IN THE COURT OF APPEALS OF IOWA

No. 0-545 / 00-0281
Filed October 13, 2000

IN RE THE MARRIAGE OF KATHY M. VOLKER AND JEFFREY D. VOLKER

FILED
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CLERK SUPREME COURT

Upon the Petition of
KATHY M. VOLKER,
Petitioner-Appellant,

And Concerning
JEFFREY D. VOLKER,
Respondent-Appellee.

Appeal from the Iowa District Court for Buchanan County, K.D. Briner, Judge.

Petitioner appeals from the property division in the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

John W. Holmes of Holmes & Holmes, Waterloo, for appellant.

Charles P. Augustine of Dunakey & Klatt, P.C., Waterloo, for appellee.

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

HECHT, J.

Kathy Volker appeals from the property division in the parties' dissolution decree. She contends (1) the trial court erred by setting aside Jeffrey's premarital down payment on the marital household as his separate property, (2) the trial court erred in not recognizing Jeff's down payment on the marital home was commingled and merged into a marital asset, and (3) it is inequitable not to divide all the equity in the marital home. We affirm as modified.

I. Factual Background and Proceedings. Jeff and Kathy Volker were married in September of 1985. They have two minor sons from this marriage, Brian and Jonathan. The parties have not appealed the custody, visitation, and support portions of the decree. Both parties are employed outside of the home. Kathy's net monthly income is $1,452.32 and Jeff's net monthly income is $2,468.55.

Three months before their marriage, Jeff signed an installment contract to purchase a house for a total purchase price of $47,500. He paid the down payment of $32,500 from his savings account. This amount represented birthday and graduation gifts, employment income, and other sums of money Jeff had been saving from the time he was a teenager. The parties paid off the remainder of the contract within two years. This house, which became the marital residence, was valued at $93,000 at the time of trial. The parties had no substantial debt at the time of the dissolution.

On July 28, 1998, Kathy filed the petition for dissolution of marriage. Trial in this matter was held on June 10, 1999, and the district court entered its decree

on October 25, 1999. The district court set aside to Kathy an undivided one-sixth remainder interest in the value of her father's one-half ownership in a family farm. The district court also concluded Jeff's down payment on the purchase of the house should be credited to him and the remaining equity in the house should be equally divided between Jeff and Kathy. The district court awarded the homestead to Kathy and ordered her to pay Jeff the sum of $18,650. Kathy appeals, contending the district court erred in its division of the property by granting Jeff a credit in the amount of $32,500 for the down payment he made on the purchase of the homestead.

II. Standard of Review. As this is an action in equity, our review is de novo. Iowa R. App. P. 4. We give weight to the findings of fact made by the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7). We have a duty to examine the evidence anew, disconnected, ultimately, from the trial court's findings. *In re Marriage of Applegate*, 567 N.W.2d 671, 673 (Iowa App. 1997).

III. Property Distribution. The parties to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Gonzales*, 561 N.W.2d 94, 98 (Iowa App. 1997). Iowa courts do not require an equal division or a percentage division in determining a just and equitable share of property. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). The distribution of property should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1999). *Gonzales*, 561 N.W.2d at 98.

Property that a party brings into the marriage is a factor to consider in making an equitable division. *See* Iowa Code § 598.21(1)(b). Although it is not required, in some instances this factor may justify a full credit. *In re Marriage of Miller,* 552 N.W.2d 460, 465 (Iowa App. 1996). A premarital asset is not otherwise set aside like gifted or inherited property. *Id.* It is a factor to consider, together with all the other circumstances, in making the overall decision. *Id.* We also must consider each party's contributions to the marriage in determining what each party receives upon the dissolution of the marriage. *In re Marriage of Garst,* 573 N.W.2d 604, 606 (Iowa App. 1997).

Premarital property does not merge with and become marital property simply by virtue of the marriage. *In re Marriage of Wendell,* 581 N.W.2d 197, 199 (Iowa App. 1998). Although the money used by Jeff for the down payment on the purchase of the homestead was the result of his earnings and savings before the marriage, we find it inequitable to award him a credit equal to his premarital investment in the real estate. The court must consider all of the factors set forth in Iowa Code section 598.21(1) in dividing the property of the parties. The property brought into the marriage by the parties is but one of those factors. This marriage of fourteen years was not of short duration. The record suggests no factual basis to support a finding Kathy's contribution to the marriage was less than Jeff's. Indeed, she was both the primary caretaker of the children and a wage earner outside the home. We also find it significant that Jeff's earning capacity substantially exceeds that of Kathy who, as physical care provider for the children after the dissolution, will be required to devote more consistent

attention to the children on a routine daily basis than will Jeff. We acknowledge that it may seem arbitrary from Jeff's perspective to set aside all of Kathy's inheritance, while requiring him to divide his pre-marital investment with Kathy. However, the legislature has made a policy decision in dissolution of marriage cases to treat inherited assets differently than those brought into the marriage. Under the circumstances of this case, we modify the decree to reduce the amount to be paid to Jeff by Kathy from $18,250 to $7,500. Kathy shall make this payment to Jeff on or before February 1, 2001. In all other respects, the decree is affirmed. The costs of this appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.