FILED
SEP 30 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF DONNA MARIE NUCKOLLS AND GLENN SIGLE NUCKOLLS

185

Upon the Petition of)

DONNA MARIE NUCKOLLS,)

Petitioner-Appellee,) Filed September 30, 1987

And Concerning)

GLENN SIGLE NUCKOLLS,) 7-244
86-1515

Respondent-Appellant.)

Appeal from the Iowa District Court for Polk County (No. DM CD49-29323), Theodore H. Miller, Judge.

Respondent husband appeals from the decree dissolving the parties' marriage. **AFFIRMED.**

John E. Orrell, Jr. of Hopkins & Huebner, Des Moines, for appellant.

J. Michael Mayer, Des Moines, for appellee.

Considered by Donielson, P.J., and Snell and Hayden, JJ.

PER CURIAM 186

Respondent husband appeals from the decree dissolving the parties' marriage, asserting that the trial court erred in the division of the property. We affirm.

Petitioner Donna Marie Nuckolls and respondent Glenn Sigle Nuckolls were first married in 1957. They were divorced in 1976. The dissolution decree awarded Glenn, among other things, the parties' house. In 1977, the parties remarried, and Donna transferred $9,200 to Glenn. In 1983, Donna received as a gift from her mother and stepfather an interest in a rental property. The parties separated four months later. Donna is now 45 years old and Glenn is 49 years old. No children were born of either marriage.

In its dissolution decree, the trial court found that Glenn had brought the house to the second marriage, but that the parties had intended to recombine their assets when they remarried and the $9,200 transfer from Donna had been made to carry out that intent. The trial court therefore ordered the equity in the house, which it valued at $55,140, equally divided; it awarded the house to Glenn subject to a $27,570 lien in favor of Donna.

The trial court set aside to Donna her rental property interest. The trial court also awarded Donna the personal property in her possession, the contents of a safety deposit box, a cemetery plot, her company retirement plan, her IRA, a credit union account, and a bank account. The trial court awarded Glenn the personal property in his possession, a car, two motorcycles, a trailer, a snowmobile, tools, two cemetery plots, his union retirement plan, his IRA, a bank account, his life insurance policies, and his worker's compensation and personal injury claims.

The trial court ordered the parties to equally divide their remaining property, including among other things, Donna's company savings plan (which it

valued at $9,200), a car, and a pickup. The trial court directed Glenn to pay the mortgage on the house and the loans against his life insurance policies. It directed the parties to split their IRS assessment. Glenn has appealed from the dissolution decree.

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).

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).

I. Glenn first argues that the trial court erred in finding that Donna was entitled to one-half of the equity in the homestead. He bases this argument on the fact that he brought the homestead into the marriage, he made improvements on the home during the marriage, and he had the responsibility for the house payments. The trial court found in its decree:

> . . . that while the Respondent brought this asset into the marriage, it was the intent and purpose of the parties that their assets be recombined jointly when they remarried in October 1977. The Court finds that Petitioner carried out the intent of the parties by transferring $9,200.00, all her liquid assets to Respondent. The Court also finds that although Petitioner was never placed in the legal title of the property, it was the intention of the parties that she hold

> an equal share in said homestead when they remarried. The Court finds that the value of said homestead is in the amount of $72,140.00 subject to a mortgage in the amount of $55,140.00 [sic]. The Court specifically finds that this $55,140.00 equitable interest of the parties should be split equally between them as jointly held property. Title to the homestead should be awarded to Respondent subject to a lien in favor of Petitioner in the amount of $27,570.00 for half of the equitable interest of the parties.

Glenn relies on Iowa Code section 598.21(1)(b), which states that the court should consider the property brought into the marriage by each party. However, we cannot look to just this subsection alone; there are twelve other criteria for the court to consider under section 598.21(1). A de novo review of the facts of this case persuades us to affirm the trial court's finding that Donna is entitled to one-half of the equity in the homestead. The record discloses the parties were married six years; Donna brought $9,200 into the marriage; testimony was elicited concerning the parties' intentions to recombine their assets; Donna worked at Northwestern Bell during the marriage, as well as performed homemaking services; the parties are ages 45 and 49; and Donna has some medical problems. Based on a review of these factors, we find the division of the property as determined by the trial court is equitable.

II. Glenn next argues that even if Donna is entitled to a percentage of the equity in the homestead, the trial court erred in determining the value. Glenn feels the value of the home should be $43,500, which was the value in 1977 at the time of their marriage; there was a $20,000 mortgage on the property at that time, for a net value of $23,500. At the time of trial the court determined the value of the property was $72,140, less the amount of the mortgage, $17,000.00, resulting in a net equity of $55,140. Because we determined the homestead was jointly owned, we also find that the trial court was correct in using the valuation at the time of trial rather than at the time of the parties' remarriage. We do not agree with Glenn's contention that Donna's percentage

should be based upon the appreciation that occurred during the marriage. Because of the cash contribution made by Donna at the inception of the marriage, the improvements made by the parties through their joint efforts, and in line with our guidance in the case of Hitchcock, 309 N.W.2d at 437, that each partner is entitled to a just and equitable share of the property, we find $55,140 was the appropriate figure to use in deciding the value of the homestead to be divided.

III. Glenn contends that the trial court erred in determining the value of Donna's Bell Systems savings account. The trial court determined the account value at the time of the separation of the parties was $9,200. We agree with this determination.

Donna testified the value of the account to be $15,339 less one-third (an amount given by Bell which does not vest until Donna retires, upon which no taxes have been paid) for a net value of $10,226 as of the trial date. Because the trial court allowed each party to keep his or her own assets accumulated since the separation, the $9,200 figure was an adjusted computation which we find was a reasonable and equitable valuation. As such, we decline to disturb the trial court's finding in this respect.

IV. Glenn's last argument is that the trial court erred in holding that Donna's rental property was not a marital asset subject to distribution. The property in question was a gift from Donna's mother and stepfather to Donna and her sister. Donna's one-half of the property is valued at $8,500. She acquired it in July 1983; the parties separated in November 1983. Glenn argues he acquired an interest in the property by repairing it.

Iowa Code section 598.21 (1985) provides that gifts are not subject to distribution except upon a finding that refusal to divide the property is inequitable to the other party.

Conflicting evidence was presented with regard to how much effort Glenn expended in working in the rental property. The trial court had an opportunity to observe the witnesses' testimony with regard to this particular issue. The trial court felt that a failure to divide the gift would not be inequitable to Glenn.

Based on the fact Donna acquired the property only four months before the parties' separation and based on the trial court's assessment of the credibility of the witnesses on this issue, we decline to disturb the trial court's ruling that Donna's rental property was not a marital asset subject to distribution.

Accordingly, we affirm the trial court in all aspects, as we find the property division was fair and equitable to both parties.

AFFIRMED.