IN THE COURT OF APPEALS OF IOWA

No. 1-81 / 90-1194

FILED
AUG 27 1991
CLERK SUPREME COURT

IN RE THE MARRIAGE OF BARBARA J. BLANCHE AND THOMAS R. BLANCHE

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Upon the Petition of
BARBARA J. BLANCHE,

Appellant,

And Concerning
THOMAS R. BLANCHE,

Appellee.

Appeal from the Iowa District Court for Scott County, Edward B. de Silva, Jr., Judge.

The wife appeals a dissolution decree, challenging its economic provisions. **AFFIRMED.**

Arthur L. Buzzell, Davenport, for appellant.

Edward J. Cervantes, Bettendorf, for appellee.

Considered by Oxberger, C.J., and Donielson and Hayden, JJ

HAYDEN, J.

Barbara and Thomas Blanche were married in 1978. They have two children, a girl born in 1982 and a boy born in 1985. The dissolution decree awarded joint legal custody with Barbara having primary physical care of the children. These custody provisions are not challenged in this appeal.

Thomas is employed by Hormel Corporation, earning a gross income of $1859 per month and a net income of $1364 per month. He also does part-time construction work when work is available. This part-time employment provides additional gross income averaging $200 per month.

Barbara also holds both a full-time job and a part-time job. Her full-time job pays a gross income of $280 per week and a net income of $216.60 per week. Her part-time job pays approximately $150 per month.

The parties' primary asset is a house which the court valued at $45,500, subject to a mortgage debt of $22,800. The decree allowed Barbara to occupy this house until the younger child reaches eighteen or graduates from high school, whichever occurs later, when the house is to be sold. Barbara is to be given credit for mortgage payments she makes after the decree, and the remaining net proceeds are to be divided equally between the parties.

Each party received a vehicle, household goods, and personal effects. In addition, each party was awarded one-half of a $9200 certificate of deposit. The dissolution decree directed Thomas to pay Barbara child support of fifty dollars per week for each child.

Barbara appeals, contending the trial court failed to award her separate premarital and gifted property and the child support award is inadequate. She also requests attorney fees and costs on appeal.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

Barbara testified that prior to the marriage, she received a $1000 certificate of deposit from her grandmother. This certificate was cashed, and the money was deposited into Barbara and Thomas's joint account. Barbara also testified that during the parties' marriage her parents gave her $3333.33. This money was also deposited by Barbara into the joint account. At the time of trial, the balance in the account was $9200. The trial court specifically determined any cash received by Barbara during the marriage from her family had been commingled with the joint property of the parties. Therefore, the trial court ordered the balance in the joint account to be split equally between the parties. It is Barbara's position the entire balance in the account should be awarded to her because the account contains money gifted to her plus interest.

Section 598.21(2) of the Iowa Code begins from the premise that inherited and gifted property shall not be divided. This premise yields, however, where its application would be inequitable. We need not reach the issue whether the statute's application in this case would be inequitable because we find the money in the joint account is no longer separate gifted property.

Separate property of one spouse is transformed into marital property when it is placed in some form of joint ownership. In re Marriage of Butler, 346 N.W.2d 45, 47 (Iowa App. 1984). This is true even when one party furnishes all of the consideration. Id. The property's transfer into joint tenancy is presumed to be a gift to the other party of one-half interest in the property. Id.

Barbara presented no evidence to rebut this presumption. In fact, Barbara testified she intended the money to be part of the marital assets to be shared by Thomas. Thus, we conclude the money in the joint account is marital property subject to distribution. As such, 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 Havran, 406 N.W.2d 450, 452 (Iowa App. 1987). The distribution of the property of the parties should be equitable under the circumstances after considering the criteria codified in Iowa Code section 598.21(1). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983). Because the trial court's

distribution of the marital property was equitable, we affirm.

Barbara also objects to the child support award. The trial court declined to consider the part-time employment of either party in determining the amount of child support because the "part-time employment of each could vary" and thus awarded support of fifty dollars per week for each child. This amount was based on Barbara's net income of $931 per month and Thomas's net income of $1364 per month.

The child support guidelines in effect at the time of the hearing mandate 25.5% of the noncustodial spouse's income be child support. The trial court's award approximates this mandate. We see no reason to disturb the trial court's award.

Finally, Barbara requests attorney fees. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). Relying on these principles, we award no appellate attorney fees.

Costs of this appeal are taxed to Barbara.

AFFIRMED.