

IN THE COURT OF APPEALS OF IOWA

No. 6-593 / 95-1475

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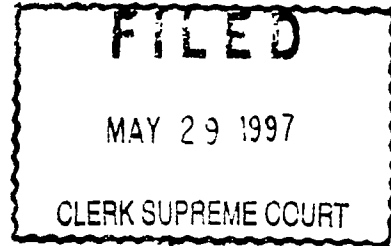
**IN RE THE MARRIAGE OF NANCY KAYE COLLINS
AND MARVIN DANIEL COLLINS**

Upon the Petition of
NANCY KAYE COLLINS,

Appellee,

And Concerning
MARVIN DANIEL COLLINS,

Appellant.



Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge.

Marvin Collins appeals from the district court's order dissolving the parties' marriage. **AFFIRMED AS MODIFIED.**

Roger J. Hudson and Stacey N. Bell of Smith, Schneider, Stiles, Hudson, Serangeli, Mallaney, Shindler & Scalise, P.C., for appellant.

J.D. Hartung of the Crawford Law Firm, West Des Moines, for appellee.

Heard by Habhab, C.J., Sackett, and Cady, JJ.

CADY, J.

Respondent appeals from various economic provisions of a decree for dissolution of marriage. We affirm the decree with modification.

Nancy and Marvin (Dan) Collins were married March 17, 1984. Both had previously been married and had children from their prior unions.

Dan brought numerous assets into the marriage, including two duplex housing units, life insurance policies, a home, and a credit union account of \$11,000. The two duplexes were purchased shortly before the marriage for approximately \$140,000. Dan made a down payment of \$14,000 and financed the balance. He borrowed most of the down payment from his mother.

Nancy brought several antiques and household items into the marriage. She also owned a home, which Dan and Nancy lived in following their marriage. The home was sold in 1986, resulting in a gain of \$19,525. Dan and Nancy then purchased a home with an in-ground swimming pool for \$117,000. The proceeds from the sale of Nancy's home were used as a down payment.

Dan sold the home he owned prior to the marriage in 1987. The net proceeds from the sale, after paying the \$12,000 loan from his mother, were \$16,700.

Dan was self-employed as a commissioned life insurance agent throughout the marriage. In 1994, his commissions exceeded \$60,000. His annual business expenses were approximately \$30,000, resulting in a net taxable income of \$30,000. His business deductions included automobile expenses of \$3422 and meals and

entertainment exceeding \$7000. Dan would entertain clients by taking them golfing, to Iowa Cub baseball games, and to University of Iowa football games. Nancy helped Dan entertain clients and prospective clients.

Nancy was employed by The Principal Financial Group. Her gross taxable income in 1994 was \$16,083. Nancy expects to receive cost of living increases in her salary in the future.

Dan was 52 years old at the time of trial in May 1995. Nancy was 51 years of age.

The trial court awarded Nancy monthly alimony of \$600 until she reached the age of 65, died, or remarried, and required Dan to maintain life insurance policy to insure future payment of the alimony. The court did not set off the duplexes to Dan in dividing the property. It also ordered Dan to maintain a life insurance policy which Nancy and Dan had taken out on Nancy's father. Nancy and Dan are the beneficiaries of the policy. Finally, the trial court ordered Dan to pay \$3000 to Nancy's attorney.

Dan appeals. He claimed an award of traditional alimony is not warranted, and it is inequitable to require him to maintain insurance on his life to guarantee alimony will be paid in the event of his death. He also claims the court failed to set aside a portion of the equity in the duplexes to him and in failing to account for all the personal property of the parties. Additionally, Dan contends the trial court erred in requiring him to maintain the life insurance policy on Nancy's father. Finally, Dan

claims the trial court erred by ordering him to contribute \$3000 towards Nancy's attorney fees.

I. Standard of Review

Our review is de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. Alimony

A variety of factors are considered in making an award of alimony. Iowa Code § 598.21 (1995). These factors include the length of the marriage, the property distribution, the earning capacity of the parties, and the standard of living enjoyed during the marriage. *See Id.*

In this case, the marriage spanned eleven years. Dan was awarded a greater share of the property and leaves the marriage with a much greater earning capacity. Nancy's net monthly income from her employment is \$1172. This amount is substantially less than her monthly living expenses. Her income will not substantially increase in the future.

We agree with the district court alimony is appropriate. We also agree it should extend beyond a period of rehabilitation. Nancy's earning capacity is established, and she will require long term financial assistance from Dan. The fighting question turns to the amount of alimony.

Although Dan's life style is not commensurate with his actual net income, there was no evidence his business expenses were not legitimate. We have reviewed

all the relevant factors, including Nancy's financial needs and Dan's ability to pay. We conclude alimony should be reduced to \$400 per month, under the same terms imposed by the trial court, including the requirement for Dan to maintain life insurance. See *In re Marriage of Boehlje*, 443 N.W.2d 81, 85 (Iowa App. 1989). However, we modify the decree to permit Dan to periodically reduce the amount of life insurance to an amount equal to the maximum future alimony obligation. The reduction in monthly alimony shall not be retroactive.

III. Property Distribution

Dan claims the property distribution made by the district court was inequitable because the two duplexes he owned prior to the marriage were not set aside to him. We disagree.

Property owned by a party prior to the marriage is not set aside to that party at the time of a divorce. *In re Marriage of Brainard*, 523 N.W.2d 611, 616 (Iowa App. 1994). To the contrary, pre-ownership is merely a factor to consider together with all other relevant factors in determining the overall equitable division. *Id.*

In this case, Dan purchased the duplexes shortly before the marriage primarily with borrowed funds. The debt incurred to purchase the duplexes was reduced during the eleven year marriage. Nancy assisted in the maintenance and management of the duplexes, and there was evidence Nancy and Dan planned to use the duplexes to supplement their retirement income. Under all the circumstances, we conclude the trial court properly considered the duplexes in making its property distribution.

Dan also claims the trial court erred in failing to require Nancy to account for some of her expenditures during the marriage which he believed diminished the assets available for distribution at the time of the divorce. We have reviewed the evidence to support Dan's claim and find it falls far short of intentional liquidation of assets in anticipation of a divorce or intentional waste. We summarily reject the claim. See Iowa Code § 597.14 (1995). The property distribution by the trial court was fair and equitable under all the circumstances.

IV. Life Insurance

Dan and Nancy were co-owners of an insurance policy on the life of Nancy's father. The policy was purchased in 1993 and is a combination of whole life and term. It has a face value of \$100,000. The district court did not divide the policy by awarding it to one party, but ordered Dan to maintain the policy for the benefit of both parties by paying the required premiums. Dan argues Nancy should share equal responsibility for paying the premiums. Neither party claims the policy should be abandoned or awarded to one party.

We agree with Dan that Nancy should equally share in paying the required premiums on the policy. She will receive one-half of the proceeds in the future, and should share in the premium if she desires to share in the distribution.

We modify the decree to require the parties to be equally responsible for the premiums. Alternatively, if either party desires to terminate their ownership in the policy in the future and relieve themselves of the obligation to pay the premiums they

can assign their interest in the policy to the other party. This modified provision of the decree is not effective retroactively.

V. Attorney Fees

The district court acted within its range of discretion in awarding attorney fees at trial. *See In re Marriage of Kern*, 408 N.W.2d 387, 390 (Iowa App. 1987). We conclude the parties should be responsible for their own appellate attorney fees.

VI. Conclusion

We have considered all claims raised by the parties. We modify the decree entered by the district court to reduce the monthly alimony payment to \$400. We modify the provision of the decree relating to the insurance policy owned by the parties on the life of Nancy's father as provided in this opinion. We also modify the provision of the decree requiring Dan to maintain life insurance for the benefit of Nancy as provided in this opinion. We otherwise affirm the decree and deny the claim for appellate attorney fees. Costs divided equally.

AFFIRMED AS MODIFIED.

Habhab, C.J., concurs; Sackett, J., concurs in part and dissents in part.

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SACKETT, J. (concurring in part; dissenting in part)

I would concur in part and dissent in part. I would strike the provision that Nancy receive alimony. She is self-supporting at the level she was when she entered the marriage. She has made no unusual sacrifices and has been able to keep her employment and benefits during the marriage. I recognize currently Dan earns more money than Nancy. I do not find this alone justifies him paying alimony.

Any interest in the life insurance policy and any responsibility for premiums should be Nancy's. I question whether Dan has an insurable interest in his former father-in-law.