IN THE COURT OF APPEALS OF IOWA

No. 4-298 / 93-1511

FILED
OCT 25 1994
CLERK SUPREME COURT

IN RE THE MARRIAGE OF LAYMAN P. RIDENOUR AND TRACI L. RIDENOUR

Upon the Petition of
LAYMAN P. RIDENOUR,

Appellant,

And Concerning
TRACI L. RIDENOUR,

Appellee.

Appeal from the Iowa District Court for Scott County, James E. Kelley, Judge.

The husband appeals the division of property in the parties' dissolution decree. **AFFIRMED.**

Seymore M. Raben, Davenport, for appellant.

John T. Bribriesco, Bettendorf, for appellee.

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

CADY, J.

Layman and Traci Ridenour began living together in December 1986 and were married in December 1988. They have one child, Layman P. Ridenour II, born on August 24, 1987.

Layman was thirty-nine years old at the time of the dissolution hearing. He has worked at the Rock Island Arsenal for the last nineteen years and has annual income of about $33,987 from his employment. His net monthly income is $1,769.

Traci was twenty-seven years old at the time of the dissolution. By the parties' agreement she did not work outside the home during most of the marriage. At the time of the hearing she had been employed as a switchboard operator at Mercy Hospital in Davenport for one and one-half years. She has net monthly income of $904.

Layman purchased a duplex prior to the marriage. The parties lived in part of the duplex and rented the other part. They received net rental income of about $50 per month. Layman also owned a Corvette, a Harley Davidson motorcycle and some cash prior to the marriage. Traci brought very few assets to the marriage.

The district court entered a dissolution decree for the parties on July 21, 1993. The parties were granted joint legal custody of Layman II, with Traci having primary physical care. The court applied the child support guidelines and ordered Layman to pay child support of $407.46 per month.

The court divided the parties' property to award Traci her vehicle, which was worth $1,000. All other assets, which were worth about $42,000, were awarded to Layman. In order to more equitably divide the parties' property, Layman was ordered to pay Traci a cash property settlement of $6,800, which is payable in monthly installments over four years. Layman was ordered to pay $800 towards Traci's attorney fees.

Layman filed a motion pursuant to Iowa Rule of Civil Procedure 179(b). The district court denied his requests to modify the property distribution. Layman appealed.

Our review of this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992).

Layman contends the property distribution is inequitable to him. In determining the amount of the cash property settlement, the district court found Traci was entitled to the value of one-half of the amount of Layman's National Civil Service Retirement plan which accumulated during the marriage. The court found Layman had contributed $9,790 to the retirement plan during the marriage, and Traci's share of this amount would be $4,895.

Layman states he is not eligible for social security because he participates in the civil service retirement

plan. He believes the parties were not married long enough for Traci to be entitled to share in his social security benefits, if he had been covered by social security. He argues his civil service pension should be treated the same as social security, and Traci should not be entitled share in the increase in this fund. Layman asks us to reduce the cash property settlement by $4,895, which would made the settlement $1,905.

Pension benefits, including civil service retirement benefits, are properly subject to equitable distribution. In re Marriage of Hornung, 480 N.W.2d 91, 95 (Iowa App. 1991). We are required to look at the consequences of a parties' social security or civil service coverage. In re Marriage of Williams, 421 N.W.2d 160, 167 (Iowa App. 1988).

We conclude the district court properly considered Layman's civil service retirement in making the property distribution in this case.

Layman also contends he should have been credited with the value of the assets he brought to the marriage. He testified he owned $1,000 in cash, a Harley Davidson motorcycle worth $3,500, the duplex, and a 1980 Corvette at the time of the marriage. He believes the dissolution decree did not give him credit for the cash and motorcycle and that due to these assets, which were worth $4,500, the cash property settlement to Traci should be eliminated.

The property owned by a spouse at the time of the marriage is not set aside to the spouse at the time of the

divorce. To the contrary, pre-marital assets are included in the overall property division. I.C. §598.21(1)(b) (1993). The nature and extent of property owned by a spouse prior to the marriage is a factor to consider, together with all the other factors enumerated in section 598.21(1), in determining the equitable division of all property. It is a factor, however, which generally weighs in favor of the spouse who owned the pre-marital property.

In our de novo review, we consider all factors enumerated in section 598.21(1) in evaluating the property distribution. The determining factor is what is fair and equitable in each particular circumstance. In re Marriage of Russell, 473 N.W.2d 244, 246 (Iowa App. 1991). We recognize the partners in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. Id.

After considering the circumstances in this case, we approve the award of the cash property settlement to Traci. In particular, we note Traci must establish a home for herself and Layman II. We conclude the district court's property division was equitable.

We affirm the dissolution decree. Costs of this appeal are assessed to Layman Ridenour.

AFFIRMED.