IN THE COURT OF APPEALS OF IOWA

No. 9-553 / 08-2011
Filed August 6, 2009

IN RE THE MARRIAGE OF MICHAEL SCOTT BOOMGARDEN AND JULIE A. BOOMGARDEN

Upon the Petition of
MICHAEL SCOTT BOOMGARDEN,
Petitioner-Appellee,

And Concerning
JULIE A. BOOMGARDEN,
Respondent-Appellant.

Appeal from the Iowa District Court for Butler County, Bryan J. McKinley, Judge.

Julie A. Boomgarden appeals the property division provisions of the decree dissolving her marriage to Michael Scott Boomgarden. **AFFIRMED.**

D. Raymond Walton of Beecher Law Offices, Waterloo, for appellant.

Bruce J. Toenjes of Nelson & Toenjes, Shell Rock, for appellee.

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

DOYLE, J.

Julie A. Boomgarden appeals the property division provisions of the decree dissolving her marriage to Michael Scott Boomgarden. We affirm.

***I. Background Facts and Proceedings*.**

Michael and Julie Boomgarden married in 1990. They have two minor children, the youngest born in August 1995. Michael filed a petition for dissolution of marriage in October 2007. On October 6, 2008, the district court entered a decree of dissolution dividing the parties' property and awarding Michael physical care of the children, with Julie receiving liberal visitation.

At issue here are certain provisions of the decree's property division. In dividing the parties' property, the court determined that Michael should be allowed to remain in the marital home with the parties' children until September 1 of the year that the youngest child graduates from high school (approximately six years from the date of the decree). The decree further provided:

> After September 1, the property will be listed for sale, and after reasonable and customary selling expenses, the proceeds shall be equally divided between Julie and Michael; however, this sale provision is subject to an option on the part of Michael that he may exercise any time prior to September 1 of the year [the youngest child] graduates from high school. In the event Michael wishes to purchase Julie's one-half interest, the court directs that Michael shall secure an appraisal from the same appraisal company that was utilized at the time of the dissolution in arriving at the current value of $193,400. Upon exercising the option, Michael shall be required to pay one-half the fair market value of the home and be able to demonstrate his ability to close the transaction prior to September 1 of the year that [the youngest child] graduates from high school.
>
> In lieu of rent for the time Michael is in possession of the home until sale or the exercising of his option, Michael shall be responsible to maintain the premises in its current condition, and shall be responsible for all repairs and maintenance.

Additionally, in dividing the parties' property, the court found that Michael's and Julie's individual bank accounts were property subject to division. The court also awarded custodial supervision of the children's savings bonds and bank accounts to Michael, and ordered that Julie, upon request, be provided financial documentation as to the status of the children's accounts.

On October 15, 2008, Julie filed a motion pursuant to Iowa Rule of Civil Procedure 1.904(2) requesting the court amend its findings of fact, conclusions of law, and decree with respect to various provisions of the property division. The district court denied Julie's motion concerning those provisions discussed above, again finding Julie's Veridian savings account to be subject to division. The court also left custodial supervision of the children's savings bonds and bank accounts with Michael. Further, the court found Julie's request that she receive interest on her share of the marital home to be inequitable. The court explained:

> [I]n addition to [Michael] being solely responsible for all taxes, insurance, maintenance and upkeep, . . . the approach taken by the court further ensures that the parties' children shall not be forced to leave the family home until after they have graduated from high school and that some stability for the children within this dissolution has been maintained.

Julie now appeals.

II. Scope and Standards of Review.

We review dissolution cases de novo. Iowa R. App. P. 6.4; *In re Marriage of Fennelly*, 737 N.W.2d 97, 100 (Iowa 2007). Although not bound by the district court's factual findings, we give them weight, especially when assessing the credibility of witnesses. Iowa R. App. P. 6.14(6)(*g*); *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006).

***III. Discussion*.**

On appeal, Julie contends the district court erred in several respects. Regarding the marital home, she argues the court erred in not fixing the value of the house as of the date of trial, in not awarding her an immediate cash payment for her interest in the house, and in not awarding her interest on her interest in the house since the date of the dissolution. Additionally, she asserts she should have been awarded custodial supervision of the children's savings bonds and bank accounts. She also contends the court erred in including her Veridian savings account in the division of property. Julie and Michael both request appellate attorney fees. We address their arguments in turn.

***A. Marital Home*.**

The ultimate goal of the property division is to divide all property equitably between the parties. *Hunt v. Kinney*, 478 N.W.2d 624, 625 (Iowa 1991). However, "[t]here need be neither an equal division nor a percentage division of the property; 'that which is determinative is that which would constitute an equitable and just award under the circumstances.'" *In re Marriage of Hoak*, 364 N.W.2d 185, 194 (Iowa 1985) (quoting *Locke v. Locke*, 246 N.W.2d 246, 251 (Iowa 1976)). Among the factors to consider in dividing the marriage property is the desirability of awarding the family home to the party having physical care of the children. Iowa Code § 598.21(5)(g) (2007); *Hunt*, 478 N.W.2d at 625. The custodial parent presumably occupies the home for the benefit of both parties by caring for the parties' children. *Hunt*, 478 N.W.2d at 625. The provisions that allow the physical care parent to remain in the family home are primarily made to

provide stability for the child; the economic benefit is ancillary. *In re Marriage of Ales*, 592 N.W.2d 698, 704 (Iowa Ct. App. 1999).

Keeping the above principles in mind, we find no inequity in requiring that Julie's equity remain in the marital home until the parties' youngest child graduates from high school. We agree with the district court that Julie's delayed access to the marital home's equity and lack of interest on her equity is equitably balanced by requiring Michael to be solely responsible for all taxes, insurance, maintenance and upkeep on the marital home and by providing the parties' children stability within this dissolution by not forcing them to leave the family home until after they have graduated from high school. Furthermore, we find no error in valuing the marital home at the time Julie's interest in the marital home becomes payable. Julie will share in any increase or decrease in the value of the home for the benefit of her children's stability.

***B. Custodial Supervision of the Children's Bonds and Accounts*.**

Julie next asserts the district court erred in awarding Michael custodial supervision of their children's saving bonds and bank accounts. Upon our review, we find no error in the court's award. Julie does not challenge Michael's award of physical care of the children, and as the children's physical custodian, it is logical for Michael to be the custodian of their accounts. Furthermore, the court ordered that Julie be provided upon request financial documentation as to the status of the children's accounts. This provision is equitable and ensures the accounts are managed for the benefit of the children.

***C. Bank Account*.**

Julie next argues the district court erred in including her Veridian bank account in the property division. She argues the funds in that account were proceeds of the family savings account already divided by the parties, and thus, the court erred in including the account in the division of property. She further argues the account included funds received from her inheritance and therefore should not have been divided.

Prior to trial, the parties provided financial affidavits listing the parties' individual bank accounts. At trial, Michael testified concerning the family savings account, the only testimony regarding any bank accounts offered (other than the children's accounts):

> [MICHAEL'S ATTORNEY]: Did [Julie] take half of [the family savings account]?
> [MICHAEL]: I went over, and I had gotten my half out, and I had left her more than half of the savings account. It wasn't a lot more than half, but it was a dollar or two more than half.
> [MICHAEL'S ATTORNEY]: About how much was that?
> [MICHAEL]: I believe around $8,600 apiece. . . .
> [MICHAEL'S ATTORNEY]: You're not worried about dividing that or anything as part of the property division?
> [MICHAEL]: No, I'm not.

Julie points to Michael's testimony as evidence that the funds in her Veridian savings account should not have been divided. However, she does not cite, nor do we find, any testimony or exhibits evidencing that the funds in the Veridian account were in fact the proceeds from the previously divided family savings account or funds from her inheritance. We therefore find the court did not err in including Julie's Veridian savings account in the property subject to division.

***D. Appellate Attorney Fees*.**

On appeal, Julie and Michael each request an award of appellate attorney fees. "Appellate attorney fees are not a matter of right, but rather rest in this court's discretion." *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). We consider the parties' needs, ability to pay, and the relative merits of the appeal. *Id*. Upon consideration of the foregoing factors, we deny each party's request for appellate attorney fees. Costs of appeal are divided equally between the parties.

***IV. Conclusion*.**

Because we conclude the distribution of property between the parties by the district court effects an equitable distribution between the parties, we affirm the district court's decree and decline to award appellate attorney fees.

AFFIRMED.