IN THE COURT OF APPEALS OF IOWA

No. 1-476 / 00-1747
Filed December 12, 2001

IN RE THE MARRIAGE OF BARBARA ANN RADOSEVICH and STEPHEN JOSEPH RADOSEVICH

Upon the Petition of
BARBARA ANN RADOSEVICH n/k/a BARBARA ANN HILL,
Petitioner-Appellant/Cross-Appellee,

And Concerning
STEPHEN JOSEPH RADOSEVICH,
Respondent-Appellee/Cross-Appellant.

FILED
DEC 12 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Johnson County, Larry J. Conmey, Judge.

The petitioner appeals, and respondent cross-appeals, from various economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED ON APPEAL, CROSS-APPEAL DISMISSED.**

Gregg Geerdes, Iowa City for appellant.

Sharon A. Mellon of Mellon & Spies, Iowa City, for appellee.

Considered by Sackett C.J., and Vogel and Vaitheswaran, JJ.

VAITHESWARAN, J.

On appeal from her divorce decree, Barbara Radosevich contends the district court inequitably allocated two securities accounts and the parties' pension accounts. We agree with her claim concerning the pension accounts and, accordingly, affirm as modified.

I. Background Facts and Proceedings

Barbara and Stephen Radosevich were married for twenty-one years. Over the course of the marriage, the parties accumulated various assets.

Barbara inherited or was gifted a total of $196,475 from her uncle and parents, much of which was spent on renovation and maintenance of the parties' homes, and on cars, cruises, and luxury items. When the parties sold one of the homes, the sale proceeds of $56,630 were placed in an escrow account.

The parties jointly owned a Merrill Lynch securities account and Barbara owned a Waterhouse account and an American Century mutual fund. Both parties had TIAA-CREF retirement accounts through their employer, the University of Iowa, and Stephen had two laborers pension funds.

Barbara sought a divorce The sole issue at trial was how to equitably divide the parties' assets. The district court awarded Barbara all the escrowed funds, to recognize her contribution of inherited and gifted money to the marriage. The court awarded Stephen the Waterhouse account, divided the Merrill Lynch account in half, and gave Barbara the American Century fund. Finally, the court equally divided the TIAA-CREF retirement accounts and awarded Stephen his laborer pension accounts.

Barbara appeals, contending the district court acted inequitably in: (1) awarding Stephen the entire Waterhouse account; (2) awarding Stephen half of the funds in the Merrill Lynch account; and (3) failing to award the parties their own pension accounts or, alternately, failing to divide all the pension accounts equally. [1]

Our review of these economic issues is de novo. Iowa R. App. P. 4. As each decision turns on its own facts, we accord the district court "considerable latitude" in resolving disputed claims, and will disturb a ruling only when there has been a failure to do equity. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998).

II. Economic Provisions

A. Waterhouse Account. At the time of trial, this account contained $29,479. The funds represented the appreciated value of the parties' first home. The district court awarded the entire sum to Stephen. Barbara claims she should have received half the money, given her contributions to the upkeep and renovation of the home and to paying down the mortgage. We disagree.

Property divisions are made based on what would be fair and equitable under the circumstances. *In re Marriage of Campbell*, 623 N.W.2d 585, 586 (Iowa Ct. App. 2001). We view all economic aspects of the decree as an integrated whole. *In re Marriage of Imhoff*, 461 N.W.2d 343, 344 (Iowa Ct. App. 1990).

Barbara received all the proceeds from the sale of the parties' second home, which was almost double the proceeds in the Waterhouse account. She

[1] Although Stephen filed a cross-appeal, he has not pursued it.

also received two vehicles worth more than $10,000 in contrast to the one $3500 car awarded to Stephen. She was awarded furniture and household items with an estimated value substantially higher than the value attributed to Stephen's household items. Finally, she received the entire $12,265.95 value of her American Century fund. We believe these allocations adequately compensated her for her contributions to the home and household. Viewing the entire property distribution, we conclude the district court acted equitably in allocating all the funds in the Waterhouse account to Stephen.

B. Merrill Lynch Account. The parties opened a securities account at Merrill Lynch. At the time of trial, the account value was $11,641. Barbara contends all of it is traceable to inherited funds and, therefore, should have been allocated to her. *See* Iowa Code § 598.21(1) (stating court to divide all property except inherited funds or gifts); Iowa Code § 598.21(2) (stating property inherited or gifted to a party belongs to party unless result is inequitable to other party or children). Stephen responds that he also contributed funds to the account.

Stephen did not refute Barbara's assertion that the fund was initially opened with her inherited funds, or her claim that she subsequently deposited $10,255.82 of inherited funds into the account. However, Stephen did furnish evidence showing that a later deposit of $8500 included some of his student loan money and that the parties deposited a legal settlement check of $2800 into the account. On this record, we cannot conclude that the account was comprised exclusively of Barbara's inherited funds. Therefore, we reject this ground for denying Stephen a portion of the funds.

Barbara also appears to argue that Stephen should not receive any funds from the Merrill Lynch account because he squandered the funds on luxury items. We agree with the district court that, during a good portion of this lengthy marriage, both parties made liberal use of Barbara's new-found wealth, including the commingled funds contained in the Merrill Lynch account. Accordingly, we do not view this ground as a basis for denying Stephen a portion of the Merrill Lynch account. *See In re Marriage of Muelhaupt*, 439 N.W.2d 656, 659 (Iowa 1989) (describing effect of lengthy marriage on allocation of inherited assets); *Cf. In re Marriage of White*, 537 N.W.2d 744, 746 (Iowa 1995) (noting decisions on how to use property during a marriage, including inherited property, are essentially family decisions). We conclude the district court acted equitably in equally dividing this account.

C. Allocation of Pension Funds. It is well established that pensions are subject to equitable division in a dissolution action. *In re Marriage of Robison*, 542 N.W.2d 4, 5 (Iowa Ct. App. 1995). The parties' pension funds were valued and distributed as follows:

Account	**Value at Trial**	**Trial Ct. Disposition**
Barbara's TIAA-CREF	$178,230	divided equally
Stephen's TIAA-CREF	$16,862	divided equally
Stephen's Laborer Pension	Unknown (Payout: $719 per month)	to Stephen

Barbara concedes that the funds in her account were accumulated during the marriage, but contends she should receive the entire value because Stephen did not generate income and accumulated substantial debt during portions of the marriage. We disagree with her contention. This was a marriage of long duration. *See* Iowa Code § 598.21(1)(a). Although Stephen did not earn wages during the entire marriage, he used his laboring skills and construction experience to enhance the value of the parties' homes. Barbara received proceeds from the sale of one of the homes in recognition of her contribution of inherited and gifted assets to the marriage. As noted, she also received substantial additional assets in recognition of her other contributions to the marriage. Under these circumstances we are not persuaded she should also receive the entire value of her TIAA-CREF account, which, at the time of trial, was more than nine times the value of Stephen's.

We are more persuaded by Barbara's fall-back position that she is at least entitled to half of Stephen's laborer pension funds. As those accounts were accumulated during the marriage, we see no basis for treating them differently than the TIAA-CREF accounts. Accordingly, we modify the decree to provide that the two laborer pension funds shall be equally divided pursuant to qualified domestic relations orders.

III. Appellate Attorney Fees

Both parties seek appellate attorney fees. Such an award rests within our sound discretion after considering the needs of the requesting party, the ability of the other party to pay, and whether the requesting party was obligated to defend the district court's decision on appeal. *In re Marriage of Thielges*, 623 N.W.2d

239, 240 (Iowa Ct. App. 2000). After consideration of these factors, we decline to award either party any appellate fees.

IV. DISPOSITION

We affirm the decree as modified. We dismiss Stephen's cross-appeal, as he failed to pursue it. Costs are assessed to Stephen.

AFFIRMED AS MODIFIED ON APPEAL, CROSS-APPEAL DISMISSED.

Sackett, C.J., concurs; Vogel, J., concurs in part and dissents in part.

VOGEL, J. (concurring in part and dissenting in part)

I agree all three pension accounts should be divided equally between the parties, but respectfully differ with the view the Merrill Lynch account should be similarly divided. It is uncontested the account was opened with and later increased by Barbara's inherited and gifted funds. Although Stephen also claims to have added funds to the account, I believe the record indicates the bulk of account assets stem from inherited and gifted property. I would therefore award the greater portion, if not the entire account, to Barbara.

While I concur with the remainder of the majority's opinion, I do so with some reservation. Barbara brought nearly $200,000 of inherited and gifted property to the marriage, and typically this amount should be set aside before the district court undertakes an equitable division of the parties' remaining assets. Iowa Code § 598.21(2) (1999). In this case the court set aside only a portion of the inherited funds. The ability to revisit the property distribution is stymied, however, by the fact poorly documented intermingling of funds makes precise tracing of much of the inherited and gifted property difficult, if not impossible. In addition, the testimony makes it clear a substantial portion of the inherited assets were expended on a sometimes immoderate lifestyle, which was enjoyed by both parties during the marriage. Upon dissolution it is impossible to reclaim those spent assets. Consequently, Barbara leaves the marriage less than satisfied with the property distribution, considering the enormous financial benefit she shared with Stephen from the generosity of her family. While appreciating the source of Barbara's dissatisfaction, the inability to trace much of her separate

property requires affirmance of the remainder of the distributions made by the district court.