IN THE COURT OF APPEALS OF IOWA

No. 0-54 / 89-1012

IN RE THE MARRIAGE OF TERESA KAY MILLER AND LARRY FRANCIS MILLER

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TERESA KAY MILLER,

Appellee,

And Concerning
LARRY FRANCIS MILLER,

Appellant.

FILED
MAR 27 1990
CLERK SUPREME COURT

Appeal from the Iowa District Court for Linn County, August F. Honsell, Judge.

Larry Miller appeals the economic provisions of a district court decree of dissolution. **AFFIRMED.**

Steven K. Warbasse and Stanley A. Roush, Cedar Rapids, for appellant.

Gordon R. Gibson of Allen, Vernon, Gibson & Robison, Marion, for appellee.

Considered by Oxberger, C.J., and Schlegel and Hayden, JJ.

SCHLEGEL, J.

Larry Miller appeals the property distribution provisions of a district court decree of dissolution. We affirm the district court.

Larry argues that the district court failed to set aside or make provision for certain property he owned prior to the marriage and for gifts made by his parents during the marriage. He requests that this court increase the $20,000 to be paid by Teresa, based on these errors.

Teresa Miller and Larry Miller were married on June 2, 1979. Two children were born of the marriage. Teresa, born in 1957, and Larry, born in 1947, work for Rockwell-Collins. Teresa has generally earned slightly more than Larry during the marriage.

At the time of the marriage, Larry sold a house in Delhi that he owned for a $29,000 profit. The $29,000 was then applied as a down payment on another home the parties purchased in Delhi. Title was held by both parties as joint tenants. Later, the parties purchased another home in Alburnett. At this time, the parties consolidated the indebtedness involved in both transactions with a single loan encumbering the Delhi property. At the time of the decree, the market value of the Delhi property was $80,000 and the market value of the Alburnett property was $55,000. The debt on the Delhi property was approximately $68,500.

Following a hearing, the district court entered its decree of dissolution. Teresa was given the physical care of the children. Larry was ordered to pay child support of $42.50 per child per week. Larry was awarded the Delhi property subject to the indebtedness. Teresa was awarded the Alburnett property. In addition, Teresa was obligated to pay Larry a $20,000 property settlement. No spousal support was awarded. Following this decree, Larry filed this appeal.

Our scope of review is de novo. Iowa R. App. P. 4. Although not bound by the trial court's determination of factual findings, we will give considerable weight to them, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). Prior cases, though helpful, have little precedential value since we must base our decision here primarily on the particular circumstance of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

The criteria governing property division are now contained in Iowa Code section 589.21. The determination as to what constitutes an equitable property division cannot be reduced to precise mathematical formulas. The courts strive to make a just and equitable award under the unique circumstances of each case. Among the factors to be considered are the parties' respective incomes, educations, and earning capacities; the length of the marriage; the

contributions and sacrifices made by each toward the acquisition of the property during the marriage; the sources of the property; the respective parties' needs; their social position and living standards both before and during the marriage; their physical and mental health and life expectancies; the tax consequences to each party; and such other factors as may reasonably enter into any division. See In re Marriage of Wallace, 315 N.W.2d 827, 830 (Iowa App. 1981).

Larry challenges two factors considered in the trial court's property division. First, he contends $29,000 of equity in the parties' Delhi home should not have been included as marital property. The trial court determined that Larry intended the equity in his home as a gift to the marriage because the home was titled in the parties jointly. A transfer of property into joint tenancy where one party furnishes all of the consideration is presumed to be a gift to the other party of one-half interest in the property. In re Marriage of Butler, 346 N.W.2d 45, 47 (Iowa App. 1984). The court in Butler was trying to determine if workmen's compensation awards are marital property. The court held that it was unnecessary to make this determination because the recipient of those payments had used the award to purchase a house held in joint tenancy with his wife. This is essentially the situation here. Larry has failed to rebut the presumption that the

$29,000 he put up for the house was intended as a gift. The trial court was correct in including this amount as marital property.

Larry also argues the trial court incorrectly considered several thousand dollars in inheritance from his parents as marital property. Larry's parents are not deceased, but have been giving him advancements against his inheritance in irregular amounts and at irregular times. The record shows that these payments were not made exclusively to Larry. They were often paid to both Larry and Teresa. Regardless of to whom the monies were paid, the money itself was spent on the family. There is insufficient evidence to show that Larry received any significant portion of the $50,000 he claims was his inheritance, and then kept it exclusively for himself and to himself. The trial court was correct in refusing to exclude these payments from the marital property.

We find that the trial court properly applied the factors listed in Iowa Code section 598.21. It properly considered the $29,000 as marital property and, while it may be questionable whether the entire $50,000 of the alleged inheritance should be included as marital property, the property division as a whole remains within equitable bounds and we will not disturb it on appeal.

Teresa requests attorney fees on 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 Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Hayne, 334 N.W.2d 347, 353 (Iowa App. 1983); In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). We award Teresa attorney fees in the amount of $500.

AFFIRMED.