IN THE COURT OF APPEALS OF IOWA

No. 7-461 / 96-1532 000171

IN RE THE MARRIAGE OF BARTON WILLIAM HILDAHL AND LINDA LOU HILDAHL

Upon the Petition of
BARTON WILLIAM HILDAHL,
Appellee,

And Concerning
LINDA LOU HILDAHL,
Appellant.

FILED
NOV 25 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Woodbury County, James D. Scott, Judge.

Linda Lou Hildahl appeals various economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Bradford F. Kollars, Sioux City, for appellant.

Dennis R. Ringgenberg of Crary, Huff, Inkster, Hecht & Sheehan, P.C., Sioux City, for appellee.

Considered by Cady, C.J., Huitink, J., and Perkins, S.J.*

*Senior judge from the Fifth Judicial District serving on this court by order of the Iowa Supreme Court.

PERKINS, S.J.

Barton and Linda Hildahl were married on December 9, 1978. They had one child, Briton, born July 18, 1980. At the time of the marriage, Linda was employed as a teller for Norwest Bank. Linda elected to stay home following Briton's birth. Linda currently provides home nursing care for elderly patients through St. Luke's Home Health Care, earning $1000 per month. Barton has worked for the Burlington Northern Railroad for twenty-four years, earning a gross income in 1995 of $49,333. Barton was forty-six years of age at the time of trial and Linda was forty-nine.

At the time of the marriage, Barton was purchasing on contract a house located in Sioux City. Barton made the initial down payment of $5000 and made several payments on the mortgage prior to the marriage. Later, Barton received a $31,442 inheritance from his father of which he used $19,700 for improvements on the home. Barton also sustained an eye injury during the course of his employment and received $3000. Barton used $2300 of that sum to make improvements on the home. Additionally, Barton received $7387.50 from a class action lawsuit. This sum was used to satisfy the mortgage on the home.

Linda received a $24,035 property settlement from a previous marriage, of which $16,587 was brought into the present marriage. This sum was used for marital expenses and improvements on the home. Linda also brought into the marriage a snowmobile.

On November 9, 1995, prior to the filing of a petition for dissolution of marriage, Barton removed $8000 from an account at Norwest Bank and gave it to his brother to place in a lock box. Barton filed the petition on November 29, 1995.

Following trial, the district court entered its decree. The court awarded possession of the marital home to Linda for as long as Briton remained in her care. After June 1, 1999, Barton was awarded the option of either buying out Linda's share or selling the home. The district court concluded Barton was entitled to $34,000 as nonmarital property, consisting of his inheritance and monies received from claim settlements. Linda was given credit for $16,000, the approximate remaining balance of her property settlement. The court awarded Barton the first $18,000 of the sale proceeds of the home, the remainder to be divided evenly. Each party was ordered to be responsible for their respective health and dental insurance. Barton was ordered to pay two-thirds of all unreimbursed medical and dental expenses. Barton was additionally ordered to pay Linda $750 in attorney fees.

Linda subsequently filed a rule 179(b) motion, claiming she had given Barton $7000 from her property settlement to equalize their equity in the marital home. She also claimed the district court did not decide the fate of the $8000 Barton took prior to filing for dissolution. The district court concluded it was not convinced the $7000 was used toward the equity in the home. The court did rule that the parties' ownership should be transferred from joint tenants with rights of survivorship to tenants in common. The court additionally ruled Linda should receive the tax deduction for Briton.

Linda filed a motion to expand the court's ruling, claiming it did not address the issue of the $8000. The court concluded Barton was to receive the entire $8000 when it fashioned a property division. Linda has appealed.

Linda contends the district court erred in ruling that Barton was entitled to the entire $8000. Linda maintains the district court erred in adopting Barton's exhibit 31, the stipulation of assets and liabilities, as evidence of the parties' intent regarding the $8000. She contends this amount should be evenly divided between the parties.

I. Scope of Review.

Dissolution actions are equitable in nature and, consequently, the review is de novo. *In re Marriage of Vrban*, 359 N.W.2d 420, 423 (Iowa 1994); Iowa R. App. P. 4. Weight is given to the findings of fact by the district court, but we are not bound by these findings. Iowa R. App. P. 14(f)(7).

II. Division of Marital Property.

A review of the district court's division of the property of the parties indicates that Iowa Code section 598.21(1) was carefully considered and for the most part properly applied.

In addition to the testimony presented at trial, the district court considered Linda's 179(b) motion, enlarged its findings, and expanded its ruling. Thereafter upon Linda's amended motion to expand, the district court ruled that Barton should be awarded the $8000 in the Norwest Bank account.

After consideration of the record, we agree with Linda that the $8000 which Barton withdrew from the savings account at Norwest Bank should be divided equally between the parties.

In conclusion, we find the decision of the trial court should be affirmed except that Linda should receive an additional $4000 property settlement. The costs of the appeal should be shared equally and each party shall pay their own attorney fees.

AFFIRMED AS MODIFIED.