FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-165 / 90-280

IN RE THE MARRIAGE OF R.J. BELZ AND TAMI DOREEN BELZ

Upon the Petition of

R.J. BELZ,

Appellant,

And Concerning

TAMI DOREEN BELZ,

Appellee.

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Appeal from the Iowa District Court for Polk County, Dale B. Hagen, Judge.

Petitioner appeals from the economic provisions of a dissolution decree. **AFFIRMED AS MODIFIED.**

Roger J. Hudson of Smith, Schneider, Stiles, Mumford, Schrage, Zurek, Wimer & Hudson, P.C., Des Moines, for appellant.

Barry N. Minear, Des Moines, for appellee.

Considered en banc.

HAYDEN, J.

R.J. Belz and Tami D. Belz were married on August 17, 1985. One child was born during the marriage. In the dissolution decree, the trial court awarded Tami primary physical care of the child, and R.J. was ordered to pay child support of $300 per month. The decree also provided neither party was to pay alimony, and each was to pay his or her own attorney fees. The parties do not contest these decisions on appeal.

During the marriage R.J. owned and operated a construction business. Tami was responsible for most of the domestic and child rearing duties. She also did the bookkeeping for R.J.'s business and was employed as a hair stylist. At the time of trial, R.J. was thirty-eight, and Tami was twenty-four.

The parties entered into an antenuptial agreement which specified certain properties each owned before their marriage. The agreement provided each party waived and relinquished all rights to the property of the other identified in the agreement. R.J.'s listed assets were valued at $205,820, and Tami's assets were valued at $13,700.

The trial court divided the parties' debts and assets using the antenuptial agreement as evidence of the property each brought into the marriage. The trial court declined to trace the proceeds from the sale of certain properties listed in the agreement.

R.J. appeals the trial court's ruling. Tami requests appellate attorney fees.

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).

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 that which is equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(1). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983).

R.J. asserts the trial court failed to equitably divide the parties' property in accordance with Iowa Code section 598.21. R.J. primarily focuses on two properties: a business property and the parties' homestead. We first address the business property.

"T'z Hair Styling" is a business partnership equally owned by the parties and into which R.J. contributed substantial assets. At the time of trial, the first floor

of this property was used by Tami for business purposes. Tami and the parties' child resided in the second-floor apartment. The trial court awarded this asset and its mortgage debt to Tami. R.J. maintains he should have received one-half of the equity in this asset. We disagree. The trial court considered Tami's need to maintain a livelihood and a home for the parties' child. Awarding Tami the business property will provide Tami and the child a home and a means of support. We affirm the trial court's decision with respect to the business property.

We now turn our attention to the homestead property. The trial court awarded Tami one-half of the proceeds from the sale of the parties' homestead. R.J. claims he should have received the entire equity interest of $40,000. We agree. R.J. owned the homestead property before the parties' marriage. He brought this and a significant amount of other property into the marriage. Although the homestead property was listed in the parties' antenuptial agreement, the trial court made no attempt to follow their agreement. See Iowa Code § 598.21(1)(1)(1991). Nor did the trial court attempt to set aside to R.J. the property he brought into this four-and-one-half-year marriage. See Iowa Code § 598.21(1)(b)(1991).

We determine the trial court failed to make an equitable distribution of the parties' property. We are

mindful this has been a relatively short marriage. See Iowa Code § 598.21 (1)(a). Therefore, we modify the trial court's decree and award all the homestead interest to R.J.

Finally, Tami requests appellate 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). We conclude each party shall be responsible for his or her own attorney fees. Costs of this appeal are taxed to R.J.

AFFIRMED AS MODIFIED.