IN THE COURT OF APPEALS OF IOWA

No. 5-588 / 94-2023

FILED
MAY 31 1996
CLERK SUPREME COURT

IN RE THE MARRIAGE OF DIANE N. MAWDSLEY AND CRAIG MAWDSLEY

Upon the Petition of
DIANE N. MAWDSLEY,

Appellee,

And Concerning
CRAIG MAWDSLEY,

Appellant.

Appeal from the Iowa District Court for Buchanan County, Margaret L. Lingreen, Judge.

Craig Mawdsley appeals the provisions of the parties' dissolution decree. **AFFIRMED.**

Robert J. Murphy of Roberts & Murphy, Independence, for appellant

Donna Lesyshen of Tyler & Lesyshen, Waterloo, for appellee

Considered by Habhab, P.J., and Huitink and Streit, JJ. Vogel, J., takes no part.

HUITINK, J.

Craig Mawdsley appeals the economic provisions of the decree dissolving his marriage to Diane Mawdsley. We affirm.

Craig and Diane Mawdsley were married in 1979. They have three children: Laura, born April 22, 1981; Hillary, born May 15, 1985; and Dain, born April 14, 1988. Diane worked as a school teacher until 1981 when she stopped working outside the home to care for the parties' children. Craig is a self-employed insurance salesman, having previously worked for Farm Bureau Insurance Company.

Each party received inherited or gifted property during the marriage. Diane received $325,000 worth of Wapsie Valley Creamery stock from her parents, and Craig inherited farmland valued at $225,000. Craig sold some of this farmland for $41,512 and also received $10,000 in life insurance proceeds upon the death of his father. Diane additionally inherited $18,321 from her grandfather's estate and received gifted money and inheritance from her grandmother in the amount of $28,833.

Craig and Diane's marriage was dissolved by decree in 1994. The district court awarded Diane custody of the parties' minor children and ordered Craig to pay $625 per month in child support. Each party was awarded his or her inherited, gifted, and premarital property including Diane's Wapsie Creamery stock and Craig's farmland. The court also found Diane had expended approximately $31,574 of her $47,951 in cash inheritances or gifts for family expenses and accordingly credited her for this.

amount. Diane had also invested $10,000 of inherited money into a certificate of deposit which was loan collateral for Craig's business. The district court ordered Craig to take the necessary steps to release the CD as collateral for his loan.

Diane received exclusive ownership of the parties' home and household items along with her checking and savings accounts, IRA, and automobile. Craig received several household goods along with his office building on which he assumed the remaining debt.

Craig filed a rule 179(b) motion on November 15, 1994, eleven days after the decree was filed. Ruling on this motion was still pending when he filed his notice of appeal on December 5, 1994. The district court denied the rule 179(b) motion on December 19, 1994. *See Wolf v. City of Ely*, 493 N.W.2d 846, 848 (Iowa 1992) (notice of appeal conferred jurisdiction on appellate court and divested the district court of jurisdiction to rule upon rule 179(b) motion). Craig appeals.

In this equity action our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). 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).

The partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. . *In re Marriage of Russell*, 473

N.W.2d 244, 246 (Iowa App. 1991). Iowa courts do not require an equal division or percentage distribution. *Id.* The determining factor is what is fair and equitable in each circumstance. *Id.* The distribution of the property should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1993). ***In re Marriage of Estlund***, 344 N.W.2d 276, 280 (Iowa . App. 1983).

Property given to or inherited by either party ordinarily is to be considered the property of that party and may be divided only where refusal to do so would result in inequity to the other party or children of the marriage. Iowa Code § 598.21(2). A party's placement of gifted or inherited property into joint ownership does not, by itself, render such property a marital asset *In re Marriage of Hoffman*, 493 N.W.2d 84, 89 (Iowa App. 1992). Instead, the court considers several factors in determining whether an equitable distribution of gifts or inherited property is warranted. *See In re Marriage of Muelhauft*, 439 N.W.2d 656, 659 (Iowa 1989)

Craig does not challenge the district court's decision to set aside the parties' inherited or gifted property as nonmarital assets Instead, he claims the district court erred in allowing Diane credit for family expenses she financed with her inherited or gifted property He also contends the district court erred in ordering him to release Diane's CD as collateral for his business loan

On our de novo review of the record, we find it was equitable for the district court to allow Diane credit for the family expenditures she financed with her gifted and

inherited money. Although we are unable to determine a sum certain for these expenditures, Diane's financial records reveal that of the $47,951 she received in inheritances and cash gifts, $15,577 remained at the time of trial. Ten thousand dollars was invested in a CD being used as collateral for Craig's business loan while the remaining $5,577 was contained in Diane's savings account. The parties' financial affidavits further show that nearly $20,000 of Diane's inheritance expenditures occurred between February and October 1994 while the she and Craig were separated. Diane testified that because she was unable to meet the parties' joint financial obligations with Craig's $357 monthly support payments during the separation, it was necessary for her to augment these payments with her inherited and gifted money. Specifically, Diane testified that she used her inheritance for real estate taxes and insurance on the house, life insurance policies for herself and Craig, and support of the children during the parties' separation. Because Diane used her gifted and inherited property under these circumstances, we find the district court correctly allowed Diane credit for this contribution.

Likewise, the $10,000 CD used as collateral for Craig's business loan was purchased with Diane's inherited property. There is nothing in the record to indicate the money used to purchase the CD was a gift to the parties jointly. Instead, it is apparent this money was a gift to Diane alone. Accordingly, we find the district court properly ordered Craig to release the CD as collateral for his loan.

Craig next argues the district court improperly determined his income for child support purposes. He claims the court should have calculated his income based on his 1993 tax return rather than relying on his September 1993 financial statement. We disagree.

It is well established that parents have a legal obligation to support their children. *In re Marriage of Fleener*, 247 N.W.2d 219, 221 (Iowa 1976). The obligation to support should be apportioned according to the ability of each parent to contribute. *In re Marriage of Bornstein*, 359 N.W.2d 500, 504 (Iowa App. 1984). Our child support guidelines are to be strictly followed in determining child support obligations unless their application would lead to an unjust or inappropriate result. *In re Marriage of Swan*, 526 N.W.2d 320, 325 (Iowa 1995). In applying the guidelines we must determine the parents' current monthly income from the most reliable evidence presented. *In re Marriage of Powell*, 474 N.W.2d 531, 534 (Iowa 1991). When a parent's income is subject to substantial fluctuations, it may be necessary to average the income over a reasonable period when determining the current monthly income. *Id.*

Craig is a self-employed insurance salesman who experiences substantial fluctuations in his income. The district court determined Craig had an average annual gross income of $30,000 based on witness testimony and a September 15, 1993, financial statement. Although this $30,000 figure is higher than the income reflected on Craig's 1993 tax return, we believe the district court based its determination of

Craig's income on the most reliable evidence available. We find the $625 per month payment for the support of the parties' three children is reasonable and necessary to meet the current needs of the children. We affirm on this issue.

In summary, we find the district court did not err in crediting Diane $31,574 for family expenditures from her inherited or gifted property. We further find the district court correctly awarded Diane the $10,000 CD she had purchased with inherited money and had used as collateral for Craig's business loan. Finally, we conclude the district correctly determined Craig's income for purposes of child support. We affirm the decision of the district court in its entirety

AFFIRMED.