

IN THE COURT OF APPEALS OF IOWA

No. 7-652 / 06-2088
Filed September 19, 2007

IN RE THE MARRIAGE OF RUSSEL ROY HART AND DEBRA K. HART

**Upon the Petition of
RUSSEL ROY HART,**
Petitioner-Appellee,

vs.

**And Concerning
DEBRA K. HART,**
Respondent-Appellant.

Appeal from the Iowa District Court for Jackson County, Charles H. Pelton, Judge.

Respondent appeals from the economic provisions of the parties' decree of dissolution of marriage. **AFFIRMED AS MODIFIED.**

Sean Iske and Bradley Norton of Bradley L. Norton, Attorney at Law, P.L.C., Clarence, for appellant.

Robert Sudmeier of Fuerste, Carew, Coyle, Juergens & Sudmeier, P.C., Dubuque, for appellee.

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

SACKETT, C.J.

Debra K. Hart appeals, challenging the economic provisions of the decree dissolving her ten-year marriage to Russell Roy Hart. We affirm as modified.

SCOPE OF REVIEW. Our review is de novo. *Zinger v. Zinger*, 243 N.W.2d 639, 640 (Iowa 1976). In undertaking our review, we examine the entire record and decide anew the issues properly presented. See *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). Although this court is not bound by the findings of the trial court, we give weight to them. *Id.*

BACKGROUND. The parties were married in May of 1996. They separated in November of 2005 and their marriage was dissolved on October 31, 2006. No children were born to the marriage. Russell was fifty-eight at the time of trial. A high school graduate, he drives trucks and also has farmed. He estimated he would have earnings of \$52,000 in 2006. This is higher than his prior years' earnings.

Debra, fifty-one, also apparently is a high school graduate. She primarily worked in minimum wage jobs but had not been employed for five years at the time of the dissolution. Debra's heart was damaged from rheumatic fever she suffered as a child and she has had surgery in an attempt to correct the defect. She also has some memory problems. She receives social security disability payments of \$840 a month and is qualified for Medicare.

At the time of the dissolution the parties had a combined net worth of just over \$502,000. The district court allocated the assets and debt so that Russell received about \$36,000 more in equities than did Debra. The larger distribution to Russell was the result of the district court giving him credit for having brought

more assets to the marriage. The district court also ordered Russell to pay Debra alimony of \$400 a month until he receives social security retirement income, at which time it was ordered that the alimony cease. Russell was also ordered to pay \$1500 towards Debra's attorney fees.

Debra contends (1) she should have additional assets, (2) she should have additional alimony, (3) the district court should have more specifically identified personal property awarded to Russell, and (4) she should have appellate attorney fees.

DIVISION OF PROPERTY. 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 Havran*, 406 N.W.2d 450, 452 (Iowa Ct. App. 1987). The distribution of the property of the parties should be what is equitable under the circumstances after consideration of 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). Assets and liabilities are valued as of the date of dissolution. See *In re Marriage of McLaughlin*, 526 N.W.2d 342, 344 (Iowa Ct. App. 1994); see also *Locke v. Locke*, 246 N.W.2d 246, 252 (Iowa 1976); *Schantz v. Schantz*, 163 N.W.2d 398, 405 (Iowa 1968). We value property for division purposes at its value at the time of the dissolution. See *Locke*, 246 N.W.2d at 252. It is the net worth of the parties at the time of trial that is relevant in adjusting property rights. *In re Marriage of Muelhaupt*, 439 N.W.2d 656, 661 (Iowa 1989); *In re Marriage of Moffatt*, 279 N.W.2d 15, 20 (Iowa 1979). We look to the economic provisions of

the decree as a whole in assessing the equity of the property division. See *In re Marriage of Robison*, 542 N.W.2d 4, 5 (Iowa Ct. App. 1995).

Debra first contends the district court erred in awarding a \$37,482 certificate of deposit to Russell. She contends it was hers and that the parties had agreed it would go to her. She contends further that she was awarded nearly all of the parties' debt of about \$40,000 and she is without liquid assets to pay the debts. We recognize that the pretrial stipulation showed the certificate as being in Debra's name and the parties agreeing it should go to her. We also note the stipulation showed the debts going to Debra. She testified she wanted to take them because then she could be certain they were paid. Much or all of the \$40,000 debt was incurred by Debra after the parties' separation. The debts include a mortgage of about \$10,500 on the \$80,000 homestead Debra is receiving. Some \$26,663 is owed on a sports car she bought, valued at \$23,000, and the balance is for jewelry Debra purchased.

While the parties were in agreement on the allocation of the certificate and of the debt, there were a number of economic issues the district court was required to resolve. In order for the district court to make what it determined to be an equitable distribution of assets it had to consider all assets and allocate them accordingly. There is no evidence that the district court had agreed to be bound by the parties' stipulation. A stipulation settling an issue in a dissolution proceeding is a contract between the parties that becomes final only when accepted and approved by the court. See *In re Marriage of Bries*, 499 N.W.2d 319, 321 (Iowa Ct. App. 1993). Until approved, it is not binding on the court, but may be considered in rendering its decree. See Iowa Code § 598.21(1)(k). The

district court was not bound to give the certificate to Debra. However, the underlying question is not whether the district court gave the certificate of deposit to the wrong person but rather whether the property division arrived at by the district court was equitable.

APPRECIATION ON PROPERTY BROUGHT TO THE MARRIAGE.

Debra contends the settlement was not equitable because the district court failed to award her one-half of the appreciation on an individual retirement and an investment account Russell brought to the marriage.

The district court noted that while both parties brought property to the marriage, it was difficult to determine the assets each brought. The court noted the parties knew little about the assets the other had at the time of marriage and their testimony on the issue at times conflicted. The court found Russell's testimony about the parties' finances more credible than Debra's. The court found Debra did not intend to be misleading in her testimony; rather, she just did not remember.

The district court set aside to each party the assets brought to the marriage at their current value. Debra had set aside to her the house she had at the time of the marriage. It was valued at market value of \$45,000. There is no evidence of its worth at the time of the marriage, although we can assume it is likely it increased in value. The two accounts about which Debra complains were brought by Russell to the marriage and the dividends and interest were reinvested. The district court set these accounts aside to Russell at their current value. The worth of these accounts increased through appreciation of approximately \$46,000. While admitting that she did not directly contribute to the

appreciation of these two assets, Debra argues that the contributions she made to the marriage support giving half of this appreciation to her. Russell contends the appreciated accounts were properly set aside to him as the increase in value was fortuitous and not the result of any tangible effort by the parties.

In dividing appreciated property acquired before the marriage, we consider whether the appreciation that occurred during the marriage was fortuitous or due to the efforts of the parties. *In re Marriage of Lattig*, 318 N.W.2d 811, 815 (Iowa Ct. App. 1982). The underlying premise of our analysis is that an equitable property division of the appreciated value of the property should be a function of the tangible contributions of each party and not the mere existence of the marital relationship. *Id.*

In *In re Marriage of Rhinehart*, 704 N.W.2d 677, 682-83 (Iowa 2005), in addressing a husband's claim he should share in property gifted to his wife, the court noted the holding of *Lattig*, 318 N.W.2d at 815, and rejected the husband's claim, considering he had done nothing to preserve or increase the wife's gifted assets.

We conclude the district court correctly considered the allocation of property the parties brought into the marriage. The property division is equitable.

ALIMONY. Debra contends she should have additional alimony. An award of alimony is a means of compensating the party who leaves the marriage at a financial disadvantage, particularly where there is a large disparity in earnings. *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa Ct. App. 1998). Alimony is not an absolute right. *In re Marriage of O'Rourke*, 547 N.W.2d 864, 866 (Iowa Ct. App. 1996). Alimony is a discretionary award that depends upon

each party's earning capacity and present standard of living, as well as the ability to pay and the relative need for support. *In re Marriage of Bell*, 576 N.W.2d 618, 622 (Iowa Ct. App. 1998), *overturned on other grounds by In re Marriage of Wendell*, 581 N.W.2d 197 (Iowa Ct. App. 1998). Iowa Code section 598.21(3) provides factors for the court to consider when awarding alimony. The factors include the length of the marriage, the parties' ages and health, the earning capacity of the spouse seeking support, and that spouse's ability to become self-sufficient. Iowa Code § 598.21(3).

This was a marriage of only ten years. Debra is leaving with a substantial net worth. The district court did not abuse its discretion in fixing the alimony.

PERSONAL PROPERTY. Debra's last complaint is that the district court did not clearly define certain personal property that went to Russell. She contends the court did not define the television set and coat rack he receives. She also contends he should not have received the grandfather clock and the court did not specify the number of old lunch buckets he was to get. We modify the decree to provide that Russell should get the television that was on the bedroom floor and the steel coat rack. The district court provided he was to get the grandfather clock and the lunch buckets, which means all the lunch buckets. We affirm the personal property award in all respects except for the modification defining the television and coat rack Russell is to receive. We award no appellate attorney fees. Costs on appeal are taxed to Debra.

AFFIRMED AS MODIFIED.