IN THE COURT OF APPEALS OF IOWA

No. 4-597 / 94-0495

FILED
FEB 28 1995
CLERK SUPREME COURT

IN RE THE MARRIAGE OF DENNIS JAMES HEISELMAN AND DEBRA LYNN HEISELMAN

Upon the Petition of
DENNIS JAMES HEISELMAN,

Petitioner-Appellee,

And Concerning
DEBRA LYNN HEISELMAN,

Respondent-Appellant.

Appeal from the Iowa District Court for Chickasaw County, James L. Beeghly, Judge.

Debra appeals from the district court's decree of dissolution of marriage. **AFFIRMED AS MODIFIED.**

Christopher F. O'Donohoe, New Hampton, for appellant.

Russell Schroeder, Jr., of Schroeder Law Office, Charles City, for appellee.

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

HABHAB, J.

Dennis and Debra Heiselman were married in 1979. They have one child, Tara, born December 10, 1981. Dennis filed a petition for dissolution of marriage in July 1993.

The parties stipulated they would have joint custody of Tara and primary physical care would be split evenly. The parties also stipulated neither party would pay child support to the other. The parties divided the household goods prior to trial.

After a trial, the district court awarded Dennis the family home, his Iowa Builders Pension Plan, and 28% of Debra's Employee Stock Ownership Plan (ESOP). The court found the ESOP had a value of of $36,328.38, and $29,917.49 of this value was accumulated during the marriage. The court subtracted the value of Dennis's pension plan from $29,917.49, divided this sum in half, and then reduced it by twenty percent for taxes. After these calculations had been made, the value of the portion of the ESOP awarded to Dennis was $10,168.20.

Debra filed a timely rule 179(b) motion arguing, among other things, that Dennis should not have been awarded any portion of her ESOP. The court overruled Debra's motion as it related to the ESOP, and adopted her valuation of the assets and debts as set out in her motion.

Debra appeals. She argues the district court failed to make an equitable division of the marital assets. She reasserts her contention that Dennis should not have been

awarded a portion of her ESOP. In addition, Debra requests Dennis be ordered to pay a debt of $4,520 to John Deere Credit Union for the installation of siding to the family home or, in the alternative, that she be awarded the camper.

Our review in cases such as these is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We are not bound by these determinations, however. Id. Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

Based on the 1992 tax returns, Debra's annual gross income is $28,462. Dennis' annual gross income, including unemployment compensation, is $20,878. At the time of trial, Debra had been employed by Tri-Mark for the last seventeen years. Dennis had been employed by Sedorf Masonry for approximately five years. His work for Sedorf appears to be somewhat seasonal. No alimony award was given to either party.

To begin with, we find the value placed on the assets by the district court to be well within the permissible range of evidence and will not disturb them 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).

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). Iowa courts do not require an equal division of percentage distribution. Id. The determining factor is what is fair and equitable in each circumstance. Id.

The primary dispute relates to the proper distribution of Debra's ESOP. While the distribution made by the district court may lead to a property division which is not absolutely equal, we do not find the distribution to be inequitable in light of the above-stated law. We affirm the district court's division of Debra's ESOP.

We also determine the credit union loan of $4,520 which was incurred, at least in part, to pay for siding on the house should be shifted over to Dennis. Dennis received the homestead as part of the distribution of the marital property, and we find it to be equitable that the siding loan follow the homestead. As a result, Dennis shall be solely responsible for the $4,520 debt. In addition, we also determine equity requires the camper awarded to Dennis should instead be awarded to Debra.

We affirm the decision of the district court as modified.

AFFIRMED AS MODIFIED.