

IN THE COURT OF APPEALS OF IOWA

No. 7-649 / 06-2069
Filed November 15, 2007

**IN RE THE MARRIAGE OF CONNIE ANN
CRABB KESSLER AND MARK REED KESSLER**

**Upon the Petition of
CONNIE ANN CRABB KESSLER,**
Petitioner-Appellant,

**And Concerning
MARK REED KESSLER,**
Respondent-Appellee.

Appeal from the Iowa District Court for Shelby County, Greg Steensland,
Judge.

Connie Kessler appeals from the district court's dissolution decree.

AFFIRMED.

Lori M. Holm of Lori M. Holm Law Office, Des Moines, for appellant.

Lori Falk-Goss, Council Bluffs, and Alexander Rhoads of Babich,
Goldman, Cashatt & Renzo, P.C., Des Moines, for appellee.

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

VAITHESWARAN, J.

Connie and Mark Kessler divorced after eight years of marriage. At the time of the dissolution trial, the only issues were financial and many were resolved by a prenuptial agreement. Remaining were two issues.

The first related to the disposition of a home that was encumbered at least to the extent of its value. Neither party wanted the home. The district court awarded it to Mark and held him responsible for any indebtedness on it.

The second issue related to the parties' retirement accounts. The court declined Connie's request for \$15,000 of Mark's pension account and awarded each party "any retirement or profit-sharing account currently in their name free and clear of any interest of the other party."

On appeal, Connie seeks a reallocation of Mark's pension account. To that end, she argues the district court improperly discounted a portion of her credit card debt and did not consider the premarital and other assets she invested in the home. Our review is de novo. Iowa R. App. P. 6.4.

Beginning with Connie's credit card debt, the district court made the following findings:

Connie would like to receive a credit against her assets for \$112,508 of credit card debt. However, she testified that her current Chapter 13 plan will pay those credit cards off at \$.37 on the dollar. This would make her credit card liability more in the line of \$41,000. The court finds from the evidence that it is unlikely that Connie's payment on those credit card bills will be any more than \$40,000. In fact the Court believes it will probably end up being less.

These findings are supported by the record. Connie testified she had separate credit cards throughout the marriage. She acknowledged she sought a

bankruptcy discharge of the \$112,508 debt on those cards. She also admitted she entered into a Chapter 13 bankruptcy repayment plan that was confirmed by the bankruptcy court and that discounted the debt to \$.37 on the dollar. Connie was making monthly payments of \$1331 on the discounted debt and had satisfied that payment obligation for six months. Her monthly expenditures as presented to the bankruptcy court did not exceed her income and included allowances for personal grooming, dry cleaning/laundry, clothing, and entertainment. Although Connie testified that consulting income she earned before the divorce had “dried up,” she admitted she also earned a salary from her employment with an established company. By the time of trial, that salary had increased from \$83,000 to \$97,000 annually. Under these circumstances, we conclude the district court acted equitably in assigning a discounted value to her credit card debt pursuant to the terms of the bankruptcy court’s repayment plan.

We turn to Connie’s financial contributions to the home. In her view, the district court did not take these contributions into account. See Iowa Code § 598.21(5) (2003).

“Where a party contributes substantially to the marriage, those efforts should be recognized when the property is distributed.” *In re Marriage of Lattig*, 318 N.W.2d 811, 816 (Iowa Ct. App. 1982). Under the unique facts of this case, we are not persuaded the district court failed to abide by this principle.

The parties purchased their century-old home for \$47,000. At Connie’s request, the house was titled in her name. Connie testified that she contributed approximately \$191,000 towards renovation of the home, including premarital assets, funds from her retirement account, and wages. She maintains these

contributions amounted to “approximately 88%” of all the improvements to the home.

There is no question Connie’s investments in the house enhanced its value. However, the debt outstripped that value. The house was refinanced seven times, primarily at Connie’s behest. By the time of trial, the house had a market value in the range of \$150,000 to \$160,000 but an encumbrance of “roughly \$184,000.” Despite Connie’s substantial investments in the house, she testified she did not care if the court declined to award it to her. She went so far as to say that if she were awarded the home, she would let it go to foreclosure and would add any deficiency judgment to her Chapter 13 bankruptcy plan. The district court abided by her wishes and awarded Mark the home and all accumulated debt, holding her harmless for that debt. Having been absolved of her responsibility for the debt on the home, equity did not dictate she receive \$15,000 of Mark’s pension plan to recognize her financial contributions to that home.

In reaching this conclusion, we have also considered the fact that Connie ratified the prenuptial agreement. The district court stated it considered this fact in making the property division. The agreement allocated all premarital debts to the party incurring those debts and all post-marital, separately incurred debts in the same fashion. The pertinent language was as follows:

The debts contracted or incurred by each party prior to the marriage are to be paid by the party who contracted or incurred them, and the property of the other party shall not in any respect be liable for payments thereof. The parties further agree that all subsequent liabilities, indebtedness, and encumbrances, liens and obligations in the name of a party, or guaranteed by that party, or assessed against the separate property of that part[y] shall remain

the sole responsibility of that party to be satisfied from his or her separate property.

The agreement also stated,

[A]ny real estate purchased or acquired by the parties during their marriage may be titled in the name of the Wife, and the contribution of the Husband and Wife set out and accounted for by a separate document or added to exhibits "A" and "B" respectively to reflect their respective interest in the property.

Connie elected not to prepare a separate document setting forth her interest in and contributions to the property, a document that might have assisted her had the home turned a profit.

In light of the prenuptial agreement and the other factors cited above, we conclude the district court's property division was equitable.

Connie also claims the district court should have ordered Mark to pay her trial attorney fees. An award of attorney fees rests in the discretion of the court. *In re Marriage of Benson*, 545 N.W.2d 252, 258 (Iowa 1996). Given Connie's income, we conclude the district court did not abuse its discretion in declining this request. For the same reason, we decline to order Mark to pay her appellate attorney fees.

AFFIRMED.