IN THE COURT OF APPEALS OF IOWA

No. 4-310 / 93-1688

IN RE THE MARRIAGE OF GLORIA K. MANGLER AND WAYNE A. MANGLER

Upon the Petition of
GLORIA K. MANGLER,

Petitioner-Appellee,

And Concerning
WAYNE A. MANGLER,

Respondent-Appellant.

Appeal from the Iowa District Court for Clinton County, Bobbi M. Alpers, Judge.

Respondent appeals from various economic provisions of the parties' separate maintenance decree. **AFFIRMED AS MODIFIED.**

A. John Frey, Jr. of Jurgemeyer, Frey & Haufe, Clinton, for appellant.

James D. Bruhn of Farwell & Bruhn, Clinton, for appellee.

Considered by Sackett, P.J., and Habhab and Cady, JJ.

HABHAB, J.

Wayne and Gloria Mangler were married on October 27, 1950. Wayne was twenty-one at the time of the marriage. Gloria was sixteen. She dropped out of high school upon being married. Neither party brought more than personal belongings into the marriage, except Wayne who also brought a car. They are the parents of three children, all of whom were adults at the time of trial.

Wayne is a high school graduate. Gloria later attended classes to obtain her G.E.D. Wayne had worked for the Milwaukee Railroad since 1948 as a brakeman and on a switch engine. Wayne retired from the railroad in 1986 due to back problems. He receives a retirement annuity from the railroad in the amount of $1245.27 per month. In 1960, Wayne also began employment with American Family Insurance. Wayne ran this business from his home until 1974, at which time he moved his office to another building and obtained a full-time secretary. His insurance business became successful, receiving thirty-five to fifty applications per month. Should Wayne terminate his agency with American Family, he would receive $168,352.83 as extended earnings, or $1872 per month for sixty months and $934 per month thereafter for life.

Gloria was the primary caretaker of the children and the marital home. Because Wayne's employment with the railroad often took him out of town for several days, Gloria also answered the telephone for his insurance business and at times met with clients on his behalf. From 1968 to 1973, Gloria worked for the Milwaukee Railroad. She also worked for one and one-half years as a home health aid.

Gloria has been diagnosed as having bipolar disorder, or manic-depressive syndrome. She has been hospitalized several times for this illness, the last occurring in 1986. Gloria is currently seeing a psychiatrist and taking medication to control her symptoms. Gloria also underwent two mastectomies to remove breast cancer.

From 1980 to 1990, Wayne purchased rental properties. These properties currently have a fair market value of $198,500, subject to liabilities in the amount of $63,595.[1] Wayne also purchased an interest in a real estate partnership which owns the building in which his insurance office is located. This interest has a value of $6400.

Wayne and Gloria built their home in 1968. The home has a current fair market value of $110,000. The property includes the residence and an adjoining lot.[2] A storage shed, located on the adjoining lot, is used by Wayne for the upkeep and repair of his rental properties and yard maintenance.

A substantial portion of the parties' remaining assets

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1. The liabilities total includes a mortgage and payments due on three real estate contracts.

2. Wayne claims this lot is worth $10,000.

were in annuities and insurance policies.

Wayne and Gloria separated in January 1993, at which time Gloria filed a petition for dissolution.[3] The district court ordered Wayne to pay Gloria $1000 per month in temporary support. Wayne continued to reside in the home, while Gloria moved to an apartment. At trial, both parties desired the home. Gloria testified she wanted the home because it has been her home for the past twenty years and she had put a great deal of work in maintaining and decorating it. Wayne argued he should be awarded the home because he worked two jobs to obtain it and has the means to maintain the property up to its current standard.

The district court awarded Gloria a 1986 Pontiac, several annuities and insurance policies from American Family Insurance, household furniture and appliances, and the railroad retirement annuity in the amount of $740 per month. In addition, Gloria was awarded other annuities owned by Wayne in the amount of $79,369. Wayne was awarded annuities and insurance policies from American Family Insurance, and the rental property. Wayne was also awarded another railroad retirement annuity valued at $1537 per month. Wayne was also ordered to pay the liabilities on all of the properties. The district court awarded the home and adjoining lot to Gloria. Wayne was ordered to pay the

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3. The parties subsequently agreed a decree of separate maintenance would be more appropriate than a dissolution.

mortgage on the home in the amount of $25,000.[4] Wayne was awarded the net proceeds of $12,597 from a personal injury settlement. Wayne was additionally ordered to pay all the credit card debts on VISA, J.C. Penney and Mastercard. Gloria was ordered to pay her medical bills and therapy.

The district court also ordered that each party would receive one-half of the American Family buyout. Because Gloria will have to pay a greater share of her medical insurance after the decree the district court awarded her $1500 per month in alimony. Wayne was ordered to pay $3000 towards Gloria's trial attorney fees. Wayne has appealed.

I. Scope of review. 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).

II. Property division. Wayne argues the nearly equal division of property is inequitable since he claims he was primarily responsible for accumulating the parties' substantial net worth. The partners in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. In re Marriage of

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4. This was a second mortgage put on the house to help finance some of Wayne's investments in the rental properties.

Russell, 473 N.W.2d 244, 246 (Iowa App. 1991). Iowa courts do not require an equal division of 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). We reject precise percentage divisions because "[t]he question is always what is an equitable and just award in a given set of circumstances." In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975).

We find the property division to be equitable considering the forty-three year marriage; the minimal property brought into the marriage by each party; the contributions each party made to the marriage in earnings, in support of the other spouse, and in raising the children; the age, physical and emotional health of each party; the different earning capacity of each party; other economic circumstances of each party; the parties' written agreement regarding the valuation and distribution of assets and liabilities. See Iowa Code § 598.21(1) (1993).

III. Property distribution. Wayne contends the district court erred in allocating property to Gloria in a lump sum rather than in periodic payments. Wayne expresses the concern that Gloria could quickly squander the property due to her bipolar disorder. The district court is mandated by the Iowa Code to divide the property and transfer the title of the property accordingly upon a judgment of separate maintenance. See Iowa Code § 598.21(1) (1993). We see no need in modifying the district court's result. In the future, various estate planning and conservatorship procedures can be used if such precautionary measures are needed.

IV. Alimony. Wayne argues the alimony award is excessive, particularly when viewed in conjunction with the property settlement. Wayne concedes alimony is appropriate, and only disputes the amount. Alimony is not an absolute right; an award depends upon the circumstances of each particular case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3). See In re Marriage of Hayne, 334 N.W.2d 347 (Iowa App. 1983). Earnings from assets received in property settlement are properly considered when determining an alimony award. See In re Marriage of Misol, 445 N.W.2d 411, 413 (Iowa App. 1989); In re Marriage of Boehlje, 443 N.W.2d 81, 84 (Iowa App. 1989).

The property division gave each party approximately $225,000 worth of property after liabilities are deducted. Specifically, Wayne received $316,575 worth of assets and was assessed $94,427 in liabilities. Wayne, as part of the property division received $198,000 worth of rental properties and liabilities on those properties of $63,595. The bulk of Wayne's remaining assets came from financial assets including bank accounts, insurance policies, annuities, a certificate of deposit, automobiles, and an interest in a real estate partnership. Gloria received $226,866 in assets and was assessed $1,830 in liabilities. Gloria received the homestead worth $110,000, annuities worth $99,882, as well as $10,019 in insurance policies and other miscellaneous assets.

Wayne computes Gloria's monthly income before taxes to eventually be $3,180 including a $1500 monthly alimony payment. Gloria does not appear to dispute this amount. The parties strongly disagree about what Wayne's monthly income will eventually be. Much of their disagreement revolves around potential income and losses from the extensive rental properties which Wayne will possess. In making the alimony award, the district court expressed concern over Gloria's age, her earning capacity, her health, her future healthcare expenses, and the desire to allow Gloria to maintain the lifestyle to which she is accustomed.

We do not feel Wayne's ability to pay alimony is as limited as he claims. In calculating his monthly income, he fails to recognize any financial impact of the rental properties. We view this as a significant error. Wayne's rental property holdings are substantial. If they do not perform well financially, there is no reason he cannot sell the poorly performing properties and invest in more profitable ventures. In addition, the majority of the HUD grants used on four of the properties will have fully or nearly fully amortized by the time Wayne shows his income decreasing significantly in 1999.

Upon consideration of the significant income-producing property Gloria received in the property division, we find the monthly alimony payment should be modified to $1000 a month. These monthly support payments shall be made until Wayne retires and Gloria is eligible for social security and commences receiving payments from the one-half of the American Family Insurance Company buy-out allocated to her in the property settlement.

V. Marital asset valuation. Wayne contends the district court erred in valuing certain assets when it made the property division. We find the value placed on the assets by the trial court to be well within the permissible range of evidence and will not disturb them on appeal. See In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973); In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984).

In addition, Wayne contends the district court should have severed the lot adjacent to the homestead which had a maintenance shed Wayne used for storage of tools and supplies he used for remodeling the rental properties. He claims severing this lot and giving it to him could be done without impairing the value of the homestead. We find the district court properly awarded the homestead and adjacent additional lot together as a whole to Gloria.

VI. Attorney fees. Gloria requests attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Hunt, 476 N.W.2d 99 (Iowa App. 1991). We determine each party should pay his or her own attorney fees for this appeal.

We affirm the district court except as we have modified in this opinion. Costs of this appeal are assessed to appellant.

AFFIRMED AS MODIFIED.