

IN THE COURT OF APPEALS OF IOWA

No. 5-030 / 94-219

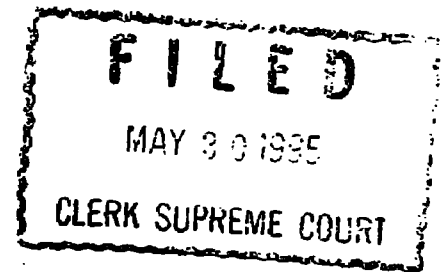
IN RE THE MARRIAGE OF REDONNA J. ALEXANDER AND
CHARLES ALEXANDER

Upon the Petition of
REDONNA J. ALEXANDER,

Petitioner-Appellee,

And Concerning
CHARLES ALEXANDER,

Respondent-Appellant.



Appeal from the Iowa District Court for Black Hawk
County, William J. Klotzbach, Judge.

Charles Alexander appeals the economic provisions of
the district court's dissolution of marriage decree.

AFFIRMED.

Donna Lesyshen of Tyler & Lesyshen, Waterloo, for
appellant.

Thomas W. Langlas of Gallagher, Langlas & Gallagher,
P.C., Waterloo, for appellee.

Considered by Habhab, P.J., and Cady and Huitink, JJ.

CADY, J.

Charles Alexander appeals from the economic provisions of the decree dissolving his marriage with Redonna Alexander. Upon our de novo review, we affirm the district court.

Charles and Redonna were married in 1969. They have three children Troy, born in 1968, Charlyn, born in 1972, and Brylan, born in 1979. Brylan was the only child affected by the divorce decree.

Both Charles and Redonna worked outside the home throughout their marriage. Charles was employed at Midwest Energy Company for over twenty years. In addition, Charles bought and sold cars prior to and during the marriage. Redonna was employed at John Deere Tractor Works for over twenty-one years.

In 1976 Charles was awarded \$17,000 in a personal injury suit. Redonna was not a party to the suit. The money was eventually used to build a home at 624 Adams Street in Waterloo, Iowa.

In October 1992, Redonna filed a petition for dissolution of marriage. While the divorce was pending, Charles transferred title of a 1965 Chevrolet Corvette out of his son Brylan's name and into his cousin Aster Lewis's name. Charles held a \$10,000 first lien security interest in the car. During this time, Charles also unilaterally sold other cars, and collected \$7,500 in contract payments from the sale of the party's home on 323 Webster Street.

In October 1993, the parties separated. Charles moved out of the family home and bought a house at 1000 Vine Street.

After the trial held in October 1993, the court awarded Redonna the home at 624 Adams Street. In addition, Redonna was awarded the 1988 Taurus and 1991 Ford Explorer and was required to pay the indebtedness on the vehicles. Charles was awarded the home on 1000 Vine Street and the 1987 Cadillac, 1986 Grand Am, 1983 Camaro, 1981 Chevrolet S-10 pickup, 1981 Buick Skylark, 1985 Chevrolet Celebrity, 1991 Thunderbird, 1989 Mustang, and a Yamaha motorcycle. The parties were each awarded their own pensions and 401K plans.

Charles was ordered to pay child support of \$100 per week for Brylan. He was also ordered to pay Redonna \$5000 "to equalize the property awarded to the parties and for any profits from the sale of motor vehicles that respondent [Charles] . . . attempted to conceal from petitioner [Redonna] during the pendency of these proceedings."

Charles appeals. He argues that the court erred in: (1) not setting aside to him the \$17,000 he received from his personal injury claim; (2) considering the 1965 Chevrolet Corvette as marital property; and (3) requiring him to pay half of the Visa bill.

Redonna requests appellate attorney fees.

I. Scope of Review

We review this equitable proceeding de novo. Iowa R. App. P. 4. We consider the facts and the law and determine rights anew from all the credible evidence on issues properly presented and preserved. In re Marriage of Lattig, 318 N.W.2d 811, 812 (Iowa App. 1982). While we give weight to the findings of the trial court, especially where the credibility of witnesses is involved, we are not bound by them. Id.

II. Personal Injury Award

Our analysis of property division issues is governed by principles of equitable distribution as codified in Iowa Code section 598.21 (1993). Section 598.21 directs courts to divide all property, except inherited property or gifts received by one party, equitably between the parties. Inherited property and gifts are set aside to the receiving party before the other property is divided, unless a refusal to divide the property is inequitable. Id.

The primary issue we are confronted with in this case is whether the proceeds from Charles personal injury claim should be treated similarly to inherited or gifted property and withheld from the division of the parties assets. Our Supreme Court addressed this issue in In re Marriage of McNerney, 417 N.W.2d 205 (Iowa 1987). There they adopted the "mechanistic approach" to distributing proceeds from personal injuries. Id. at 208. This approach allows trial courts to divide the property equitably on a case-by-case basis. Id. Thus, the settlement proceeds do not automatically belong to either party. Id.

In the instant case, we conclude the trial court appropriately considered Charles personal injury award. Setting aside the award to Charles, as he requests, would be inequitable. Charles was injured approximately two years after the parties were married, and received the award four years later. Although, Charles initially placed the money in certificates of deposit, he eventually used it to build the family home. He clearly intended it to be a family asset and testified to this at trial. Moreover, Redonna made significant contributions to the parties economic resources throughout the marriage. Her steady employment enabled the family to preserve Charles award and use it to finance their home. When Charles was unable to work for two years, as a result of his injuries, Redonna continued to provide for the family. Charles also admitted he "recouped" \$10,000 of this award through the unilateral sale of property and cars the parties accumulated during the marriage. Under the record in this case, we agree with the trial court's division of the asset.

III. 1965 Corvette

Charles asserts the trial court erred in considering the 1965 Corvette as a divisible asset of the parties. He claims he acquired the car prior to the marriage, and it should not, therefore, be considered a marital asset subject to division.

Property brought into a marriage by a party is not necessarily set aside for that individual. See In re

Marriage of Brainard, 523 N.W.2d 611, 616 (Iowa App. 1994). Whether a party owned the property at issue prior to the marriage is just one factor courts must consider in the equitable division of property. Iowa Code § 598.21(1). The only property specifically exempted from equitable division under section 598.21(1) is inheritance and gifts. All other property is subject to division by the court according to what is just and equitable under the circumstances of each case. In re Marriage of Hanson, 475 N.W.2d 660, 662 (Iowa App. 1991).

Initially, we note the trial court did not award the car or Charles security interest in the car to either party. He merely noted Charles did not list the car on his statement of affairs and transferred ownership of the car to his cousin at the beginning of the dissolution action. The court also stated Charles duplicitous actions in the sale of several vehicles contributed to his decision to award Redonna a \$5000 property settlement.

We conclude the court properly considered the transfer of the Corvette and the concealed sale of other cars in formulating an equitable property division. Our courts have continually disapproved transfers which jeopardize the rights of the other spouse. In re Marriage of Williams, 421 N.W.2d 160, 164 (Iowa App. 1988); In re Marriage of Johnson, 350 N.W.2d 199, 202 (Iowa 1984); In re Marriage of Cerven, 335 N.W.2d 143, 146-67 (Iowa 1983). Parties who are not fair and accountable with property under their

control during the dissolution process are dealt with harshly. Id.

The purchase and maintenance of the Corvette resulted from the parties joint efforts. Charles did not have clear title to the Corvette prior to the marriage. The remaining balance on the car was paid during the marriage, and the parties used the car several times throughout the marriage as collateral for loans. Redonna contributed to the assets used to reduce these loans. Yet, at trial, Charles testified he purposely failed to disclose the Corvette on his statement of affairs, and transferred the Corvette's title in order to prevent his wife from claiming the car. He also testified to keeping the proceeds from the sale of other cars in order to recoup his personal injury award. We conclude Charles actions were an attempt to dissipate Redonna's potential assets and were properly considered in assessing the property settlement.

IV. Visa Bill

Charles claims the court erred in requiring him to pay one half of the Visa bill. Charles asserts because Redonna acknowledged the debt on her affidavit of financial status, she is solely responsible for it. We disagree.

Debts like assets are to be equitably divided by the trial court under the circumstances of each case. In re Marriage of Burkle, 525 N.W.2d 439, 442 (Iowa App. 1994). In this case, although Charles received the majority of the consumer debt, it was counterbalanced by the significant

number of assets he received in the form of automobiles. We conclude the trial court made a just and equitable division of the parties debts and assets.

V. Attorney Fees

Redonna requests appellate attorney fees for defending the decree on appeal. An award of attorney fees rests within the court's discretion and the parties financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). Our decision is guided by the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). Redonna has secure long-term employment and her current income exceeds Charles. We, therefore, deny her request for attorney fees. Costs of this appeal are assessed to Charles.

AFFIRMED.