IN THE COURT OF APPEALS OF IOWA

No. 7-281 / 96-0755

000143

IN RE THE MARRIAGE OF TAMMI RAE GRAFKE AND EDGAR GRAFKE, III

Upon the Petition of TAMMI RAE GRAFKE,

Petitioner-Appellee,

And Concerning EDGAR GRAFKE, III,

Respondent-Appellant.

FILED
AUG 22 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Mahaska County, James P. Rielly, Judge.

On appeal from the entry of a dissolution decree, the appellant argues the district court erred in its division of the parties' property and debts. **AFFIRMED.**

Eric J. Palmer of Palmer & Palmer, Oskaloosa, for appellant.

Thomas M. Walter of Johnson, Hester, Walter & Harrison, L.L.P., Ottumwa, for appellee.

Considered by Sackett, P.J., and Streit and Vogel, JJ.

SACKETT, P.J.

The sole question in this appeal from a decree dissolving a marriage of less than ten years is whether the property division made by the trial court is equitable. We find that it is and affirm.

Respondent-appellant Edgar Grafke, III, and petitioner-appellee Tammi Rae Grafke were married in July 1987. Tammi filed a petition for dissolution of the marriage in June 1995. On March 22, 1996, the district court entered a decree dissolving the marriage. The decree allocated certain personal property and bank accounts to each party and ordered the sale of the family home and other personal property. The court ordered the proceeds from the sale be used to satisfy certain debts and then allocated the balance. In doing so, the district court adjusted the balance of the sale proceeds (1) to account for property Edgar had disposed of, and (2) to provide credit for property brought into the marriage.

Edgar contends the allocation is not equitable because the property ordered sold included tools and camera equipment he owned before the marriage and a tractor which belonged to his father. He also contends the property division did not properly account for retirement funds he acquired before his marriage and did not consider an obligation he had to repay unemployment compensation.

Tammi advances there is no evidence to support Edgar's claims. She further alleges in considering his arguments we should consider his failure to properly comply with discovery requests and his attempt to manipulate assets.

We review de novo. Iowa R. App. P. 4; *In re Marriage of White*, 537 N.W.2d 744, 746 (Iowa 1995).

Iowa is an "equitable distribution" state meaning partners in a marriage that is to be dissolved are entitled to a just and equitable share of property accumulated through their joint efforts. *In re Marriage of Robinson*, 542 N.W.2d 4, 5 (Iowa App. 1995). An equitable division does not necessarily mean an equal division of each asset; rather, it means what is equitable under the circumstances after considering the statutory criteria of Iowa Code section 598.21(1). *Id.*

The record does not support Edgar's claims that the tools and camera equipment ordered sold were all brought by him into the marriage. There was an additional accumulation of both tools and camera equipment during the marriage. We cannot, based on the record made, attribute much value to those items Edgar claims to have brought into the marriage.

We recognize Tammi conceded the challenged tractor came from Edgar's father. Edgar, in stipulating to assets, valued "lawn mowers and tractors" at $543. There is no inequity in including the tractor in the items to be sold. The controlling mandate is to achieve an equitable and just award under the circumstances. *In re Marriage of Martens*, 406 N.W.2d 819, 821 (Iowa App. 1987). We affirm the trial court on this issue.

Tammi requests attorney fees on appeal. An award of attorney fees is not recoverable as a matter of right. *In re Marriage of Dahl*, 418 N.W.2d 358, 361 (Iowa

App. 1987). They are justified in this case. We award Tammi $500 in appellate attorney fees to be taxed against Edgar.

AFFIRMED.