IN THE COURT OF APPEALS OF IOWA

No. 2-401 / 91-1656

IN RE THE MARRIAGE OF RICHARD LYNN COLBY
AND LYNNE RENAE COLBY

Upon the Petition of

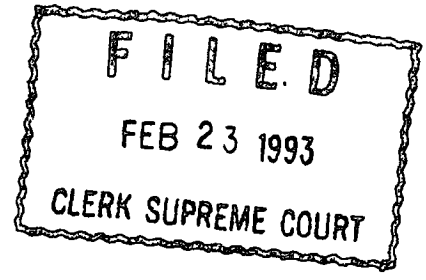
RICHARD LYNN COLBY

Appellant,

And Concerning

LYNNE RENAE COLBY,

Appellee.



Appeal from the Iowa District Court for Bremer County, Ralph F. McCartney, Judge.

Petitioner appeals from a judgment of the district court dividing the parties' assets and debts pursuant to a decree of dissolution of marriage. **AFFIRMED.**

John S. Pieters of Pieters, Pieters & Corzine, Waterloo, for appellant.

Gary J. Boveia of Boveia Law Office, Waverly, for appellee.

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

OXBERGER, C.J.

Richard and Lynne Colby were married on May 26, 1979. They have two children: Jacquelynne Colby, born June 27, 1985; and Laura Colby, born December 30, 1986.

Richard was thirty-two years old at the time of the trial. He is certified as a registered nurse and has a college degree in health care administration. He is the administrator of Parkview Gardens Care Center in Waterloo. Richard's income is about $36,216 and he has net monthly income of about $2,101.

Lynne was thirty-three years old at the time of the trial. She has a college degree in medical technology. Lynne is employed at Waverly Municipal Hospital as manager of their technological laboratories. Her income is about $28,776 and she has net monthly income of about $1,633. Lynne is in good health.

The parties separated in March 1990. Richard has had problems with alcoholism which led to inpatient treatment in January 1991. He has been abstinent since that time and regularly attends Alcoholics Anonymous. He filed a petition for dissolution of marriage in February 1991. Richard filed for bankruptcy on May 28, 1991. Lynne refused to join in the bankruptcy.

The district court filed its judgment and decree on August 28, 1991. The court granted the parties joint legal custody of the children, with Lynne having primary physical

care. Richard was ordered to pay $630 per month in child support.

The district court noted the parties accumulated substantial debts and very few assets during the marriage. Each party was awarded the household goods in his or her possession. Lynne was awarded the only asset of any value, a 1990 Ford Taurus. Richard was ordered to be responsible for debts worth $42,518. This included debts of $5,917 for alcoholism treatment, $15,700 in student loans, $8,000 to his father, and $3,150 to Lynne's father. Richard was additionally ordered to pay a property settlement of $1,200 to Lynne, which was based on his failure to pay temporary child support while the dissolution was pending. Lynne was ordered to be responsible for debts worth $16,804. This included $7,697 for her car and $3,150 to her father.

Lynne filed a motion pursuant to Iowa Rule of Civil Procedure 179(b). The court modified the decree to order Richard to obtain life insurance worth $100,000 naming the children as beneficiaries as soon as he becomes insurable. Richard has appealed.

Our review in this equitable action is de novo. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992). 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. Id.

Richard contends the district court's distribution of debts was inequitable. He believes each party should be responsible for one-half of the debts incurred during the marriage. He points out that he will be discharged from many of the debts during bankruptcy. He states that he could then reimburse Lynne for one-half of the amount she has actually paid towards the parties' debts. However, he asks that Lynne be made solely responsible for the debt to her father. He also asks us to eliminate the $1,200 property settlement.

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). The Iowa courts do not require an equal division or percentage distribution. Id. The determining factor is what is fair and equitable in each particular circumstance. Id.

We believe the property division as set forth by the district court is equitable in this case. We affirm the property division.

Richard also claims the court should not have ordered him to pay a total of $1,100 in attorney fees for Lynne. Richard was ordered to pay $350 in temporary attorney fees and $750 in trial attorney fees.

Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Hunt, 476 N.W.2d

99, 103 (Iowa App. 1991). To overturn an award the complaining party must show that the trial court abused its discretion. Id. We find Richard has not shown the trial court abused its discretion here. We affirm the award of attorney fees.

We affirm the dissolution decree as entered by the district court. Costs of this appeal are assessed to Richard Colby.

AFFIRMED.

Hayden, J., concurs; Sackett, J., dissents.

SACKETT, J. (dissenting)

I find no equity in the property division fashioned by the trial court and affirmed by the majority.

This was an eleven-year marriage. During the marriage the parties accumulated minimal assets and substantial debt. Richard has an annual income of $36,216 and Lynn has an annual income of $27,776. Lynn was given the only asset of value, a 1990 Ford Taurus, ordered to pay the debt on the car, and ordered to pay a debt to her father of $3,150.

Richard was ordered to pay debts of $42,518 and pay Lynn a $1,200 property settlement. Richard was also ordered to pay $1,100 to Lynn's attorney.

I would divide the property and debts equally.