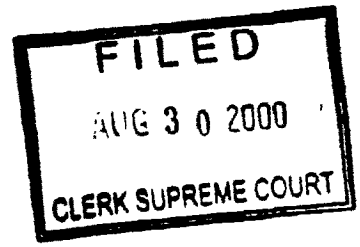
IN THE COURT OF APPEALS OF IOWA

No. 0-168 / 99-853
Filed August 30, 2000



IN RE THE MARRIAGE OF KEITH A. LEVORSON AND PATRICIA LEVORSON

Upon the Petition of
KEITH A. LEVORSON,
Petitioner-Appellee/Cross-Appellant,

And Concerning
PATRICIA LEVORSON,
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Mitchell County, John S. Mackey, Judge.

Both parties appeal, challenging the equity of the district court's division of their property in the decree dissolving their marriage. **AFFIRMED AND REMANDED.**

Judith O'Donohoe of Elwood, O'Donohoe, O'Connor & Stochl, Charles City, for appellant.

Russell H. Schroeder, Jr. of Schroeder Law Office, Charles City, for appellee.

Considered by Sackett, C.J., and Huitink and Vaitheswaran, JJ.

HUITINK, J.

I. Background Facts and Proceedings.

The Levorsons were married on September 6, 1980. The petition for dissolution of their marriage was filed March 14, 1997. They separated on April 5, 1997. Trial commenced on May 11, 1999.

Joint custody and Patricia's physical care of the Levorsons' children were resolved by stipulation. The disputed issues at trial included property division, debt allocation, alimony, Keith's child support obligation, tax exemptions, and dependent health care coverage.

The primary property division issues concerned valuation and division of Keith's equity interest in L & M Machine, Ltd. and his Dean Witter I.R.A. account. Keith was awarded the entire amount of his equity in L & M Machine, Ltd. The I.R.A. was proportionately divided. The trial court's disposition of these assets was based on the following findings of fact:

> Keith will be, as of April 1, 1999, the owner of a one-half interest in L & M Machine, Limited, a subchapter S corporation which initially began business in 1994. The company performs custom tool and die machine work. In 1994 Keith purchased a one-third interest for the sum of $4,750 with two other partners, Marshall Korte and Leo Foxen. Keith utilized a $3,000 gift from his parents in 1994 to help pay for his share of the business. . . . In a financial statement to the bank, L & M Machine, Limited, reflects its net worth as $66,587. . . . Keith and Marshall Korte have agreed to pay Leo Foxen the sum of $30,000 for his one-third interest in the business. Based upon the expert testimony presented, the court finds that Keith's interest in L & M Machine, Limited, has a total gross value of $61,200 which would be reduced by one-half of the $30,000 payment owing to Leo Foxen for a total of $46,200.
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> [T]he court concludes that the value of Keith's Dean Witter IRA. account as of the date of separation provides a starting point to determine Patricia's equitable share thereof. As of the date of

separation, that value was $74,017.10, and Keith contributed $30,685.21 by way of separate, premarital and/or gift funds thereto. The balance of the remaining funds as of the date of separation, $43,311.89, represents contributions Keith made during the marriage from his 401(k) plan at White Farm and accumulations thereto. The court concludes that Patricia should be entitled to one-half of that amount plus her proportional share of the accumulation between the date of separation and the date of trial calculated as follows:

DEAN WITTER IRA DIVISION

Value as of Separation = $74,017.10 - $30,685.21 (Keith's separate funds) = $43,331.89

Joint accumulation = $43,331.89 ÷ 2 = $21,665.95 (each party)

Value as of date of trial = $94,428.51 - $74,017.10 (value date of separation) = $20,411.47 (accumulation between date of separation and date of marriage)

Patricia's proportional share = $21,665.95 ÷ $74,017.10 = 29.27%
Keith's proportional share: $52,351.16 ÷ $74,017.10 = 70.73%

Patricia's total = $20,411.47 x 29.27% = $5,974.44 + $21,665.95 = $27,640.39

Keith's total = $20,411.47 x 70.73% = $14,437.03 + 52,351.16 = $66,788.19

Division of the parties' property, exclusive of Keith's I.R.A., was separately addressed in the court's decree. Keith was awarded property, including L & M Machine, Ltd. equity, valued at $87,970. Patricia received property valued at $39,825.60. In addition, Patricia received equalizing payments of $26,572.16 to compensate for the disproportionate property division and $27,640.39 to accomplish division of Keith's I.R.A. The total equalizing payment of $54,212.55 was payable in an initial $10,000 payment and the balance as provided in a qualified domestic relations order to be subsequently filed.

Based on findings concerning the parties' current employment and earnings history, the trial court ordered Keith to pay $523 monthly child support. The court also decreed an equal division of the children's future medical expenses including premium costs to enroll the children in Patricia's employer-sponsored medical insurance plan. Keith and Patricia were each allowed to claim one child as an exemption on future income tax returns. Patricia's requests for alimony and attorney fees were denied.

On appeal both parties challenge the equity of the district court's property division and request an award of attorney's fees. There are no issues raised concerning the remainder of the decree.

II. Scope of Review.

Our review is de novo. *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996). We are obliged to examine the entire record and adjudicate rights anew on the issues properly presented. *In re Marriage of Geil*, 509 N.W.2d 738, 740 (Iowa 1993). No hard and fast rules govern the economic provisions in a dissolution action; each decision turns on its own uniquely relevant facts. *In re Marriage of Gaer*, 476 N.W.2d 324, 326 (Iowa 1991). We accord the trial court considerable latitude in resolving disputed claims and will disturb the ruling only when there has been a failure to do equity. *Benson*, 545 N.W.2d at 257.

III. Property Division.

A. Keith's I.R.A. Patricia argues the court incorrectly found that all of Keith's contributions to his I.R.A. from 1982 through 1985 and then from 1989 through 1991 were made with premarital or gifted funds. She also argues Keith

failed to prove the origin of $14,000 contributed to his I.R.A. during this time period. Patricia alternatively argues it was inequitable to set off these contributions and the income therefrom in light of the length of their marriage.

Parties to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts, including pension benefits. *In re Marriage of Rebouche*, 587 N.W.2d 795, 801 (Iowa App. 1998); *In re Marriage of Gonzalez*, 561 N.W.2d 94, 98 (Iowa App. 1997). Equitable distribution does not necessarily mean an equal division of property, nor does it mean a percentage division of the property. *In re Marriage of Bonnette*, 584 N.W.2d 713, 714 (Iowa App. 1998). Instead, each particular circumstance determines what is fair and equitable. *In re Marriage of Wendell*, 581 N.W.2d 197, 199 (Iowa App. 1998).

Generally, gifts received by a party during the marriage are not subject to division unless the failure to do so would be inequitable to the other party. *In re Marriage of Hardy*, 539 N.W.2d 729, 731 (Iowa App. 1995). Property that a party brings into the marriage is a factor to consider in making an equitable property division. *Wendell*, 581 N.W.2d at 199. In some instances this factor may justify a full credit, but it is not required. *Id.* A premarital asset is not otherwise set aside like gifted or inherited property. *Id.* Moreover, in considering accumulations to premarital assets, we do not limit our focus to the parties' direct contributions to the increase. *Id.* Rather, we broadly consider the contributions of each party to the overall marriage, as well as all other factors. *Id.*

The record leaves little doubt concerning the origin of funds contributed to the disputed I.R.A. Keith acquired two $10,000 certificates of deposit prior to the

marriage. He also received $15,000 in cash gifts from his parents during the marriage, of which at least $6000 was contributed to his I.R.A. We adopt the district court's findings that $30,685.21 of the I.R.A. balance was attributable to cash gifts from Keith's parents and separate contributions of funds acquired before the marriage. The record similarly contradicts Patricia's claim that Keith failed to establish the origins of $14,000 contributed to his I.R.A. Keith testified that he originally deposited funds in a savings account and subsequently withdrew $2000 annually to comply with applicable contribution limits. Because the court's finding on this issue implicates its assessment of Keith's credibility, we will not interfere. We find no inequity in either the district court's set aside of a portion of Keith's I.R.A. or the proportionate division of the remainder, including the accumulations thereon. We affirm on this issue.

B. L & M Machine, Ltd. Equity. Keith's challenge to the equity of the district court's disposition of this asset is twofold. He contends this asset, like his I.R.A., was acquired with gifted funds and should have been excluded from division. Keith alternatively argues the district court overvalued his equity interest in L & M Machine, Ltd. We disagree on both counts.

Contrary to Keith's contention, his equity in L & M Machine, Ltd. was acquired with both gifted funds and income earned during the marriage. Moreover, Keith's entitlement to a set aside of any gifts or premarital funds has been adequately addressed in the disposition of his I.R.A. Any additional set aside of L & M Machine, Ltd. equity would be inequitable under these circumstances. The district court is affirmed on this issue.

The district court's valuation of L & M Machine, Ltd. was premised on expert testimony from a certified public accountant. In making this determination, the district court rejected Keith's claim that the purchase price of Leo Foxen's interest was a more accurate measure of value.

The valuation of a closely held corporation is difficult, and the market value of stock in a closely held corporation can rarely be ascertained. *In re Marriage of Steele*, 502 N.W.2d 18, 21 (Iowa App. 1993). Because of the difficulty of this task, the district court is allowed considerable discretion to devise its own valuation scheme. *Id.* We find the value placed on Keith's equity in L & M Machine, Ltd. falls well within the range of permissible evidence and affirm on this issue.

We note there is a $1000 discrepancy between the $46,200 valuation recited in the court's findings of fact and the $47,200 value used in computing the total property division and equalizing payments. This discrepancy should be corrected on remand to the district court. In all other respects, the disposition of this asset is affirmed.

C. Remaining Issues. Both Patricia and Keith make competing claims concerning debts they believe were misallocated. When asked to review individual economic provisions of a decree, we consider all the provisions together as an integrated whole. *In re Marriage of Lattig*, 318 N.W.2d 811, 815 (Iowa App. 1982). When viewed as a whole, we find the assets and remaining liabilities were divided equitably between the parties, and we will not disturb these provisions of the district court's decree.

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We have carefully considered all of the remaining issues raised by the parties and find no merit in any of them. With the exception of the noted discrepancy, the district court's division of the Levorsons' property and allocation of their debts was equitable, and we affirm the decree in its entirety.

D. Attorney Fees and Costs. Both parties request attorney's fees and costs on appeal. Attorney's fees are not recoverable as a matter of right but rest within the discretion of the court and depend on one spouse's financial needs and the other spouse's ability to pay. *In re Marriage of Orgren*, 375 N.W.2d 710, 714 (Iowa App. 1985). Keith and Patricia are both employed. Each received a substantial property award. An award of trial or appellate attorney's fees is not warranted under these circumstances. Costs of this appeal shall be shared equally by the parties.

AFFIRMED AND REMANDED.