

IN THE COURT OF APPEALS OF IOWA

No. 8-285 / 07-1511

Filed April 30, 2008

IN RE MARRIAGE OF CHRISTINE HACKLEY AND GLEN HACKLEY

**Upon the Petition of
CHRISTINE HACKLEY,**
Petitioner-Appellee,

**And Concerning
GLEN HACKLEY,**
Respondent-Appellant.

Appeal from the Iowa District Court for Fayette County, John
Bauercamper, Judge.

Glen Hackley appeals from the decree dissolving his marriage to Christine
Hackley, contending the property division is not equitable. **AFFIRMED.**

Andrew Howie of Hudson, Mallaney & Schindler, P.C., West Des Moines,
for appellant.

Dale Putnam, Decorah, for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

SACKETT, C.J.

Glen Hackley appeals from the July 28, 2007 decree dissolving his marriage to Christine Hackley, contending the property division is not equitable. We affirm.

I. SCOPE OF REVIEW.

Our review of the economic provisions of a divorce decree is de novo. Iowa R. App. P. 6.4. We examine the entire record and adjudicate anew the issues properly presented on appeal. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). 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); *In re Marriage of Grady-Woods*, 577 N.W.2d 851, 852 (Iowa Ct. App. 1998). We approach this issue from a gender-neutral position, avoiding sexual stereotypes. *In re Marriage of Pratt*, 489 N.W.2d 56, 58 (Iowa Ct. App. 1992); see *In re Marriage of Bethke*, 484 N.W.2d 604, 608 (Iowa Ct. App. 1992).

II. BACKGROUND.

Christine and Glen were married in November of 1988. Two sons were born to the marriage, one in 1989, and the second in 1994. The younger son was in Glen's care. The older child has graduated from high school and at the time of the dissolution hearing was scheduled to start active duty in the United States Air Force.

Both parties have served in the military and Glen is a second lieutenant in the Iowa Air National Guard. He completed his education at Upper Iowa University during the marriage and has sporadically been employed. His federal

and state income tax returns show his income in 2006 to be \$14,731. Christine has been employed and obtained a two-year college degree. She earns nearly twenty dollars an hour and has medical and dental insurance coverage that costs her \$132 every two weeks. Christine also participates in a 401(k) plan. The district court found her income in 2006 was \$38,459.

Glen was named primary custodian of the parties' younger son; however the court found the child should reside with Christine when Glen was deployed. Child support was fixed. No spousal support was ordered. The district court allocated the assets and debts. The challenge to this allocation is the only issue raised except both parties seek appellate attorney fees.

III. ANALYSIS.

Before making an equitable distribution of assets in a dissolution, the court must determine all assets held in the name of either or both parties as well as the debts owed by either or both. See *In re Marriage of Brainard*, 523 N.W.2d 611, 616 (Iowa Ct. App. 1994). The assets should then be given their value as of the date of trial. *Locke v. Locke*, 246 N.W.2d 246, 252 (Iowa 1976); *In re Marriage of McLaughlin*, 526 N.W.2d 342, 344 (Iowa Ct. App. 1994). The assets and liabilities should then be equitably, not necessarily equally, divided after considering the criteria delineated in Iowa Code section 598.21(1) (2007). In general, the division of property is based on each marriage partner's right to a just and equitable share of the property accumulated as a result of their joint efforts. *In re Marriage of Dean*, 642 N.W.2d 321, 323 (Iowa Ct. App. 2002). With these principles in mind we address Glen's challenges.

Glen challenges the district court's valuation of the home given to him. He contends the district court abused its discretion in valuing the home at \$82,000, as it should only be valued at \$72,200, the amount it was appraised for in 2002. He also contends that loans of \$19,417 and \$15,000 that he was ordered to pay should have been allocated one-half to each party. However, he does not ask that the debts be reallocated; rather, he contends he should receive a \$14,729 equalization payment from Christine.

In allocating the assets and debts the district court put no value on household goods, jewelry, tools, and collectibles, finding the division was agreed upon and was considered to treat the parties equally. Nor were bank accounts awarded to the person in whose name they were held valued. Additionally, no value was placed on Glen's military retirement benefits, which were allocated to him although the district court found them to be significant if Glen serves long enough. Furthermore, contrary to Glen's argument that the court valued the home at \$83,000, the district court found its value to be between \$72,000 and \$83,000.

A. Value of home.

Glen argues that the district court should not have accepted Christine's opinion the house was valued at \$83,000. He contends she has not been living in it, he has, and she does not understand that it is in serious need of repair. Generally where the district court establishes a value within the permissible range of evidence it will not be disturbed on appeal. *In re Marriage of Decker*, 666 N.W.2d 175, 180 (Iowa Ct. App. 2003). The range of the value given the house by the district court is within the permissible range of evidence. In

assessing the equity of the property division we consider the house to be valued at \$77,500, the average of the high and low value established by the district court.

B. Allocation of debt.

Glen, while recognizing the \$19,417 loan is in his name alone, contends it was done in that manner because it was a loan that was only available to service personnel. He contends the loan was taken out during the marriage, the proceeds from the loan were used for family expenses, and the loan should be divided. He contends that the \$15,000 loan he owes to Sallie Mae was taken out as a loan for his college education but was actually used for family expenses because his actual college expenses were paid through scholarships, grants, and Army Reserve benefits. Christine contends she did not know about the first loan and Glen presented no evidence it existed. While she apparently was aware of the Sallie Mae loan and recognized it was used for living expenses, she said she did not know what the balance on the loan was.

In assessing whether the allocation made by the district court is equitable we are limited, as was the district court, to the minimal financial information that was presented. Looking at the allocation of items valued by the district court we find the result is that Christine received approximately \$13,427 in equities. Glen received an approximate negative \$5229 if the home is valued at \$83,000 or a negative \$16,029 if the home is valued at \$72,200. Christine recognizes that the allocation is not equal and that she received some \$12,000 more, but argues that she had \$6000 in attorney fees and Glen had none because he was represented by legal aid.

We cannot say the district court did not do equity. In arriving at this conclusion we consider, among other things, that included in the assets allocated to Christine is the value of her 401(k). While the court recognized that Glen's military pension has value, it gave no value to it in the property division nor was any provision made for Christine to benefit from it. While Glen was ordered to pay his student loans, Christine was also was ordered to pay hers of nearly \$11,000.

IV. APPELLATE ATTORNEY FEES.

Both parties have requested appellate attorney fees. On a request for appellate attorney fees, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party was required to defend the district court's decision on appeal. *In re Marriage of Wood*, 567 N.W.2d 680, 684 (Iowa Ct. App. 1997). Christine was successful on appeal but she has greater earnings and has received more property through the district court's division. Glen was not successful on appeal. We award no appellate attorney fees. Costs on appeal are taxed to Glen.

AFFIRMED.