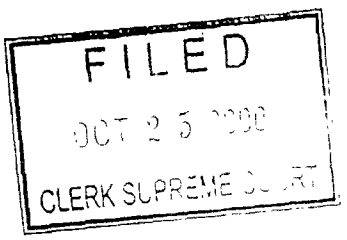
IN THE COURT OF APPEALS OF IOWA

No. 0-146 / 98-2293
Filed October 25, 2000

WILLIAM F. HOWARD,
Plaintiff-Appellant,

vs.

KATERINE MARIE HOWARD,
n/k/a KATHERINE MARIE GRESHAM,
Defendant-Appellee.



Appeal from the Iowa District for Buchanan County, William G. Klotzbach, Sr., Judge.

Plaintiff-Appellant appeals the trial court's decision effecting the economic provisions of the dissolution decree of the parties. **AFFIRMED.**

Mark A. Tarnow of Bozeman, Neighbour, Patton & Noe, Moline Illinois, for appellant.

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

Considered by Sackett, C.J., and Vogel, J., and Honsell, S.J.*

*Senior judge assigned by order pursuant to Iowa Code Section 602.9206 (1999).

Sackett, C.J. concurs in part and dissents in part; Vogel, J. specially concurs without opinion.

HONSELL, S.J.

This case has been to this court on a prior occasion. On July 29, 1997, this court reversed in part the decision of the trial court and remanded the case for equitable disposition of the property of the parties. Upon remand the trial court determined as follows:

> The major asset acquired by the parties during the marriage was a group single premium deferred annuity contract, No. SL001141001, in the amount of $15,000 issued March 13, 1987, naming them both as owner. On the 7th day of March 1988, defendant requested a beneficiary change and she was named the individual owner on the 7th day of March, 1988. Plaintiff had moved to California in the preceding months. Between September of 1988 and the end of the year, defendant's attorney and the plaintiff had telephone conversations in regard to terms of the dissolution.
>
> The default decree awarding all property to the defendant was entered on January 9, 1989, and defendant married Thomas Gresham on February 21, 1989. Plaintiff received a copy of the dissolution decree in January, 1989. In May of 1991, plaintiff made inquiries about the annuity and his representative, John Teve, asked defendant to surrender the annuity and divide the proceeds equally. On November 18, 1991, defendant cashed the annuity for $20,934 but plaintiff's attorney was not notified until June 1992, that the annuity had been surrendered.

The trial court then entered judgment in favor of plaintiff and against defendant in the amount of $10.467.00 plus interest at the rate of 6.730% per annum from July 8, 1993.

The Howards were married on March 19, 1971. They were divorced on January 4, 1989. They did not have any children. The divorce decree awarded each party that vehicle or those vehicles in his or her possession, and Ms. Howard the real estate Lamont, Iowa.

In 1972 they purchased a mobile home for $18,000.00 or $19,000.00. Their down payment was $2,000.00. Later during 1972 they bought an acreage with a home on it for $10,000.00. The down payment was $1,500.00. Periodic payments were made on these obligations. The mobile home was moved to this property.

In 1976 Mr. Howard, who was employed as an over the road trucker, borrowed $20,000.00, bought a tractor and trailer, and became a self-employed over the road trucker. He also bought a second trailer and tractor and employed a driver for it.

In 1977, the Howards purchased a café in Maryville. They borrowed $30,000.00 and made monthly payments of $622.00 on this acquisition. Ms. Howard operated this business by herself. In September 1983 the business was sold for $45,000.00. $22,500.00 was received that year and a like amount in 1984. While they reported a gain on their 1983 and 1984 tax returns, little tax was paid because of offsetting loses. The single premium annuity was later purchased using these funds. Apparently $18,000.00 of these funds was also used to build a garage, driveway and a structure, which included a foundation under in addition to cover the mobile home. Very shortly after completion of this project, the roof and foundation leaked and the driveway crumbled. These structures remain in a state of disrepair.

During 1979 the Howards borrowed $13,677.00 and purchased a Lincoln automobile, which was later traded in for another automobile purchased by Mr. Howard as a gift to Ms. Howard.

In 1980 Mr. Howard bought a semi-trailer for $8,634.00 and an engine for a tractor for $13,000.00.

During 1987 the Howards had a dispute, which resulted in Mr. Howard leaving the home permanently and making California his place of residence.

I. Mr. Howard claims that the trial court in the Supplemental Judgment entered upon remand from this court failed to make an equitable distribution of the assets accumulated during the marriage of the parties. 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 Webb*, 426 N.W.2d 402, 405 (Iowa 1988). When distributing the property, we take into consideration the criteria codified in Iowa Code section 598.21(1); *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983). Among the many factors to consider are: length of the marriage, property brought to the marriage by each party, the contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking, and the earning capacity of each party. Iowa Code § 598.21.

In considering all of the circumstances alluded to above and reviewing the submitted record de novo; we find that the distribution of assets made by the trial court in the Supplemental Judgment reflected an equitable distribution of the assets accumulated by the Howard's during their marriage.

We affirm the decision of the trial court awarding plaintiff-appellant one-half of the annuity proceeds plus interest as alluded to above.

AFFIRMED.

SACKETT, C.J. (concurs in part and dissents in part)

The sole question in this appeal is whether the district court properly identified and then made an equitable division of property owned by Plaintiff-Appellant William F. Howard and Defendant-Appellee Katherina Marie Howard. William filed a petition for equitable relief contending a default dissolution decree obtained by Katherina was void because the district court at the time the decree was entered did not have personal jurisdiction over him. In *Howard v. Howard*, 7-787/96-0241 (1997) we determined the dissolution decree was void because the district court did not have personal jurisdiction over William. We further determined William was barred by laches from challenging the dissolution of the marriage in that he did nothing for a substantial period of time though he knew Katherina had remarried. We then remanded the case to the district court "for further proceedings in William's action for an accounting and an equitable division of the parties' marital property."

On remand the district court determined the only major asset of the parties was an annuity that Katherina cashed for $20,934 on November 18, 1991. The court then found Howard was entitled to $10,467 and entered judgment against Katherina in that amount with interest from July 8, 1993, at 6.73 percent. William contends this is not equitable. He argues the assets of the parties totaled between $63,100 and $78,300 and he was entitled to one-half that amount.

The majority, while discussing a series of acquisitions of assets by the parties, does not make a finding of the assets owned by the parties and their value.

Plaintiff and Defendant were married in 1971 and separated in December of 1987. William testified at the time he took nothing. He has done an exceptionally poor job of setting out the assets left with Katherina and the encumbrances thereon.

I agree with the majority and the district court that the annuity existed, and I agree with the decision as to its division. I find in addition there was a house or trailer house on a lot in Hudson, Iowa. I would modify to award one-half of that property to William. In all other respects I would affirm.

VOGEL, J. (specially concurs without opinion)

I specially concur without opinion.