

IN THE COURT OF APPEALS OF IOWA

No. 8-676 / 08-0077
Filed October 1, 2008

IN RE THE MARRIAGE OF EDITH RADINE SHAFER AND CHARLES W. SHAFER

**Upon the Petition of
EDITH RADINE SHAFER,**
Petitioner-Appellee,

**And Concerning
CHARLES W. SHAFER,**
Respondent-Appellant.

Appeal from the Iowa District Court for Wapello County, Annette Scieszinski, Judge.

Husband appeals the economic provisions of a dissolution decree.

AFFIRMED.

Allan C. Orsborn of Orsborn, Milani & Mitchell, L.L.P., Ottumwa, for appellant.

Steven Gardner of Kiple, Denefe, Beaver, Gardner & Zingg, L.L.P., Ottumwa, for appellee.

Considered by Huitink, P.J., and Vogel and Eisenhauer, JJ.

EISENHAUER, J.

Charles Shafer appeals the economic provisions of the decree dissolving his marriage to Edith Shafer. We affirm.

I. Background Facts.

Edith and Charles executed a prenuptial agreement for the protection of their separate property when they married in 2002. Both parties recognized the validity of the agreement during the 2006-07 dissolution. During the marriage Edith was the county attorney's office manager, retiring on May 1, 2007. This employment qualifies her for Iowa Public Employees Retirement System benefits. Charles is a partially-retired real estate broker who still operates his realty agency. Charles receives social security and rental property income.

Before they married, Edith and Charles decided they would update one of Charles's rental properties for their new home. They lived in Edith's Ottumwa home while they planned and completed the extensive renovation. During the process of planning the home's improvements, Charles executed a January 2003 warranty deed transferring title to the property to himself and Edith. To fund the renovations, Edith and Charles took out a joint bank line of credit for \$25,000, which Edith repaid. The cost of renovations exceeded the line of credit and both parties contributed additional funds, as well as many hours of sweat equity. Construction began in the fall of 2003 and resulted in an improved valuation from \$26,750 in 1987 to \$190,000 in December 2006. The parties moved in during November 2004 and Edith sold her house.

Charles appeals the economic provisions in the court's November 2007 dissolution decree.

II. Standard of Review.

We review this equity action de novo. Iowa R. App. P. 6.4. We give weight to the fact findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(g).

III. Appellate Waiver Doctrine.

Edith filed a cross-appeal arguing Charles's appeal is barred by the appellate waiver doctrine. Charles's reply brief acknowledges his acceptance of the court-ordered \$81,635 payment, along with his filing a release and satisfaction of judgment, could waive his appellate issue concerning possession of the home. However, Charles argues no other appellate issues are waived.

Under the appellate waiver doctrine, a party who "accepts material and substantial benefits under a judgment" is not ordinarily allowed to challenge the provisions under which the benefits are awarded. *Mendenhall v. Judy*, 671 N.W.2d 452, 459 (Iowa 2003). An appellate waiver "must be made voluntarily, intentionally, and with knowledge of the circumstances." *Id.* The acceptance of proceeds on one issue in a case does not waive the right to appeal on other issues. *Kettells v. Assurance Co.*, 644 N.W.2d 299, 301 (Iowa 2002). Also, in a dissolution decree, where a party accepts part of an award of cash, alimony, or support while claiming entitlement to a larger award on appeal, the appellate waiver doctrine does not apply. *In re Marriage of Abild*, 243 N.W.2d 541, 543 (Iowa 1976).

Both Edith and Charles hotly contested the issue of possession of their home to the point that neither party moved out while the dissolution was pending. Noting Edith's influence on the home's substantial remodeling, the court awarded

her possession. The court then determined an equitable division of property required Edith to pay Charles \$81,635. The release and satisfaction Charles signed provides: “does hereby release [Edith] for the property settlement/cash settlement provided for in the Decree of Dissolution.” We determine Charles has waived his right to challenge the court’s award of the home to Edith. Charles voluntarily accepted the cash benefits designed to replace the value of the home and this operated as a waiver for this issue. We conclude, however, Charles has not waived his other appellate issues.

IV. Deeding One-Half Interest in Homestead.

Charles argues the court erred in concluding his warranty deed to himself and Edith conveyed one-half of the property to Edith. Charles calculates he should receive 78.65% of the home’s value. In support, Charles points to his testimony that his intent at the time of execution was to transfer an interest based upon Edith’s contributions to the home. The district court rejected this claim, stating:

Charles’s courtroom testimony that he never intended to make Edith a half owner of the real estate, is contradicted by all other credible evidence and does not merit weight in this evidentiary record. Furthermore, it cannot go unnoticed that, at the time of his gift of title to Edith, Charles was a seasoned businessman in the real-estate arena, had personal experience with the property issues implicated by divorce, had already secured the protections of a Prenuptial Agreement, and was well-aware of the impact of his decision.

The trial court’s determination of credibility is given weight because it 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). The court ruled: “Here there is overwhelming evidence that the parties set about their house renovation not

only as equal owners of real estate, but with each making material financial contributions.” We agree with the trial court’s conclusion.

V. Property Division.

Charles raises three additional issues. First, Charles seeks additional credit for inherited property “that went directly into” the renovated home. The district court noted Charles completely segregated most of his inheritance from the household expenses and the house renovation and ruled: Charles “should be accorded the value of his inheritance that was not subsumed into the spouses’ home improvements.”

Second, Charles argues although the court stated the premarital agreement would be followed, the court did not follow the agreement when allocating an August 2006 CD and allocating premarital rental property appreciation. Stating “there is no clear evidence as to the origin of the money,” the district court ruled \$13,300 of the \$20,000 August CD was funded by the sale of three premarital rental units and not divisible property. The court ruled the remaining \$6700 was “marital property, representative of the household income that supplemented the purchase.” Further, the court determined Charles’s appreciation of rental unit values was subject to apportionment.

Third, Charles argues the court erred in not awarding him an interest in Edith’s I.P.E.R.S. benefits earned during the marriage. Noting Charles “realized an increase on some of his previously-held property as a result of marriage-funded growth,” the court ruled “it is reasonable to regard Edith’s employment-funded increase in her I.P.E.R.S. account as set off by the impact of Charles’s property appreciation.”

On our de novo review of the evidence, we find no inequity with the economic provisions of the decree and will not disturb them on appeal. See *In re Marriage of Vieth*, 591 N.W.2d. 639, 641 (Iowa Ct. App. 1999) (holding “we give strong deference to the trial court which, after sorting through the economic details of the parties, made a fair division supported by the record”).

Edith seeks attorney fees for this appeal. “An award of appellate attorney fees is not a matter of right, but rests within our discretion.” *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa Ct. App. 1997). We consider the needs of the party making the request, the ability of the other party to pay, and whether the party requesting fees was required to defend the district court’s decision on appeal. *Id.* Both parties were awarded substantial assets in the dissolution decree and each party should pay their own attorney fees. Costs are assessed to Charles.

AFFIRMED.