

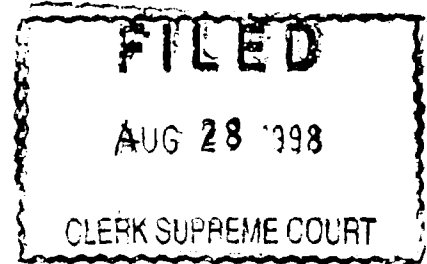
IN THE COURT OF APPEALS OF IOWA

No. 8-010 / 97-0119

IN RE THE MARRIAGE OF DEBRA KAY MARTIN AND LYNN ALAN MARTIN

Upon the Petition of
DEBRA KAY MARTIN,
Appellee,

And Concerning
LYNN ALAN MARTIN,
Appellant.



Appeal from the Iowa District Court for Woodbury County, Michael Walsh,
Judge.

Lynn Alan Martin appeals the parties' dissolution of marriage decree.

AFFIRMED.

Sam S. Killinger of Rawlings, Nieland, Probasco, Killinger, Ellwanger, Jacobs
& Mohrhauser, Sioux City, for appellant.

Elizabeth A. Rosenbaum, Sioux City, for appellee.

Considered by Cady, C.J., Mahan, J., and Perkins, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

PERKINS, S.J.

Respondent appeals the parties' dissolution of marriage decree. He argues the decree's provision regarding division of the parties' marital residence was inequitable and that the court should not have accepted the parties' stipulation on this subject after he expressed his objections to it.

Debra and Lynn Martin's fourteen-year marriage was dissolved in 1996. They have one child from the marriage, Kristopher. Debra was awarded primary physical care.

At issue in this appeal and below is the method which should be used in calculating the parties' equity in the marital residence. Prior to trial the parties entered into a stipulation providing that the home would be sold in 2001 when their son turned eighteen. As read into the record the stipulation provided that the home was valued at \$104,000 and that the amount remaining on the mortgage was \$66,255. Upon sale of the home the proceeds were to be divided evenly between the parties.

The court asked both parties if the stipulation, as read into the record, was the agreement they understood they were making. Both parties answered affirmatively. The court ordered Debra's attorney to submit the written stipulation signed by both parties. However, Lynn later objected to the terms of the stipulation. He argued that he had misunderstood the stipulation read into the record and did not intend to agree to the amount that remained on the mortgage. Lynn asserted that the amount to be paid off on the home was \$40,333 rather than the \$66,255 figure used in the

stipulation presented to the court. Lynn also noted that his portion of the proceeds from the sale will be further diminished if Debra made no payments on the owing state and federal taxes on the home between the time of the decree and the time of sale.

The court found that the stipulation was equitable. Lynn appeals.

Lynn maintains the division of the parties' marital residence is inequitable and that the court should not have approved the stipulation.

The issues presented by this appeal are: (1) whether the court retains the power to determine if a property settlement in a stipulation is unfair or contrary to law, and (2) whether the appellant/respondent is entitled to a just and equitable division of the marital property.

Standard of Review. The standard of review for the court in an equity action is de novo. Iowa R. App. P. 4; *In re Marriage of Stark*, 542 N.W.2d 260, 262 (Iowa App. 1995). The court has a duty to conduct an examination of the entire record, and as to property presented issues, adjudicate the rights of the parties anew. *Id.*, citing, *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). However, the appellate court gives considerable weight to the sound judgment of the trial court as the trial court has had the benefit of hearing and observing the parties first hand. *In re Marriage of Kleist*, 538 N.W.2d 273, 278 (Iowa 1995).

Ruling. The trial court made an exhaustive inquiry at the time the stipulation was proposed to be certain the parties and their attorneys understood and consented

to the stipulation. Later, when the respondent and his attorney claimed they had misunderstood the stipulation and objected to it, the trial court conducted another hearing affording the parties an opportunity to testify. The parties also were given the opportunity to file briefs. The trial court, by its decree, ruled after reviewing the entire matter in a manner that resolved the controversy between the parties fairly and equitably.

We as an appellate court have reviewed the entire matter and reach the same conclusion. The stipulation entered into by the parties at trial was binding upon them. *In re Marriage of Bries*, 499 N.W.2d 319, 322 (Iowa App. 1993), and the final decree, when all the facts are considered, is fair, just, and equitable.

The costs of the appeal are taxed to the appellant and the appellee is awarded \$1500 as her attorney fee to be paid by the appellant.

The trial court decision is affirmed.

AFFIRMED.