

IN THE COURT OF APPEALS OF IOWA

No. 9-191 / 08-1303
Filed May 6, 2009

**IN RE THE MARRIAGE OF ROBERT D. BECKER
AND NANCY A. BECKER**

**Upon the Petition of
ROBERT D. BECKER,**
Petitioner-Appellee,

**And Concerning
NANCY A. BECKER,**
Respondent-Appellant.

Appeal from the Iowa District Court for Linn County, Kristin L. Hibbs,
Judge.

A wife appeals and a husband cross-appeals the economic provisions of a
dissolution decree. **AFFIRMED.**

John M. Maher of John Maher Law Firm, P.L.C., Cedar Rapids, for
appellant.

Amy Reasner of Lynch Dallas, P.C., Cedar Rapids, for appellee.

Considered by Mahan, P.J., and Miller, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

HUITINK, S.J.**I. Background Facts & Proceedings**

Robert and Nancy Becker were married on September 27, 2003. Prior to the marriage, on September 1, 2003, they signed a prenuptial agreement. Attached to the prenuptial agreement was a personal financial statement by Robert showing he had a net worth of about \$5.9 million. The prenuptial agreement provided that each party would retain his or her interest in the assets brought to the marriage, with the exception of the marital residence and household goods. The agreement also provided that neither party would be entitled to alimony in the event of a dissolution of the marriage.

During the marriage Robert was the president and CEO of Guaranty Bank & Trust Co. in Cedar Rapids. He also owned a manufacturing company, In Tolerance, and had an interest in family corporations involved in real estate. Nancy had been a senior vice-president at Guaranty Bank, but resigned her position shortly before the marriage. She then became involved in the operation of In Tolerance for a period of time. Nancy subsequently took an unpaid position with a non-profit organization, The World, an international cultural center.

Robert filed a petition for dissolution of marriage on March 22, 2007. He asked Nancy to leave the marital residence. In August 2007 the parties reached an agreement that Nancy would receive temporary alimony of \$4500 per month and move out of the home by September 1, 2007.

Concerning the marital residence, the prenuptial agreement provided:

Robert and Nancy agree that, as soon as practical after their marriage, they will take title to the property at 2838 Allegheny Drive

NE, Cedar Rapids, Iowa as tenants in common. Nancy and Robert shall be deemed to hold their interest in the residential property in the same proportions as their contributions to its acquisition, with Robert paying all of the initial cash payment and Nancy and Robert each being responsible for one-half of the mortgage on the property.

At the time of the dissolution, the marital residence was valued at \$1,000,000, and the mortgage was \$494,209. Robert claimed that he spent \$440,551 in out-of-pocket costs during the construction of the residence, and he should be reimbursed for this contribution. Nancy claimed Robert had not fully disclosed to her his out-of-pocket contributions to the property. She asked to receive one-half of the equity in the residence, calculated at the value of the property less the mortgage. Nancy also asked for alimony of \$7323 per month for five years.

The district court issued a dissolution decree for the parties on June 30, 2008. The court found that Robert adequately disclosed his out-of-pocket costs on the marital residence. The court noted Robert kept this information on spreadsheets, and both parties periodically reviewed the spreadsheets. The court determined the value of the marital residence was \$1 million. The court then subtracted the amount of the mortgage, \$494,209, and Robert's out-of-pocket costs, \$440,551, to determine the amount of equity in the home was \$65,239, to be divided equally, giving each party \$32,619.

The court found the provision in the prenuptial agreement waiving alimony was void under Iowa Code section 596.5(2) (2007). The court concluded Robert should pay Nancy alimony of \$3000 per month for twenty-four months "to give Nancy time to re-establish her career in banking or other field related to her extensive work experience." The court found that Nancy had the ability to earn a

significant income, but it might take her some time to re-establish her career. The court also noted that Robert had the ability to pay alimony.

Both parties filed motions pursuant to Iowa Rule of Civil Procedure 1.904(2). The court clarified some issues, but did not substantively change the dissolution decree. Nancy appealed and Robert cross-appealed.

II. Standard of Review

Issues concerning the validity and construction of prenuptial agreements are considered in equity. *In re Marriage of Shanks*, 758 N.W.2d 506, 511 (Iowa 2008). Our scope of review in this equitable action is de novo. Iowa R. App. P. 6.4. In our de novo review we examine the entire record and adjudicate rights anew on issues properly presented. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). 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. Marital Residence

Nancy points out that she is not seeking to void the prenuptial agreement. Under the terms of the agreement, the only substantial asset that would be divided in the event of a dissolution of marriage was the marital residence. Nancy claims that she would not have signed the agreement if she had known Robert would claim out-of-pocket costs, in addition to the mortgage, against the value of the home. She states that at the time she signed the agreement Robert had not disclosed to her that he would seek \$440,551 as out-of-pocket costs for the construction of the home.

Prenuptial agreements are treated in the same manner as ordinary contracts. *In re Marriage of Gonzalez*, 561 N.W.2d 94, 96 (Iowa Ct. App. 1997). Such agreements are generally favored in the law, and should be liberally construed to carry out the intention of the parties. *In re Marriage of Christensen*, 543 N.W.2d 915, 918 (Iowa Ct. App. 1995).

Under section 596.8(3), a prenuptial agreement is not enforceable under the following circumstances:

Before the execution of the agreement the person was not provided a fair and reasonable disclosure of the property or financial obligations of the other spouse; and the person did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other spouse.

This section “requires only ‘fair and reasonable’ disclosure, or that the party could have had ‘adequate knowledge’ of the other party’s property and financial obligations.” *Shanks*, 758 N.W.2d at 519. A general knowledge of the extent and nature of the other party’s properties is sufficient. *In re Marriage of Spiegel*, 553 N.W.2d 309, 317 (Iowa 1996). Furthermore, actual knowledge of the other party’s assets alleviates the need to prove full and frank disclosure. *In re Marriage of Sell*, 451 N.W.2d 28, 30 (Iowa Ct. App. 1989).

On this issue the district court found:

The Court finds the evidence establishes that Nancy had or reasonably could have had an adequate knowledge of the property and financial obligations of her spouse. Robert made a financial disclosure statement to Nancy. Her attorney contacted Robert’s attorney requesting more detailed financial information. More information was provided. The parties were living together at the time that the residence was constructed. In addition, they had worked together. Nancy had knowledge of Robert’s income, lifestyle, and tangible assets. She was active in selecting fixtures and material for the new home. As previously noted, both parties

testified that Robert kept spreadsheets setting out the costs of the various parts or components of the construction. These spreadsheets were reviewed by both of the parties periodically to monitor their spending on this new construction. Nancy was a banker with knowledge of financial matters. She has a degree in business administration with a minor in economics. She reviewed those spreadsheets with Robert. While the parties stipulate that [Nancy's attorney] was unaware of these costs, the evidence makes clear that Nancy was aware of additional costs being incurred and had access to spreadsheets as the construction continued.

On our de novo review, we agree with the district court's assessment that Nancy had actual knowledge of Robert's out-of-pocket construction costs for the home. Robert testified he kept detailed records of construction costs in a spreadsheet and stated "Nancy and I looked at that computer spreadsheet probably every other day." Nancy also testified, "Bob had kept a spreadsheet and we went over, like he says, several – you know, the spreadsheet several times." She stated they reviewed the spreadsheet periodically to compare estimated costs against actual costs. Nancy stated she had a copy of the spreadsheet on her computer, and Robert had a copy on his computer.¹

We furthermore agree with the district court's finding that Nancy had a sufficient background, due to her education and work experience, to understand the spreadsheets. Nancy had a college education in business administration and had a successful career of many years' duration in the banking industry. We also note that Nancy had the opportunity to consult with an attorney before signing the prenuptial agreement, and in fact consulted with an attorney. See *Shanks*, 758

¹ Nancy testified that after the parties separated she no longer had access to the spreadsheet.

N.W.2d at 518 (noting party's opportunity to consult with counsel as a factor in considering a prenuptial agreement); *Gonzalez*, 561 N.W.2d at 97 (same).

As an additional issue, Nancy claims that as to the marital residence, the language of the prenuptial agreement would only permit Robert to be reimbursed for "contributions to its acquisition," and this would not include construction costs. We first question whether this issue was preserved because it was not specifically addressed by the district court. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (noting we do not consider issues raised for the first time on appeal). Even if the issue were preserved, however, we find that at the time the parties signed the prenuptial agreement, they were in the process of building the marital residence. We conclude that in referring to the parties' contributions to the acquisition of the residence, they are clearly referring to their contributions to the costs of building, and thus acquiring, a residence.

We determine the district court properly concluded the provision in the prenuptial agreement concerning the parties' marital residence was enforceable under section 596.8(3), and that Nancy failed to show there had not been a fair and reasonable disclosure of property.

IV. Alimony

In his cross-appeal, Robert challenges the district court's award of alimony to Nancy. He points out that the prenuptial agreement provides, "in the event of dissolution or annulment of their marriage, neither shall be entitled to alimony or support from the other in any form or to any extent." The district court correctly found this provision of the prenuptial agreement is not enforceable. Section

596.5(2) provides, “The right of a spouse or child to support shall not be adversely affected by a premarital agreement.” Thus, the waiver of spousal support in a prenuptial agreement is not binding. *In re Marriage of Regenmorter*, 587 N.W.2d 493, 495 (Iowa Ct. App. 1998).

Robert also argues that based on the facts of this case Nancy is not entitled to alimony. Alimony is a stipend to a spouse in lieu of the other spouse’s legal obligation for support. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). Alimony is not an absolute right; an award depends upon the circumstances of the particular case. *Id.* In making an award of alimony, the court considers the factors set forth in section 598.21A(1). *In re Marriage of Olson*, 705 N.W.2d 312, 315 (Iowa 2005). We give the district court considerable discretion in awarding alimony, and will disturb the court’s ruling only when there has been a failure to do equity. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998).

After examining the facts of this case, we affirm the award of alimony of \$3000 per month for twenty-four months. Although this was a relatively short marriage (slightly short of five years), Nancy was out of the job market for that period of time while she worked for Robert and then for a non-profit organization. Nancy will need a period of time to re-enter the job market and establish herself in employment where she can be self-supporting. Furthermore, Robert has sufficient financial resources to pay this amount of alimony.

V. Attorney Fees

Nancy seeks attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Romanelli*, 570 N.W.2d 761, 765 (Iowa 1997). We determine each party should pay his or her own appellate attorney fees.

We affirm the decision of the district court on the appeal and the cross-appeal. Costs of this appeal are assessed one-half to each party.

AFFIRMED.