IN THE COURT OF APPEALS OF IOWA

FILED
DEC 26 1984
CLERK SUPREME COURT

IN RE THE MARRIAGE OF ANNIE J. SHEETZ AND LELAND O. SHEETZ

Upon the Petition of)

ANNIE J. SHEETZ,) Filed December 26, 1984 504

Petitioner-Appellant/Cross-Appellee,)

And Concerning)

LELAND O. SHEETZ,) 4-485
84-646

Respondent-Appellee/Cross-Appellant.)

Appeal from the Iowa District Court for Washington County - Harlan W. Bainter, Judge.

Petitioner-wife appeals from the economic provisions of the parties' dissolution decree and respondent-husband cross-appeals asserting the trial court should not have required him to pay petitioner's trial attorney's fees. AFFIRMED.

Davis L. Foster of Barker, Cruise & Kennedy, Iowa City, Iowa, for petitioner-appellant.

Craig Arbuckle, Washington, Iowa, for respondent-appellee.

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

HAYDEN, J.

Petitioner-wife appeals from a decree which dissolved the parties' marriage. On appeal, she asserts that the trial court should have awarded an additional lump sum payment, it should have awarded the house free of the husband's judgment lien, and it should have awarded her a better car. In addition, she requests attorney's fees on appeal.

Respondent-husband cross-appeals, asserting that the trial court should not have required payment of his wife's attorney's fees accrued at trial. We affirm.

At the time the parties were married in 1978, petitioner was a fifty-six-year-old widow and respondent was a fifty-nine-year-old widower. Petitioner had attended high school through eleventh grade and had further course work at a community college. She owned a $26,000 apartment house, $20,000 of which was financed through a mortgage, an encumbered 1976 automobile, a bank account containing $1,000, and furniture. She received rental income on the house of $100 per month. Just prior to the marriage she quit her job that paid over $7,000 per year. Respondent farmed 190 acres on a cash-rent basis under lease with his mother. He shared remainder interest in the land with his three sisters. His farming income was $9,579 per year. He owned his own machinery, equipment, livestock, and grain. He also owned a 1976 automobile and a 1977 pickup truck. In addition, he possessed insurance policies, government bonds, investment securities, and bank accounts. His interest income was $2,570.

During the marriage the parties were separated three times. During the first separation petitioner took $1,000 and returned $500. During the second separation petitioner took $2,000. At the time of the final separation she took $5,100 and the 1976 automobile that the husband owned prior to the marriage.

During the marriage the 1976 automobile that belonged to the petitioner prior to the marriage was traded in on a 1982 automobile. The operating expenses and improvements on the apartment house were paid from the bank account

funded from the farming operation. The mortgage on the apartment house was paid off with funds acquired by the respondent before the marriage. The petitioner performed house work but she did not participate in the farming operation and pursuant to respondent's wishes she did not perform work for an outside employer. The respondent's mother died just prior to dissolution, thus vesting the respondent's share in the farmland.

The trial court found that at the time of the decree the petitioner received pension payments of $37.46 per month and rental payments of $150 per month and determined that because of petitioner's age, it was unlikely that she could find full-time employment. The petitioner claimed to have expenses of $603.48 per month and debts totalling $3,087.75.

The trial court found that the respondent had farm income of $24,420 per year and interest income of $9,950 per year at the time of the decree. It was also disclosed that the respondent was retiring from farming and that he was moving off the farm. The court determined that both parties were in good health, however, petitioner disputes this finding as to her health.

The petitioner requested an award consisting of the 1982 automobile, the improvements respondent put in the apartment house, the amount used to pay off the mortgage in the apartment house, a $20,000 lump sum payment, and household goods and personal property that she brought into the marriage. The court's decree included an award to the petitioner of the 1976 automobile and an award to respondent of the 1982 automobile and a 1977 pickup truck. The decree gave the apartment house to the petitioner subject to a $16,891.25 judgment lien to respondent. The decree contained no alimony or cash property settlement for the petitioner, however, it provided that respondent pay $2,400.05 for petitioner's attorney's fees plus it charged respondent with the costs of the court proceeding.

Our review is de novo. Iowa R. App. P. 4. When considering the credibility of witnesses, we give weight to the trial court's findings but are not bound by them. Iowa R. App. P. 14(f)(7).

It is clear from the record the trial court very carefully and thoroughly considered and correctly applied the applicable criteria set forth in Iowa Code section 598.21(1) (1983) and those factors enumerated in the case of In re Marriage of Vrban, 293 N.W.2d 198 (Iowa 1980), in dividing the parties' property. Precedents are of little help in determining what is a fair division of assets between the parties to a dissolved marriage. Each case depends on its own peculiar circumstances. In re Marriage of Andersen, 243 N.W.2d 562, 564 (Iowa 1976).

We agree with the trial court's characterization of the parties' marriage as a "misadventure in matrimony," notwithstanding they are not a young couple. See Behrle v. Behrle, 228 N.W.2d 25, 27-28 (Iowa 1975), and Pinion v. Pinion, 92 Utah 255, 67 P.2d 265, 267 (1937).

We affirm the trial court's decree in all respects. Each party shall be solely responsible for payment of their respective attorney fees on appeal. Costs of appeal are taxed one-half to each party.

AFFIRMED.