IN THE COURT OF APPEALS OF IOWA

No. 0-547 / 00-0362
Filed October 13, 2000

IN RE THE MARRIAGE OF JANET D. SKOLA and LARRY K. SKOLA

Upon the Petition of
JANET D. SKOLA,
Petitioner-Appellant,

FILED
OCT 1 3 2000
CLERK SUPREME COURT

And Concerning
LARRY K. SKOLA,
Respondent-Appellee.

Appeal from the Iowa District Court for Muscatine County, Mark Cleve, Judge.

Janet Skola appeals the district court's findings of fact, conclusions of law and decree of dissolution of her marriage to Larry Skola. **AFFIRMED.**

Ralph H. Heninger of Heninger and Heninger, P.C., Davenport, for appellant.

Steven A. Berger of Wehr, Berger, Lane & Stevens, Davenport, for appellee.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

MAHAN, J.

Janet Skola appeals the district court's findings of fact, conclusions of law and decree of dissolution of her marriage to Larry Skola. She contends the district court erred because the property division was inequitable and violated Iowa Code section 598.21(1) (1999). She also argues the court erred in not taking into account the property brought into the marriage by both parties. We affirm.

Janet and Larry were married on February 12, 1994. No children were born of the marriage.

At the time of their marriage, Janet lived in a home she owned in Bettendorf. She has a nineteen-year old daughter from a previous marriage, who attends college. Janet received monthly child support payments from her ex-husband until her daughter reached age eighteen, on February 20, 1998. Janet has worked as a letter carrier at the Bettendorf post office since 1987. She earns approximately $40,000 per year. At the time of their marriage, Janet had approximately $30,312 in her FERS account with the U.S. Postal Service. The FERS account accrued approximately $31,453 during the marriage, all of which the district court awarded to Janet. After the parties married, Janet realized approximately $18,000 net proceeds from the sale of her home.

Prior to their marriage, Larry lived in a home he owned in Davenport. In the early 1990s, Larry had been down-sized from a long-term factory job at the Berry Bearing Company. He did not hold a full-time job during the marriage, except for the four months he worked as a mechanic for Tri-State Engineering in

1998, until back problems forced him to quit. Persistent and on-going back problems keep Larry from rejoining the work force.

In April 1994, shortly after the parties were married, Larry received $421,190 from the sale of stock in the Farmer's Savings Bank of Washington, Iowa, which was owned by his family. He also received a $36,878.81 loan repayment from the bank. The total of approximately $458,069 came from gifts of inheritance to Larry from members of his family, received by Larry before the marriage. In addition, Larry received $49,360 from the sale of his premarital home.

Janet and Larry met in 1992. Both had been married and divorced twice. The parties began discussing marriage in 1993. Both parties were interested in buying an acreage in the country. In late 1993, they found twenty acres in rural Muscatine County, which included a ranch-style house, a bunk house, a barn/stable, an indoor riding facility and an outside riding arena, a tractor and some equipment. Larry signed an offer to purchase in late 1993. On April 14, 1994, Larry and Janet purchased the acreage for $215,000. Larry used $215,000 from the proceeds of the sale of his bank stock to purchase the acreage. The deed to the acreage was issued to the parties as joint tenants with full rights of survivorship.

According to Janet, the parties entered into an oral agreement, by which they agreed to pool their assets and create a working stable and horse-breeding operation, with the expectation that Janet would retire from the postal service within five years and work full-time at the acreage. Larry contends there was no

agreement to turn the acreage into a business so Janet could retire from her job with the postal service. Rather, Larry testified the acreage's pasture was too small for the number of horses Janet collected, and the acreage initially attracted him because he could store cars and other items in the barn.

During the marriage, Janet worked full-time with the postal service. She also performed various chores around the acreage, including caring for the horses, and planting and caring for a garden and an orchard. She prepared all the family meals. Janet boarded horses from time to time, and gave riding lessons and bred horses for profit. Larry worked more or less full-time on maintaining and improving the acreage. He also restored various collector cars, sometimes for barter.

The parties opened a joint checking account in the name of Skola Stables. The account, however, remained inactive. The activities surrounding the operation of Skola Stables constituted more of a hobby than a business, and did not generate any significant income. The parties did not keep any business records or separate tax records in connection with the operation of the acreage.

The parties placed their respective home sale proceeds into a joint account, which was used for living expenses and operation of the acreage. Janet contributed her earnings and child support payments to the account. Larry also contributed to the joint account.

Janet moved from the acreage in the spring of 1999. She filed her petition for dissolution of marriage on May 27, 1999. Trial was held on December 6, 1999. The district court filed its findings of fact, conclusions of law, and decree of

dissolution on January 6, 2000. The decree awarded Larry property totaling $530,317, including the acreage, valued at $230,000. The district court awarded Janet $21,500 for her equitable interest in the acreage and as an equitable adjustment to the division of property between the parties. Janet's property award totaled $75,453. Janet appeals.

Standard of Review. Our review of this equitable action 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 Hoffman*, 493, N.W.2d 84, 87 (Iowa App. 1992). We give the trial court's factual findings weight in considering the credibility of witnesses, although we are not bound by them. Iowa R. App. P. 14(f)(7); *In re Marriage of Clinton*, 579 N.W.2d 835, 838 (Iowa App. 1998).

Property Division. The partners to a marriage are entitled to a just and equitable share of the property accumulated through 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.* An equitable distribution of the parties' property must be made according to the criteria set forth in Iowa Code section 598.21(1). *In re Marriage of Goodwin*, 606 N.W.2d 315, 319 (Iowa 2000).

Iowa Code section 598.21(1) provides, "the court shall divide all property, except inherited property or gifts received by one party, equitably between the

parties." The exception of inherited property or gifts from the property distribution is qualified later in the statute:

> Property inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section *except upon a finding that refusal to divide the property is inequitable to the other party* or to the children of the marriage.

Iowa Code § 598.21(2) (emphasis added). In determining whether it would be inequitable to exclude one spouse's gifted or inherited property from property division upon dissolution, we consider:

> (1) contributions of the parties toward the property, its care, preservation or improvement;
> (2) the existence of any independent close relationship between the donor or testator and the spouse of the one to whom the property was given or devised;
> (3) separate contributions by the parties to their economic welfare to whatever extent those contributions preserve the property for either of them;
> (4) any special needs of either party;
> (5) any other matter which would render it plainly unfair to a spouse or child to have the property set aside for the exclusive enjoyment of the donee or devisee.

Goodwin, 606 N.W.2d at 319 (citing *In re Marriage of Muelhaupt*, 439 N.W.2d 656, 659 (Iowa 1989)). The length of the marriage is also an important factor. *Hoffman*, 493 N.W.2d at 89. Placing inherited property into joint ownership does not, in and of itself, destroy the separate character of the property. *In re Marriage of Liebich*, 547 N.W.2d 844, 850 (Iowa App. 1996).

The district court, in its findings of fact, concluded:

> [T]he Court finds that the proceeds [Larry] used to purchase the property came from an inheritance to him, and despite the joint tenancy designation on the deed, in the circumstances of the present case the Court does not find it would be equitable to award one-half the current value of the acreage to [Janet]. . . . [T]he Court

> finds [Larry] should be required to make a payment to [Janet] in the sum of $21,500 for her equitable interest in the acreage and as an equitable adjustment to the division of property between the parties.

Janet contends the trial court erred in awarding the acreage to Larry. Specifically, she claims the trial court failed to take into account the contribution of her salary, the $18,000 net proceeds from the sale of her residence, and her services to maintaining the acreage, thereby adding value to it. Further, Janet asserts the trial court erred in not taking into account the property brought into the marriage by both parties. She claims the district court's award of approximately eighty-eight percent of the total marital property to Larry is an abuse of discretion.

The funds used to purchase the acreage came from an inheritance received by Larry. Placing the acreage, purchased with Larry's inheritance, into joint tenancy did not, in and of itself, destroy the separate character of the property. *See Liebich*, 547 N.W.2d at 850. While both parties contributed financially and physically to the care, preservation and improvement of the acreage, the property's market value increased only $15,000 during the marriage. Janet did not have an independent close relationship with Larry's father, from whom Larry received the stock. The parties' marriage was of short duration. We find nothing in the record "which would render it plainly unfair [to Janet] to have the property set aside for the exclusive enjoyment of [Larry]." *See Goodwin*, 606 N.W.2d at 319. Therefore, we conclude the district court did not err in awarding the acreage to Larry, and awarding Janet $21,500 for her equitable interest in the acreage.

Larry came into the marriage with a considerably higher net worth than Janet. The record shows Larry made substantial expenditures and income contributions during the marriage. His cash purchase of the acreage saved the parties substantial mortgage interest expense. Janet leaves the marriage with a substantially higher net worth, while Larry leaves it with a diminished net worth. After a careful examination of the record, we conclude the district court properly took into account the property brought into the marriage by both parties when determining the appropriate property division in this case.

AFFIRMED.