IN THE COURT OF APPEALS OF IOWA

FILED
JUN 4 1986
CLERK SUPREME COURT

IN RE THE MARRIAGE OF THOMAS LYLE HOWARD AND IRENE G. HOWARD

UPON THE PETITION OF
THOMAS LYLE HOWARD,

Petitioner-Appellee

AND CONCERNING
IRENE G. HOWARD,

Respondent-Appellant.

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Appeal from the Iowa District Court for Polk County (DM 47 27932), Arthur E. Gamble, Judge.

Respondent-wife appeals the decree dissolving the parties' marriage. **AFFIRMED.**

John R. Hearn, Des Moines, Iowa, for appellant.

Robert H. Laden of Hyland, Laden & Pearson, Des Moines, Iowa, for appellee.

Considered by Snell, P.J., Hayden and Sackett, JJ.

HAYDEN, J. 142

Respondent wife appeals the decree dissolving the parties' marriage. She asserts that 1) the property division is inequitable and 2) the trial court should have reopened the case and allowed her to present new evidence of the value of certain lake real estate. We affirm.

Thomas and Irene Howard were married in 1971 and have two children. Thomas is a carpenter; however, he is presently unemployed. During the year prior to trial he earned $23,000. Irene works for the Iowa Health Department earning $22,000 per year.

The trial court set up a joint custody arrangement with Irene having physical care of the children. Thomas was directed to pay child support of $100 per week.

As his share of the property division, Thomas was awarded the parties' lake real estate, an $18,675 lien on the parties' house, a truck, half the proceeds from the sale of another truck, a camper, and various items of personal property. Irene was awarded the parties' house subject to the lien, half the proceeds from the sale of the truck, certain household goods and items of personal property, and some savings bonds. Each party was directed to pay specified debts and his or her own attorney fees.

Following entry of the court's findings of fact and conclusions of law, Irene filed a motion to reopen the case. She asserted that she had obtained a new valuation of the parties' lake real estate which was substantially greater than the value used by the trial court. The court denied Irene's motion and entered its dissolution decree.

Irene has appealed; Thomas filed a cross-appeal, which was later dismissed.

I

Irene argues that the property division is inequitable in two respects. She claims the trial court should not have considered that she cashed and spent $6,000 in U.S. Savings Bonds during the parties' separation. She also claims it was inequitable for the court to award Thomas a lien on the homestead with interest.

Our analysis of the property division is governed by section 598.21(1) of the Iowa Code. A percentage division of property is not statutorily sanctioned. Rather, the ultimate question is whether the distribution is equitable under the specified facts of the particular case. In re Marriage of Callenius, 309 N.W.2d 511, 514 (Iowa 1981).

We have reviewed the record and conclude that the property division should not be disturbed. Irene cashed and spent $6,000 in savings bonds, as well as $960 from Thomas's company account, without his knowledge and without an accounting. She claims it was necessary to have the money to pay off a loan to her parents, to purchase fuel oil, and pay for her attorney. We are unconvinced, however, that these large expenditures were necessary. As we have indicated, this occurred during the parties' separation. While a petition for dissolution had not been filed, such proceedings were likely to occur. Irene's decision to dispose of a large portion of the parties' assets at that time was appropriately viewed with caution by the trial court. The savings bonds were marital assets that would have been subject to division. Apparently the trial court determined that Irene was attempting to avoid this result by cashing the bonds and spending the money. We are not inclined to interfere with this determination and find that Irene's expenditures were an appropriate consideration in dividing the property.

We also conclude that it was appropriate to award Thomas a lien on the homestead with interest to accumulate at ten percent per annum. At present, Thomas' equitable share in the homestead is $18,675. However, he will be denied the benefit of this money for several years so Irene can live in the home until their youngest child attains majority. Under such circumstances awarding a lien with interest is entirely justified.

II

Irene also argues the trial court erred in refusing to reopen the case and allow her to introduce a new assessment of the value of the party's lake real estate. We disagree. Irene has failed to demonstrate that this evidence could not have been discovered before the conclusion of the trial. The mere fact that she now has a higher appraisal value is not a sufficient reason to reopen the case.

Finding no error, we affirm the provisions of the dissolution decree. Irene's request for appellate attorney fees is denied.

AFFIRMED.