IN THE COURT OF APPEALS OF IOWA

No. 4-164 / 93-1160

FILED
JUN 28 1994
CLERK SUPREME COURT

IN RE THE MARRIAGE OF DALLAS E. VOIGTS AND BARBARA ANNE VOIGTS

Upon the Petition of
DALLAS E. VOIGTS,

Petitioner-Appellee/Cross-Appellant,

And Concerning
BARBARA ANNE VOIGTS,

Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Bremer County, Gilbert K. Bovard, Judge.

Former wife appeals, and former husband cross-appeals, from the economic provisions of the parties' dissolution decree. **AFFIRMED.**

Frances L. Gohlke of Carney & Gohlke, Waverly, for appellant.

Galen V. Hassman of Engelbrecht, Ackerman & Hassman, Waverly, for appellee.

Heard by Donielson, C.J., and Hayden and Habhab, JJ.

HABHAB, J.

This is an appeal and cross-appeal from the economic provisions of the parties' dissolution decree. We affirm.

Barbara and Dallas Voigts were married in 1968. They have three children: Adam, born February 18, 1972; Jeremy, born December 31, 1975; and Carrie, born October 13, 1980. Adam is pursuing a post-high school education program and Jeremy and Carrie live at home. Barbara has a nursing diploma, and is the nurse administrator for Bremer County Nursing Agency. Dallas has a bachelor's degree in business and is a partner with a nine percent interest in an accounting firm. The parties' 1992 income tax return shows a gross income for Dallas of $75,204 and for Barbara of $24,926.

The parties' twenty-five-year marriage was dissolved in 1993. At the time of the dissolution, Barbara was forty-five years old and Dallas was forty-seven. The parties stipulated to primary care placement of the children with Barbara and liberal visitation for Dallas. They also agreed that child support should be set according to the supreme court guidelines while the children are in high school and/or college. The court approved Dallas's proposal to recalculate child support each year, deduct alimony from net monthly income for the child support calculation, and use a separate calculation and analysis for "extra child care costs" based on "actual" money available to the parties. Based on the parties' 1992

incomes, monthly child support was set at $1500 and Barbara was found to be responsible for fifty-four percent of the extra child care costs while Dallas was responsible for forty-six percent of the costs. The district court awarded Dallas $118,543 in marital property and Barbara $51,448 plus a $33,547 "equalization payment" to be paid at a rate of $300 per month. Barbara was awarded $200 per month in alimony. Barbara appeals and Dallas cross-appeals.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. 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. 14(f)(7).

Both parties contend the district court erred in the property distribution. The partners in the marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. In re Marriage of Russell, 473 N.W.2d 244, 246 (Iowa App. 1991). The Iowa courts do not require an equal division or percentage distribution. Id. The determining factor is what is fair and equitable in each particular circumstance. Id. We consider property division and alimony together in evaluating their individual sufficiency. In re Marriage of

Dahl, 418 N.W.2d 358, 359 (Iowa App. 1987); In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984).

Dallas contends the district court's valuation of his business interest and the parties' debt were incorrect. We find the value placed on the business and the debt by the trial court to be well within the permissible range of evidence and will not disturb it on appeal. See In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973); In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984).

Dallas also claims the district court erred in valuing Barbara's IPERS benefits. Even assuming we agree with Dallas that the court should have considered Barbara's employer's contribution and therefore valued her IPERS benefits at a greater value than it was was given, we find the resulting property distribution was equitable. Dallas was awarded $118,543 in marital property. Barbara was awarded $51,448 plus an "equalization payment" of $33,547 to be paid at a rate of $300 per month.

Both parties also object to how the district court considered the parties' inheritances. Barbara contends the district court failed to distribute to her any part of a substantial family inheritance she received during the marriage. Barbara claims she should have received a credit against the parties' assets. Dallas contends the district court awarded Barbara fifty percent of her inheritance in the form of alimony. He claims the court erred in doing this because these funds were commingled with marital

assets and are now untraceable. He also asserts Barbara's inheritance is of less value than calculated by the court.

Inherited property is generally not treated as marital property for distribution in dissolution actions. Iowa Code section 598.21(2) (1991) provides:

> Property inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage.

In this case, Barbara received between $74,559 (Barbara's calculation) and $66,941 (Dallas's calculation)[1] in inherited monies during the marriage. Barbara placed her inheritance into the family's joint account where it was used over the years for family expenses. Dallas received $16,000 in inherited monies during the marriage. He used $10,000 of his inheritance to purchase the Allison residence, which the district court set-off to him as inheritance.

The district court awarded Barbara alimony in the amount of $200 per month, until she receives retirement benefits or reaches age 65, whichever event occurs first.

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1. Dallas asserts the total inheritance should be reduced by expenses the estate of Barbara's mother incurred which reduced Barbara's inheritance. Dallas also states the parties agreed that Barbara should keep numerous household goods which Barbara received as part of her inheritance and that these items should not be subject to the property division because they are not "marital property". Dallas believes the value of these items should be deducted from the $74,559 figure.

Dallas claims that this was to compensate Barbara for $37,280 of her inheritance. Considering the fact that a substantial portion of Dallas's inheritance was set-off to him and the large disparity in the parties' incomes, we find this result equitable.

Barbara next argues the district court erred in deducting alimony from net monthly income for child support purposes. Our guidelines give discretion to the district court in setting child support to adjust the amounts to reflect alimony paid under the present decree in an attempt to "do justice between the parties." In re Marriage of Lalone, 469 N.W.2d 695, 697 (Iowa 1991). The district court properly considered the amount of alimony paid to Barbara in determining Dallas's child support.

Barbara also claims the district court erred in determining parental contributions for additional expenses of the children, such as unreimbursed medical costs, college tuition and books, major automobile repairs and automobile purchase cost not paid by the child.[2] We find the district court's allocations of these costs of 54% to Barbara and 46% to Dallas is equitable. Barbara also argues the district court erred in granting Dallas all the children as tax exemptions. We find this equitable also.

Both parties request appellate attorney fees. An award of attorney fees is not a matter of right, but rests within

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2. It appears the $1500 a month in child support Barbara receives from Dallas includes a payment for the oldest child's room and board at college.

the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). We determine each party should pay his or her own appellate attorney fees.

Costs assessed one-half to appellant, one-half to appellee.

AFFIRMED.