

FILED

OCT 28 1987

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ROBERTA JEAN McLAUGHLIN
AND GERALD C. McLAUGHLIN

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Upon the Petition of	)	
ROBERTA JEAN McLAUGHLIN,	)	Filed October 28, 1987
Petitioner-Appellant,	)	
And Concerning	)	
GERALD C. McLAUGHLIN,	)	7-335
Respondent-Appellee.	)	86-1546

Appeal from the Iowa District Court for Pottawattamie County (No. 272),
Leo Connolly, Judge.

The petitioner appeals from the property provisions in the parties' decree of dissolution, claiming that the trial court's procedure precluded a fair trial; that there is not sufficient evidence to support the property division; and that the unearned appreciation in value during the marriage of her premarital assets is not divisible at dissolution. **AFFIRMED.**

G. Elizabeth Otte, Council Bluffs, for petitioner-appellant.

Eric H. Leed, Council Bluffs, for respondent-appellee.

Considered by Oxberger, C.J., and Hayden and Sackett, JJ. Snell, J.,
takes no part.

PER CURIAM

The parties to this appeal, Gerald and Roberta McLaughlin, were granted a dissolution of their five-year marriage by the district court for Pottawattamie County on June 12, 1986. Roberta brings this appeal in order to challenge the property division and the district court's manner of conducting trial. Our review is de novo. Iowa R. App. P. 4. Although we are not bound by the district court's fact findings, we give them weight, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7).

I.

Roberta maintains the district court denied her a fair trial by itself conducting most of the examinations of herself and Gerald, the only two witnesses. We note that although both parties and their respective counsel were present at trial no one objected or took exception to the district court's procedure until Roberta raised the issue in her motion for new trial. Our rules of evidence provide that "[o]bjections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present." Iowa R. Evid. 614(c). The rationale in support of this provision—like that in support of other rules governing timely objection, see e.g., Goetzman v. Wichern, 327 N.W.2d 742, 745 (Iowa 1982)—is to "assur[e] that objections are made in apt time to afford the opportunity to take possible corrective measures." Iowa R. Evid. 614(c) federal advisory committee note. In the present case not only did Roberta fail to lodge a timely objection, she engaged, through counsel, in the following colloquy with the district court:

THE COURT: Okay. Do you attorneys want me to inquire of the parties what they feel would be a fair resolution of this matter. This is something I won't do unless it's okay with you attorneys.

MR. LYNCH [Roberta's counsel]: I don't think we have any objections, if you just want to have some narrative from them as to what they feel and why.

THE COURT: That's what I was getting at.

MR. LEED: I have no objection.

MR. LYNCH: I don't have any objection.

In addition, the district court allowed the respective attorneys to pursue further questioning with the parties. Our review of these proceedings is limited to "those propositions properly presented, provided issue has been raised and error, if any, . . . preserved in the course of trial proceedings." E.g., In re Marriage of Morgan, 218 N.W.2d 552, 556 (Iowa 1974). We express no opinion as to the propriety of the district court's action; we merely note that this is an issue which is not properly before us.

II.

In reviewing a district court's division of marital property, we are guided by the criteria set out in Iowa Code section 598.21(1) (1985). We reaffirm our rejection of any rule based upon a percentage division of the assets. In re Marriage of Lattig, 318 N.W.2d 811, 814 (Iowa App. 1982). We are not bound to achieve a precisely equal division in awards of marital property. In re Marriage of Anderson, 243 N.W.2d 562, 564 (Iowa 1976). In general, the division of property is based upon each marital partner's right to a just and equitable share of the property accumulated as a result of the efforts of both parties. In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1976). The controlling mandate is that courts achieve an equitable and just award under the circumstances. In re Marriage of Wallace, 315 N.W.2d 827, 831 (Iowa App. 1981).

The dissolution decree awarded Gerald a 1980 pickup truck valued at approximately \$2,700.00, certain personal property of nominal worth, and a \$3,000.00 judgment. Roberta was awarded the marital residence with an equity value of approximately \$25,000.00, her pension valued at \$46,000.00, and all of the remaining marital property. Roberta challenges the division as inequitable.

Initially, we reject Roberta's claim that the district court erroneously considered appreciations in her net worth to which Gerald made no contribution. This, Roberta claims, is contrary to our law. See, e.g., In re Marriage of Lattig, 318 N.W.2d 811, 815-16 (Iowa App. 1982). Suffice it to say the record does not support her allegation. Of similar merit is her contention that the \$3,000.00 judgment awarded to Gerald as part of the property division "must be disallowed." Equity is our polestar, Marriage of Wallace, 315 N.W.2d at 831, and we cannot say it has been affronted in the case at bar.

The district court's decree and judgment are affirmed.

AFFIRMED.