

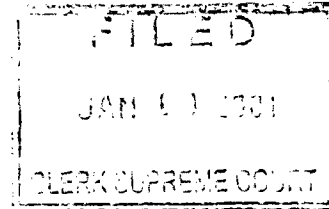
IN THE COURT OF APPEALS OF IOWA

No. 0-732 / 00-179
Filed January 10, 2001

**IN RE THE MARRIAGE OF DANNY W. VAN WYK
AND KELLY GENE VAN WYK**

**Upon the Petition of
DANNY W. VAN WYK,**
Petitioner-Appellee,

**And Concerning
KELLY GENE VAN WYK,**
Respondent-Appellant.



Appeal from the Iowa District Court for Jasper County, Peter A. Keller,
Judge.

Kelly Van Wyk appeals from the property provisions of the dissolution
decree. **AFFIRMED.**

Michael P. Brice, Oskaloosa, and Martha L. Mertz, Knoxville, for appellant.

Troy A. Skinner, West Des Moines, and Ed Skinner of Skinner Law Office,
P.C., Altoona, for appellee.

Considered by Streit, P.J., Miller, J., and C. Peterson, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code section 602.9206
(1999).

C. PETERSON, S.J.

Kelly Van Wyk appeals from various provisions of the decree of dissolution entered in these proceedings. We affirm the decree of the trial court.

The parties were married on January 18, 1987. There was one minor child of the marriage, born March 24, 1989. Danny and Kelly stipulated to certain issues that included an agreement concerning the values of certain property of the marriage and to a division of some of the assets. Those items in agreement were accepted by the court and incorporated in the decree. Kelly contends the court erred in the valuation and distribution of certain other assets of the marriage.

I. General Principles. Dissolution of marriage decrees are reviewed in equity. *In re Marriage of Knickerbocker*, 601 N.W.2d 48, 50 (Iowa 1999). The standard of review is, therefore, de novo. Iowa R. App. P. 4. We examine the entire record and adjudicate anew rights on the issues properly presented. We give weight to the fact findings of the trial court, especially when considering the credibility of the witnesses, but are not bound by them. *In re Marriage of Beecher*, 582 N.W.2d 510, 513 (Iowa 1998).

Under Iowa law, the property of the parties in an action to dissolve the marriage should be distributed equitably after considering all the relevant criteria in Iowa Code section 598.21(1). *In re Marriage of Brainard*, 523 N.W.2d 611, 616 (Iowa App. 1994); *In re Marriage of Whechel*, 476 N.W.2d 104, 107 (Iowa App. 1991). We are not bound to achieve a precisely equal division of marital property between the parties. *In re Marriage of Andersen*, 243 N.W.2d 562, 564

(Iowa 1976). In general, the division of property is based upon each marital partner's right to a just and equitable share of the property accumulated as a result of their joint efforts. *In re Marriage of Hitchcock*, 309 N.W.2d 432, 437 (Iowa 1981). The controlling mandate is that the courts achieve an equitable and just award under the circumstances. *In re Marriage of Hoak*, 364 N.W.2d 185, 194 (Iowa App. 1995).

II. Valuation of Real Estate. Kelly claims error by the trial court in the values assigned to certain real property. The trial court very succinctly described how it arrived at the values of the real property that, in some instances, required a tracing of the properties through interfamily transactions and through Danny's father's estate. The trial court correctly interpreted those transactions and assigned values to the assets that were supported by the evidence. We find the value placed on the assets by the trial court to be within the range of the evidence and will not disturb it on appeal. *In re Marriage of Driscoll*, 563 N.W.2d 640, 643 (Iowa App. 1997); *In re Marriage of Huisman*, 532 N.W.2d 157, 160 (Iowa App. 1995).

III. Valuation of Other Assets. Kelly contends the trial court erred when it assigned a value of \$4000 to her checking account when the evidence reflected the checking account balance at the time of trial to be \$2300. In making a determination of the value of the checking account to be allocated to Kelly in the division of the marriage assets, the trial court apparently took into consideration a number of factors, including Kelly's response to interrogatories and her oral testimony. In her response to the interrogatories filed ten days

before trial, Kelly asserted she had approximately \$5000 in the account at that time. She also acknowledged in her testimony that she had received \$1000 from Danny from sale of cattle that was to go to their son. Kelly testified she may have put the money in the account, but was extremely vague and evasive concerning the disposition of money. On cross-examination she could account for some expenditures from the account, but could not explain the reduction from \$5000 to \$2300 within the ten-day period before trial.

Kelly contends the trial court erred when it attributed a \$10,000 CRP payment to her in the distribution of assets, but did not include an identical payment to Danny. The parties each received a similar CRP payment on a one-fourth interest in farmland that they owned in Colorado. The \$10,000 CRP payment received by Danny was applied to the reduction of the mortgage on the farm. Danny also applied a CRP payment to that mortgage that he received from the one-sixth interest in the portion of the farm he inherited from his father. The mortgage balance was thus reduced by \$15,000. Each party was awarded one-half of the appreciation in the farm. Kelly, therefore, received the benefit of Danny's CRP payment that reduced the balance of the mortgage. Kelly could not explain the whereabouts or disposition of her \$10,000 CRP payment.

Kelly also complains the court erred when it did not include as a debt of the marriage relationship a \$8000 loan to her received from her brother during the pendency of the dissolution. Kelly testified that her brother began loaning this money to her commencing in May 1999. Her financial statement filed in July

1999 made no mention of this loan. The disposition of this money was not explained.

The financial statement of Kelly also failed to reflect a loan against her life insurance policy of \$11,436.

The record reflects that, unknown to Danny, rather than pay farm debts from the livestock account of the parties during the spring of 1999, Kelly used the several thousand dollars for her personal use, including the use of funds for the making of a down payment of \$1500 on a time share. The time share is not reflected on her financial statement filed with the court.

Applicable to a proper determination of these issues is the reasoning contained in *In re Marriage of Burgess*, wherein the court stated:

We have previously determined that some conduct of a spouse which results in the loss or disposal of property otherwise subject to division at the time of divorce may be considered in making an equitable division of property. See *In re Marriage of Johnson*, 350 N.W.2d 199, 202 (Iowa 1984); *In re Marriage of Williams*, 421 N.W.2d 160, 164 (Iowa App. 1988).

568 N.W.2d 827, 828 (Iowa App. 1997).

Also significant in the proper analysis of the division of assets in this dissolution action is the reflections of the court in *In re Marriage of Williams*, wherein we stated:

Both parties to a dissolution are required to disclose their financial status. See Iowa Code § 598.13; *In re Marriage of Mueller*, 400 N.W.2d 86, 88 (Iowa App. 1986). A party who has not been fair and accountable with property under his or her control during the dissolution process must be charged accordingly. To hold otherwise would in numerous instances weigh heavily against the marriage partner not in business. The courts of this state have an obligation to require accountability. Failure to disclose, secretion of assets, or transfer of assets during the dissolution

process must be dealt with harshly. Otherwise the process becomes an uncivilized procedure and the issues become not ones of fairness and justices but which party can outmaneuver the other.

421 N.W.2d 160, 164 (Iowa App. 1988). In some cases, expenditures made during a separation should be considered in making an equitable distribution. See *In re Marriage of Fall*, 593 N.W.2d 164, 168 (Iowa App. 1999). The trial court properly reviewed each of these transactions and gave them their appropriate weight and consideration. We adopt the trial court's determination on these issues.

IV. Occupancy of Homestead. Kelly asserts error by the trial court when it awarded the family residence to Danny. This residence in Monroe was acquired by Danny from his parents prior to the marriage. This was the family home throughout the marriage, and Kelly has remained in the home with the child since the separation. The trial court awarded the Monroe residence to Danny. The court awarded the equivalent of one-half of the appreciation in value of the home accrued during the marriage to each party. The decree provides that Kelly has a right to live in the house with the son, rent free, as long as she has physical custody of the child or until he reaches age eighteen or finishes high school, whichever occurs first. There is a further provision allowing Kelly to live in the house until the child is twenty-one provided the child uses the house as his principal residence while pursuing postsecondary education. During this period of time Kelly is responsible for utilities, upkeep, real estate taxes, and insurance. The child is now eleven years old.

The desirability of awarding the family home or right to live in the family home to the primary care parent is a factor for the dissolution court to consider before making a property distribution. Iowa Code § 598.21(1)(g). We believe provisions that allow the primary physical care parent to remain in the family home are primarily made to provide stability for the child; the economic benefit is ancillary. *In re Marriage of Ales*, 592 N.W.2d 698, 704 (Iowa App. 1999). The right of ownership by Danny and right of occupancy by Kelly and the child fulfills the interest in retaining the title of this home in the Van Wyk family and gives consideration to the provisions of section 598.21(1)(g).

While we are concerned about the potentially extended period of occupancy by Kelly and the child in the home awarded to Danny by the court, and the antagonisms that can result therefrom, it is significant to note that Danny does not raise the issue by any cross appeal. The distribution of property between the parties by the trial court effects an equitable distribution between the parties. The property division should not be disturbed.

AFFIRMED.