715 N.W.2d 242, 247 (Iowa 2006) (citations omitted) (quoting *In re Marriage of Shriner*, 694 N.W.2d 493, 497 (Iowa 2005)).

Toni brought to the marriage \$84,000 in home equity and an AIG account, and Rickie brought a UPS account of \$2,200. The parties' marriage lasted sixteen years. Each party contributed to the marriage, financially and otherwise, to the extent of their ability and as their decisions and circumstances, including child care and homemaking responsibilities, permitted. Under the circumstances Toni is entitled to some, but not full credit, for the large difference between the amounts of property the parties contributed to the marriage. Rickie does not claim the district court's "setoff" of \$60,000 to Toni was error. We therefore affirm the \$60,000 allowed by the court.

Rickie argues he should receive a "setoff" of \$93,821. We have earlier considered and dealt with the \$4,000 of guns. After a sixteen-year marriage we have allowed Toni credit for only part of the property she brought to the marriage,

and conclude Rickie is entitled to no credit for the \$2,200 UPS account. This leaves Rickie's inheritance of \$87,621 at issue.

The parties spent \$11,404 of Rickie's inheritance on their residence and other family purchases and expenses. The farmland represents \$69,317 of Rickie's inheritance. Rickie purchased an ATV and mower deck with \$6,900 of his inheritance, and the parties still have the ATV and mower deck, which has a value of \$5,000. We conclude Rickie is entitled to have set aside as his separate property \$74,317, consisting of the portion of his inheritance invested in the farmland and the present value of the ATV and mower deck.

4. Reconciliation and Modification of Property Division

Both parties are in their early fifties, both are in good health, both are employed, and both have reasonably good earning capacities and incomes. The parties were married for sixteen years. We conclude that, other than the \$60,000 credit to Toni for property contributed to the marriage and the inherited property of \$74,317 set aside to Rickie, a relatively equal property division is appropriate. Otherwise stated, when all property of the parties, including Rickie's inherited property, is considered, Rickie should receive somewhat more property than Toni receives.

The district court awarded property of \$238,710 to Toni and \$191,134 to Rickie. We conclude this division was inequitable. We modify the court's property division to provide that in dividing Rickie's UPS 401(k) account according to the formula in *In re Marriage of Benson*, 545 N.W.2d 252, 255 (Iowa

1996) Toni's share shall be calculated by multiplying the fraction determined by the formula by twenty-five percent rather than fifty percent.³

B. Spousal Support

Toni claims the district court erred in failing to award spousal support to her. She cites in support of her claim the facts involved in the case *In re Marriage of Brown*, 462 N.W.2d 683 (Iowa Ct. App. 1990). However, as noted in that same case, precedent is of little value on questions of spousal support. *Brown*, 462 N.W.2d at 684.

"[Spousal support] is an allowance to the spouse in lieu of the legal obligation for support." *In re Marriage of Sjulín*, 431 N.W.2d 773, 775 (Iowa 1988). Spousal support is not an absolute right; an award depends on the circumstances of the particular case. *In re Marriage of Dieger*, 584 N.W.2d 567, 570 (Iowa Ct. App. 1998). The discretionary award of spousal support is made after considering the factors in Iowa Code § 598.21A(1) (Supp. 2005). See *id.* Property division is one of the many things to be considered when evaluating whether spousal support should be awarded. Iowa Code § 598.232.21A(1)(c); *Trickey*, 589 N.W.2d at 756. In marriages of long duration, both spousal support and nearly equal property division may be appropriate, especially where the disparity in earning capacity is great. *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997).

Several facts have a bearing on the factors listed in section 598.21A(1). The parties' sixteen-year marriage is of moderate length, and the parties had become largely settled in their employments and lifestyle. The property division,

³ As applied to the current account, this would result in Toni receiving \$33,332 rather than \$66,664, and a property division of \$205,378 to Toni and \$224,466 to Rickie.

as modified herein, provides for approximately equal property awards. Rickie's educational level was substantially higher than Toni's, both at the time of the marriage and the time of trial. For about twelve of the sixteen years of the marriage Toni was not employed on a full-time basis. Rickie's earning capacity and income are both much greater than Toni's.

Based on the parties' ages, educational levels, and employment histories, it is not feasible that Toni will be able to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. Any spousal support payments by Rickie will be includable in Toni's gross income and deductible from his gross income. See I.R.C. §§ 61(a)(8), 71(a), 62(a)(10), and 215(a) (2002).

After considering relevant factors we find an award of spousal support, for the duration requested by Toni, to be appropriate and required by equity. We modify the district court's decree to award Toni spousal support of \$750 per month for a period of ten years.

C. Trial Attorney Fees

Rickie claims the district court abused its discretion in awarding Toni \$3,000 in trial attorney fees. He argues the amount of the award is not supported by the evidence.

An award of attorney fees must be for a fair and reasonable amount, and based on the parties' respective abilities to pay. *In re Marriage of Coulter*, 502 N.W.2d 168, 172 (Iowa Ct. App. 1993). An award lies in the sound discretion of the trial court and will not be disturbed on appeal in the absence of an abuse of discretion. *In re Marriage of Romanelli*, 570 N.W.2d 761, 765 (Iowa 1997).

The evidence shows that Toni owed her attorney “about \$3,000,” an amount that did not include time spent on trial preparation and at trial. This case involved numerous, contested economic issues. Further, the district court itself is an expert on the issue of reasonable attorney fees. *Schaffer v. Frank Moyer Constr., Inc.*, 624 N.W.2d 11, 24 (Iowa 2001); *Green v. Iowa Dist. Ct.*, 415 N.W.2d 606, 608 (Iowa 1987). We find no abuse of discretion in the court’s award.

D. Appellate Attorney Fees and Costs.

Toni requests an award of appellate attorney fees and costs. An award of appellate attorney fees rests in the court’s discretion. *Sullins*, 715 N.W.2d at 255. The factors to be considered include the needs of the party requesting the award, the other party’s ability to pay, and the relative merits of the appeal(s). *Id.* Upon consideration of the foregoing factors, we deny Toni’s request for an award of appellate attorney fees.

V. SUMMARY AND CONCLUSION

We modify the district court’s decision and decree to (1) increase the amount of inherited property set aside to Rickie as his separate property, (2) award Toni twenty-five percent, rather than fifty percent, of the fractional share of Rickie’s UPS 401(k) plan, and (3) award Toni spousal support of \$750 per month for a period of ten years. In all other respects we affirm the court’s decree. We deny Toni’s request for appellate attorney fees.

Costs on appeal are taxed one-half to Toni and one-half to Rickie.

AFFIRMED AS MODIFIED.