IN THE COURT OF APPEALS OF IOWA

No. 6-576 / 95-0900

IN RE THE MARRIAGE OF MARJORIE A. GERARD AND JEFFREY G. GERARD

Upon the Petition of
MARJORIE A. GERARD,

Petitioner-Appellee,

And Concerning
JEFFREY G. GERARD,

Respondent-Appellant.

FILED
DEC 20 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Webster County, William C. Osthund, Judge.

On appeal from entry of dissolution decree, appellant challenges the distribution and valuation of proceeds from a personal injury suit and the award of attorney fees to appellee. **AFFIRMED AS MODIFIED.**

Dan T. McGrevey, Fort Dodge, for appellant.

Leonard R. Holland, Dayton, for appellee.

Considered by Sackett, C.J., and Cady and Streit, JJ., and Habhab, J., takes no part.

PER CURIAM

This is an appeal by a husband challenging the property division and attorney fee provisions of the parties' dissolution decree. We affirm as modified in this memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Marjorie and Jeffrey Gerard were married in 1985. They have two children. In 1986, Jeffrey was in a motorcycle accident. The parties received $66,000 in a settlement regarding that accident. The money was placed in a joint account and used for joint debts. The parties first separated in 1989. At that time, Jeffrey took the balance of the joint account, $22,000. When the parties reconciled in 1990, only $4,700 was left. Jeffrey had used $6,000 of the account to pay off his pickup.

The district court issued a dissolution decree for the parties on May 8, 1995. The court granted the parties joint legal custody of the children, with Marjorie having primary physical care. The court divided the parties' assets equally. Marjorie was awarded the marital residence, her vehicle, furniture, and a cash property settlement of $2,909. The assets awarded to Jeffrey included $11,300, which the court considered to be the amount which was unaccounted for during the time Jeffrey had sole control of the settlement funds. The court ordered Jeffrey to pay $2,000 for Marjorie's attorney fees. Jeffrey now appeals.

I. Jeffrey contends the property distribution was inequitable to him. He asks to have some percentage of the settlement funds set off to him. He also claims the

$11,300, which the court credited to him, is "phantom money" which should not be considered in the property distribution.

The partners in a 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). We disagree with the district court's distribution of the "phantom money". This money was not part of the marital assets at the time of the dissolution decree and had disappeared over four years prior to trial. For purposes of property division, property is valued at the time of the dissolution of marriage. *In re Marriage of McLaughlin*, 526 N.W.2d 342, 343 (Iowa App. 1994).

In our de novo review, we do not consider the $11,300 "phantom money" which was credited to Jeffrey. We also determine the cash property settlement of $2,909 to Marjorie should be eliminated. This leaves Marjorie with a greater share of the parties' assets. However, we determine this distribution is equitable given the fact that Marjorie is required to assume most of the parties' debts and is currently attending school full-time. We modify the parties' dissolution decree to make these changes.

II. Jeffrey claims the district court abused its discretion in requiring him to pay $2,000 for Marjorie's trial attorney fees. Marjorie was unemployed and attending school full-time, while Jeffrey receives annual income of about $27,000 from his employment. We find no abuse of discretion in the award of attorney fees.

III. Marjorie seeks attorney fees for this appeal. We determine Jeffrey should pay $1,000 for Marjorie's appellate attorney fees.

We have modified the provision of the dissolution decree concerning division of property. We affirm the decision of the district court on all other issues. Costs of this appeal are assessed to Jeffrey.

AFFIRMED AS MODIFIED.