IN THE COURT OF APPEALS OF IOWA

No. 1-277 / 00-1103
Filed August 15, 2001

IN RE THE MARRIAGE OF WAYNE JOSEPH HINGTGEN AND ROSE MARIE FRANCES HINGTGEN

Upon the Petition of
WAYNE JOSEPH HINGTGEN,
Petitioner-Appellant,

FILED
AUG 15 2001
CLERK SUPREME COURT

And Concerning
ROSE MARIE FRANCES HINGTGEN,
Respondent-Appellee.

Appeal from the Iowa District Court for Dubuque County, Robert J. Curnan, Judge.

The petitioner appeals the property distribution provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Robert L. Sudmeier and Norman J. Wangberg of Fuerste, Carew, Coyle, Juergens & Sudmeier, P.C., Dubuque, for appellant.

Patricia M. Reisen of the Kintzinger Law Firm, P.L.C., Dubuque, for appellee.

Considered by Huitink, P.J., and Miller and Hecht, JJ.

HECHT, J.

Petitioner appeals the property distribution provisions of the parties' dissolution decree. He contends the district court's property division was inequitable because: (1) respondent was awarded $70,000 from an IRA, while he was awarded only $13,000; and (2) the court wrongly relied on evidence of respondent's poor health in awarding her a greater share of marital assets instead of awarding her increased support. Alternatively, petitioner urges if the court properly relied on respondent's health in dividing marital assets, the court should provide petitioner a set-off for premarital property brought to the marriage. We affirm as modified.

I. Facts and Proceedings. Wayne and Rose Hingtgen were married on September 8, 1978. At the time of the marriage, the first for both parties, Wayne was fifty years old and Rose was fifty-one. The couple was employed by the Dubuque Packing Company; he earned $30,000 per year working in the plant and she earned up to $19,000 per year in the personnel department. After more than thirty-six years at Dubuque Packing, Rose retired in 1981. Wayne's job was eliminated a year later when the plant closed. Thereafter, he held a succession of part-time jobs ending in 1989.

Wayne entered the marriage with securities purchased for approximately $32,600, a $10,000 savings account, inherited property worth $36,300, and an automobile. At the time of the marriage, Rose owned a furnished home on

Lincoln Avenue[1] where the couple lived from 1978 until 1989, when they sold it for $46,000 and purchased a larger residence on Arbor Hills Drive. The proceeds of the sale were placed in a jointly held CD.

During the marriage, Wayne inherited approximately $43,000 and earned an additional $46,000 through his part-time employment. Additionally, the parties received in excess of $120,000 from the sale of assets brought into the marriage by Wayne.

At the time of her retirement in 1981, Rose owned an employee savings plan with Dubuque Packing, valued at $39,000. She accumulated this asset during her thirty-six and one-half years of employment. Three years of her contributions to the plan occurred during the marriage.

The Hingtgens' assets appreciated during their twenty-one year marriage. Rose cashed in her $39,000 Dubuque Packing pension in 1982, and the couple used $10,000 of that fund to purchase a jointly owned car. The remainder was placed in an IRA in Rose's name [hereinafter the 1982 IRA] and maintained, along with two other IRAs, in local banks. With the exception of their IRAs, the couple converted all individual holdings into joint assets. Six years into the marriage, the couple paid $150,000 cash, derived principally from the liquidation of appreciated assets brought into the marriage by Wayne, for a home on Arbor Hills Drive.

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[1] Rose inherited this house in 1966. It was valued at approximately $35,000 at the time of the marriage. The parties made substantial improvements to the home before selling it.

Over time, Rose developed psoriasis and was diagnosed with lupus, a condition that requires her to make quarterly trips to the University of Iowa Hospitals and Clinics and take medication. Wayne, who has asthma, a hiatal hernia, and high blood pressure, also receives regular treatment in Iowa City.

Wayne filed a petition for dissolution on September 8, 1999. Prior to trial, the couple sold their Arbor Hills home and placed the sale proceeds of $156,000 in escrow. The parties stipulated to the division of all property except the house sale proceeds and the 1982 IRA, which had a value of $83,000 at the time of trial. The district court awarded the first $5000 of the house proceeds to Wayne, correcting a $5000 balance in Rose's favor resulting from the stipulation. The court divided the remaining $151,000 in proceeds evenly between the parties. It divided the 1982 IRA by giving $70,000 to Rose, and $13,000 to Wayne. Wayne appeals, contending the district court's division of property is inequitable.

II. Standard of Review. Our review of the economic provisions of a dissolution decree is de novo. Iowa R. App. P. 4. In our review, we examine the entire record and adjudicate anew the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981).

III. Property Distribution. Wayne contends the district court erred in finding Rose's medical condition and the primarily premarital derivation of the 1982 IRA justified the allocation of a disproportionately large share of that asset to Rose. In general, Iowa courts do not require an equal division of the property in dissolution of marriage cases. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa Ct. App. 1991). The determining factor is what is fair and equitable in each circumstance. *Id.* An equitable distribution of the parties' property must be made

according to the criteria set forth in Iowa Code section 598.21(1) (1999). *In re Marriage of Goodwin*, 606 N.W.2d 315, 319 (Iowa 2000).

Although an equal division is not necessary, it should nevertheless be a general goal of trial courts to make the division of property approximately equal. *In re Marriage of Conley*, 284 N.W.2d 220, 223 (Iowa 1979). With the single exception of the 1982 IRA, the Hingtgens' assets were distributed evenly between the parties. Two of the couple's CDs were divided in half, while their vehicles and other tangible personal property were evenly distributed in kind. Rose was awarded her jewelry and Wayne received its monetary equivalent, a CD with a value of $3000. The court equalized a $5000 balance in Rose's favor resulting from the distribution of two of the couple's three IRAs by awarding Wayne the first $5000 of the Arbor Hills home sale proceeds. The decree further provided the balance of the house proceeds should be split equally between Wayne and Rose.

A. Premarital Source of the IRA. In dividing the 1982 IRA, the district court awarded Rose $70,035.60 and Wayne $13,000. The court emphasized the IRA was funded predominantly from Rose's premarital employment at Dubuque Packing. In reviewing the court's analysis of this factor, we note in an equitable property distribution, "[a] premarital asset is not otherwise set aside like gifted or inherited property." *In re Marriage of Miller*, 552 N.W.2d 460, 465 (Iowa Ct. App. 1996). The property brought to the marriage by each party is only a factor to consider together with the other relevant factors in determining an equitable property division. Iowa Code § 598.21(1)(b) (1999); *In re Marriage of Brainard*, 523 N.W.2d 611, 616 (Iowa Ct. App. 1994). Unless the marriage is short in

duration, our law does not credit a party for the value of property owned prior to the marriage. *See Brainard,* 523 N.W.2d at 616; *In re Marriage of Hass*, 538 N.W.2d 889, 893 (Iowa Ct. App. 1995).

We note the marriage of Wayne and Rose endured for more than twenty years. Although an equitable award need not be equal, substantially equal property awards are generally appropriate in marriages of long duration. *See In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993). Although ninety-two percent of the 1982 IRA's value did derive from Rose's premarital efforts, we find that fact does not justify the district court's division of the asset. Wayne brought significantly more property into the long-term marriage than Rose and did not receive a corresponding preferential allocation. Rose also benefited during the marriage from inheritances received by Wayne prior to and during the marriage.[2] These were not set aside as Wayne's separate property in the property division.

B. Medical Condition. We next address the question of whether the unequal division of the IRA is justified by Rose's health problems. We are required by statute to consider the parties' age and physical and emotional health in equitably dividing their assets. Iowa Code § 598.21(1)(d). The district court found Wayne, age seventy-one, and Rose, age seventy-three, each suffered health challenges not unique to persons of advanced age. It also found Rose's lupus was "probably the most serious of the medical conditions suffered by [the parties]."

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[2] The record reflects Wayne inherited property valued at $36,333 in 1977 before the marriage. He sold the property for $50,333 during the marriage. During the marriage, he received an inheritance valued at $42,692 from his father and inherited an additional $600 from an uncle.

From our de novo review of the record, we are unable to find support for the district court's implicit finding Rose's medical condition was sufficiently more serious than Wayne's to justify the district court's division of the IRA. While Rose reported suffering from lupus, psoriasis, and hypertension, Wayne testified he suffers from asthma, high blood pressure, and a hiatal hernia. The record reveals both parties make regular trips to Iowa City for ongoing treatment. Although Rose testified, and pharmacy invoices confirm, she regularly purchases[3] medications, no competent evidence established her physical health was particularly debilitating or cumulatively worse than Wayne's. Rose did not present medical evidence as to her health problems, and made no request for spousal support. On this record, we find the respective health conditions of the parties do not justify the division of the 1982 IRA ordered by the district court.

IV. Conclusion. We modify the decree to provide the 1982 IRA shall be divided equally between the parties. The parties shall execute and deliver documents, if any, required to effectuate this division of the IRA. The costs of this appeal shall be divided equally between the parties.

AFFIRMED AS MODIFIED.

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[3] Although her brief suggests Rose spends "in the hundreds of dollars each month" for pharmaceuticals, respondent's Exhibit E shows her total expense for such items in 1999 was just over $70 per month. A pharmacy invoice that is part of the same exhibit evidences Rose's actual expenditure for such items from January 1 through April 24 of 2000 was in the range of $47 per month. A third page of the same exhibit apparently signed by a pharmacist lists several medications and a cost of $523.36, but the record does not disclose the period during which they were allegedly purchased. We acknowledge the amount of Rose's pharmaceutical expenses has been diminished by her receipt from time to time of medication samples for which she has not been charged.