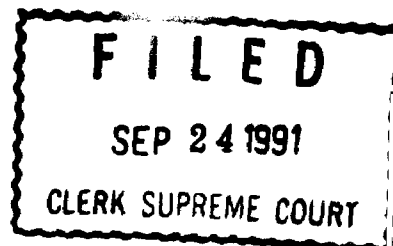


IN THE COURT OF APPEALS OF IOWA

No. 0-726 / 90-781



IN RE THE MARRIAGE OF PAMELA RAE WIESE AND THOMAS GLENN
WIESE

Upon the Petition of

495

PAMELA RAE WIESE,

Appellant,

And Concerning

THOMAS GLENN WIESE,

Appellee.

Appeal from the Iowa District Court for Benton County,
L. Vern Robinson, Judge.

The wife appeals from a dissolution decree, challenging
its economic provisions. **AFFIRMED.**

Morris L. Eckhart of Milroy & Eckhart, Vinton, for
appellant.

Mark Mossman of Mossman, Mossman & Fraker, Vinton, for
appellee.

Considered by Schlegel, P.J., and Sackett and Habhab,
JJ.

HABHAB, J.

Pamela and Thomas Wiese were married in 1984. They had no children. Pamela has two adult children from a previous marriage.

Thomas is a self-employed farmer. He and his brother farm about 900 acres, much of which is rented. In 1989 his taxable income was slightly over \$20,000. Thomas owns a one-quarter interest in seventy-seven acres and a three-eighths interest in another 284 acres. He also owns a substantial amount of machinery and livestock, as well as certain investments. His estimated net worth exceeded \$300,000 both before the marriage and at the time of the dissolution hearing.

Pamela holds a clerical job with the Department of Human Services and earns about \$17,000 per year. She brought little property into the marriage.

Prior to the marriage the parties signed an antenuptial agreement providing that neither party would make any claim to property owned by the other before the marriage. The agreement was silent on the matter of alimony in the event of a dissolution.

The dissolution decree awarded Thomas all of the property he brought into the marriage, including all of the farm-related property. In reaching this determination, the district court concluded that the antenuptial agreement was valid and enforceable; the court noted, among other things,

that Thomas had fully disclosed the extent of his property to Pamela before she signed the agreement.

The district court did award Pamela a larger share than Thomas of the little personal property acquired during the marriage. Pamela was awarded three automobiles and a motorcycle, her IPERS fund, and a promissory note from her son, Dion Teal.

The district court declined to award Pamela alimony. The court noted that in spite of Thomas's extensive farm-related property, his actual income is not much larger than Pamela's employment income.

Pamela has appealed from the dissolution decree.

I.

In this equity action, our review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II.

Pamela contends she should have been awarded a share of the farm-related property. She argues the antenuptial agreement is invalid and unenforceable; she asserts the agreement is unfair to her because of the great disparity between Thomas's wealth and her wealth at the time the agreement was signed.

Antenuptial agreements are looked upon with favor by the law and are to be liberally construed to carry out the

intentions of the parties. In re Marriage of Pillard, 448 N.W.2d 714, 715 (Iowa App. 1989). Our courts will uphold antenuptial agreements if they are fair between the parties and fairly, freely, and understandingly entered into. In re Marriage of Sell, 451 N.W.2d 28, 30 (Iowa App. 1989). If the antenuptial agreement is fair on its face and not procured by fraud, it is as legal and enforceable as other contracts. In re Estate of Ascherl, 445 N.W.2d 391, 392 (Iowa App. 1989).

The antenuptial agreement in this case is fair on its face. It states that each party will retain the property he or she brought to the marriage. Pamela does not contend Thomas engaged in fraud to induce her to sign the agreement. She freely entered into the agreement and understood its terms.

We conclude the antenuptial agreement in this case is valid and enforceable. We affirm the property division set forth by the district court.

III.

Pamela contends the district court erred in not awarding her alimony. The court did not award alimony based on the short duration of the marriage, the ages of the parties, and the similar incomes of the parties.

Alimony is an allowance to the ex-spouse in lieu of a legal obligation to support that person. In re Marriage of Cooper, 451 N.W.2d 507, 508 (Iowa App. 1989). Alimony is not an absolute right; its award depends upon the unique

circumstances in each case. Id. We consider property division and alimony together in evaluating their individual sufficiency. Id. After considering the factors set forth in Iowa Code section 598.21(3), we affirm the trial court on this issue.

IV.

Pamela contends the district court should have either granted her a new trial or granted her motion to modify the decree. These issues arise because Thomas inherited additional farmland from his grandfather, who died while this dissolution action was pending in district court. Pamela argues that Thomas's additional inherited property makes it even more unfair to enforce the antenuptial agreement and to deny her a share of the farm-related property.

In ruling upon motions for new trial, the district court has broad but not unlimited discretion in determining whether its decision effectuates substantial justice between the parties. See Iowa R. App. P. 14(f)(3).

We do not believe the district court abused its discretion in this case.

V.

Finally, Pamela seeks attorney fees for this appeal. Attorney fees are not recoverable as a matter of right, but rest within the discretion of the court. In re Marriage of Oler, 451 N.W.2d 9, 13 (Iowa App. 1989). Dissolution courts have considerable discretion with regard to attorney

fees. Id. The controlling factor is the parties' ability to pay. Id. Under the circumstances here, we conclude each party should pay his or her own appellate attorney fees. Costs on appeal are taxed to the appellant.

AFFIRMED.