

IN THE COURT OF APPEALS OF IOWA

No. 8-124 / 07-1023
Filed July 16, 2008

**IN RE THE MARRIAGE OF THOMAS
EUGENE BLOOM AND JANET KAY BLOOM**

**Upon the Petition of
THOMAS EUGENE BLOOM,**
Petitioner-Appellant/Cross-Appellee,

**And Concerning
JANET KAY BLOOM,**
Respondent-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Johnson County, Mitchell E.
Turner, Judge.

The parties appeal from the property provisions of the district court's
dissolution decree. **AFFIRMED.**

Michael J. Pitton of Martinek & Pitton, Iowa City, for appellant.

Frank J. Nidey and Mark D. Fisher of Nidey, Peterson, Erdahl & Tindal,
Cedar Rapids, for appellee.

Heard by Sackett, C.J., and Miller and Vaitheswaran, JJ.

VAITHESWARAN, J.

Tom and Janet Bloom married at a ceremony in Tom's home. They signed an agreement purporting to govern the disposition of property in the event of a divorce. The agreement was to be signed immediately before the wedding ceremony but, due to a delay in the arrival of the attorney who prepared it, it was not executed until after the ceremony ended.

The parties divorced approximately nine and one-half years later. The key issue at trial was whether the agreement was enforceable. The district court held the agreement unenforceable and proceeded to divide the parties' property on an equitable basis.

Tom appeals the court's ruling on the agreement and alternately argues the division of property was inequitable. Janet cross-appeals, also contending the court's division of property was inequitable. She requests appellate attorney fees.

I. Enforceability of Agreement

Iowa Code chapter 596 (2005) governs the creation and enforceability of premarital agreements. It defines a premarital agreement as "an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage." Iowa Code § 596.1(1). The agreement "is enforceable without consideration other than the marriage." Iowa Code § 596.4.

Tom and Janet were no longer "prospective spouses" when they signed the agreement. Accordingly, based on the plain language of section 596.1(1), we conclude the Blooms' agreement was not enforceable as a premarital agreement. In light of our conclusion, we need not address Tom's remaining

arguments concerning the enforceability of the document as a premarital agreement.

We turn to Tom's argument that the agreement was valid as a post-marital agreement. Tom cites Iowa Code section 598.21(5) (Supp. 2005), which provides that a district court must consider several factors in deciding on a property distribution, including "any written agreement made by the parties concerning property distribution." Janet counters that this provision does not apply to post-nuptial agreements because Iowa Code section 597.2 (2005) prohibits contracts between married persons involving property either party owns. We need not address these code provisions because, in our view, the agreement between Tom and Janet could be considered in the property distribution under the catch-all "other relevant factors" provision of Iowa Code section 598.21(5)(m) (Supp. 2005).

II. Equitable Division of Property

As noted, the statutory factors relevant to dividing property are set forth in Iowa Code section 598.21(1). "Iowa courts do not require an equal division or percentage distribution. The determining factor is what is fair and equitable in each circumstance." *In re Marriage of Gonzalez*, 561 N.W.2d 94, 98 (Iowa Ct. App. 1997) (citations omitted).

The parties take issue with the district court's division of real estate proceeds and investment accounts.

A. Real Estate Proceeds

Before the marriage, Tom purchased what the parties referred to as the Rustic Ridge property. At the time of the marriage, Tom had built equity of

\$55,000 in this property. Rustic Ridge was sold and the proceeds were used to purchase what the parties referred to as the Moonbeam Ridge property. This property, in turn, was sold, with the proceeds of \$289,132 placed in an account pending trial.

Had the parties' property agreement been enforceable, rather than simply a factor for consideration, Tom would have received all the proceeds from these real estate transactions. Instead, the district court awarded Tom \$55,000 of the \$289,132 in recognition of his premarital interest in the Rustic Ridge property. The court divided the balance equally between the parties.

Tom argues this distribution scheme was inequitable. He cites (1) "[t]he relative contributions of each party," (2) "deception, concealment, and fraud" by Janet, and (3) "Janet's dissipation of assets." The district court fully addressed these factors, making key credibility findings that informed its analysis and resolution. On our de novo review of the record, we see no reason to disagree with that resolution.

We turn to Janet's cross-appeal. She argues (1) Tom's premarital contribution should not have been set off to him, (2) her "disproportionate contribution to the Moonbeam Ridge property requires that she receive a larger share of the proceeds from the sale," and (3) "the doctrine of unclean hands is not relevant to the issues presented in this case."

With respect to Janet's first argument, we recognize Tom's premarital equity in Rustic Ridge was subject to equitable division. See *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006) ("[T]he 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.”). While the district court could “place different degrees of weight on the premarital status of property,” it could not automatically separate it from the divisible estate and award it to the spouse that owned the property before the marriage. *Id.* We are not convinced the district court violated this principle.

When it came to the division of premarital assets, both parties acted as if their written agreement was in effect. As the district court noted, they generally segregated those assets and, with the exception of premarital assets used to purchase real estate, made no claim to the other’s premarital accounts. This factor weighs in favor of the court’s decision to award Tom the premarital equity he accumulated in the Rustic Ridge property. See Iowa Code § 598.21(5)(m).

Turning to Janet’s second and third arguments, the district court considered a number of factors in dividing the real estate, including the parties’ relative monetary contributions and contributions of labor to the properties, as well as both parties’ conduct as it related to the real estate. The court’s analysis was supported by the record.

We conclude the court’s division of the real estate proceeds was equitable.

B. Investment Accounts

After allocating certain accounts to each party, the district court awarded Tom and Janet each a one-third interest in certain of the other’s accounts. Janet received \$24,757 in two accounts held by Tom and Tom was awarded \$707.76

from Janet's checking and savings accounts.¹ Tom argues the award to Janet was inequitable because of her claimed dissipation of assets and excessive spending. Janet cross-appeals, contending the court's award of only one-third of Tom's accounts was inequitable.

With respect to Tom's argument, the district court found that Janet's expenditures during the latter part of the marriage were for improvements to the Moonbeam Ridge property and family expenses that benefited Tom. The record supports this finding; Janet testified that when Tom was away she paid for the mortgage, taxes and insurance on the Moonbeam Ridge property, the insurance on their vehicles, and other household bills.

Turning to Janet's argument, the district court found that Janet was entitled to only one-third of Tom's two accounts because of other financial provisions in the decree and the relatively short duration of the marriage. While reasonable minds may differ on whether this was a short- or long-term marriage, there can be no disagreement that, in Iowa, courts need not divide the property equally. *Sullins*, 715 N.W.2d at 247. In this case, much of the disparity came from the allocation of premarital assets to the parties who brought them to the marriage, an allocation which the parties did not contest. For that reason, we conclude the district court acted equitably in awarding only one-third of Tom's two accounts to Janet.

¹ At one point, the decree states Janet's one-third interest in Tom's accounts equals \$24,732.23. We believe the correct figure is \$24,757.

III. Appellate Attorney Fees

Janet requests \$5000 in appellate attorney fees. An award is discretionary, and is based on the needs of the party making the request, the ability of the other party to pay, and whether the requesting party was obliged to defend the trial court's decision. *In re Marriage of Ask*, 551 N.W.2d 643, 646 (Iowa 1996). While Tom's resources were greater than Janet's, a significant portion of Janet's brief addressed her cross-appeal on which she did not prevail. Therefore, we decline Janet's request to have Tom pay her appellate attorney fees. Costs on appeal should be divided equally between the parties.

AFFIRMED.