

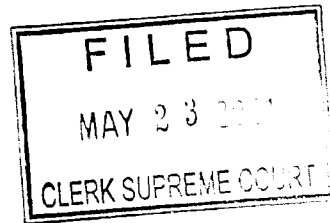
IN THE COURT OF APPEALS OF IOWA

No. 0-822 / 00-556
Filed May 23, 2001

**IN RE MARRIAGE OF MAXINE G. VEATCH
AND STEPHEN E. VEATCH**

Upon the Petition of
MAXINE G. VEATCH,
Petitioner-Appellant/Cross-Appellee,

And Concerning
STEPHEN E. VEATCH,
Respondent-Appellee/Cross-Appellant.



Appeal from the Iowa District Court for Black Hawk County, Bruce B. Zager, Judge.

The petitioner appeals, and respondent cross-appeals, from various economic provisions of the parties' dissolution decree. **AFFIRMED.**

David S. Kelsen, Waterloo, for appellant.

John R. Walker, Jr. of Beecher, Field, Walker, Morris, Hoffman & Johnson, P.C., Waterloo, for appellee.

Considered by Vogel, P.J., and Zimmer and Hecht, JJ.

ZIMMER, J.

Maxine Veatch appeals, and Stephen Veatch cross-appeals, from various economic provisions of their dissolution decree. On review, Maxine contends the district court erred in (1) failing to equitably divide Stephen's retirement account; (2) failing to award her commissions, residuals, and trailer payments which had accrued to their business when the partnership terminated; (3) assessing a \$180,000 value to the marital home; and (4) making an error in computing Stephen's \$15,000 lump-sum payment award. On cross-appeal, Stephen argues the district court erred in (1) awarding him an inequitable share of the marital home's equity; and (2) failing to award him alimony. We affirm.

I. Background Facts and Proceedings. Stephen and Maxine Veatch were married in November 1990. Both parties had been married before. The parties resided in a home Maxine brought into the marriage. Stephen was a successful insurance sales agent with Lutheran Brotherhood. During the marriage, his retirement plan increased in value from \$79,104.92 to \$452,000. Maxine joined Stephen in his business, and Stephen provided extensive training for Maxine, enabling her to obtain numerous professional insurance licenses. After 1995, Stephen became increasingly ill due to mental and physical health issues and is now completely disabled.

Maxine filed a petition for dissolution in January 1999. The main issues at trial concerned the division of Stephen's retirement account and the equity in the marital home. In its decree, the district court valued the marital home at \$180,000 and awarded it to Maxine. The court ordered an equal division of the home's \$50,000 net equity. The district court awarded Maxine a \$71,000 interest

in Stephen's pension plan. In addition, the court ordered Maxine to pay Stephen a lump-sum property settlement of \$15,000. The court declined to award Stephen alimony. Maxine appeals, and Stephen cross-appeals.

II. Maxine's Appeal. Maxine argues she should receive a greater share of Stephen's pension because they entered into a partnership agreement whereby they agreed to treat all business and personal property as marital assets. She next contends the district court erred in valuing the marital home at \$180,000, rather than \$165,000. Maxine also contends she should be awarded commissions, residuals, and asset trailer payments which had accrued at the time of the partnership's termination. Finally, she argues the district court made a \$5000 miscalculation when computing the \$15,000 lump-sum payment.

Appeal of economic provisions of a divorce decree are reviewed de novo. See *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). This standard requires us to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Ruter*, 564 N.W.2d 849, 851 (Iowa Ct. App. 1997). We recognize the value in listening to and observing the parties and witnesses. See Iowa R. App. P. 14(f)(7). Consequently, we give weight to the findings of the trial court, although they are not binding. *Id.*

A. Stephen's Retirement Account. Maxine first contests the district court's division of Stephen's retirement account from Lutheran Brotherhood. The partners to a marriage are entitled to a just and equitable share of property accumulated through their joint efforts. *In re Marriage of Hass*, 538 N.W.2d 889, 892 (Iowa Ct. App. 1995). "Premarital property does not merge with and become marital property simply by virtue of the marriage." *In re Marriage of Wendell*, 581

N.W.2d 197, 199 (Iowa Ct. App. 1998). Nor do Iowa courts require an equal division or percentage division in determining a just and equitable share of property. *In re Marriage of Gonzalez*, 561 N.W.2d 94, 98 (Iowa Ct. App. 1997). Instead, each particular circumstance determines what is fair and equitable. *Id.*

In its decree, the district court noted Maxine's substantial contributions to the marriage. Stephen acknowledges she was an equal partner in his business throughout the duration of the marriage. As a result, the trial court awarded Maxine half of the post-marital accumulation in value of Stephen's pension. This amount equaled \$71,000 of the pension's total value of \$452,000.

Maxine argues that she should be entitled to one half of Stephen's total pension. She claims that, prior to their marriage, the parties entered into a partnership agreement by which each party's premarital assets became marital assets. We do not find support for this contention.

Maxine argues both parties' actions support her claim that the parties intended to treat premarital assets as marital assets. Maxine and Stephen testified that prior to marrying, they made statements to the effect of, "what's mine is yours and yours is mine." Additionally, both parties executed new wills in which they bequeathed all of their property to the other. Stephen added Maxine as a beneficiary of his retirement account. Finally, Stephen's name was added to the title on Maxine's home when the home was refinanced.

Joint ownership of an asset originally owned by one party in a marriage cannot be demonstrated by merely affixing the other party's name to that asset. *See In re Marriage of Hoffman*, 493 N.W.2d 84, 89 (Iowa Ct. App. 1992). "The

donor must have a clear intention to pass all right, title, and dominion over the gift to the donee.” *Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa Ct. App. 1983).

In this case, Maxine has failed to establish a clear intention to treat all premarital assets as marital assets. Maxine herself testified that at the time the “agreement” was entered into she had not contemplated how their assets would be divided in the event they divorced. Instead, the parties simply agreed to share equally with one another during the course of their marriage. These actions do not create joint ownership of the retirement account. We find no error in the district court’s division of Stephen’s retirement account.

B. Commissions, Residuals, and Asset Trailers. When the parties separated in December of 1998, their business partnership terminated. After that date, Stephen received commissions from Lutheran Brotherhood for sales made during the existence of the partnership. Additionally, the company continues to pay Stephen residuals and asset trailers which accrued during the partnership. The district court did not award Maxine any of these commissions, residuals and asset trailers in its decree based on support paid by Stephen during the course of the marriage and separation. On appeal, Maxine argues she is entitled to one half of these payments, which equal approximately \$28,000.

During the parties’ separation, Stephen was ordered to pay temporary support to Maxine in the amount of \$2000 per month. Stephen made these payments for four months, in the total amount of approximately \$8000. Approximately \$5000 of this money was borrowed. Stephen also paid for some of the parties’ joint expenses during the separation, like their insurance and credit cards. However, Maxine points out that the \$8000 in temporary support she

received from Stephen is less than half of the commissions, residuals and asset trailers.

Assets and debts should be equitably, but not necessarily equally, divided under the circumstances after considering the criteria set forth in Iowa Code section 598.21(1) (1999). *In re Marriage of Driscoll*, 563 N.W.2d 640, 642 (Iowa Ct. App. 1997). Some of the circumstances we consider include the physical and emotional health of the parties, the contribution of one party to the education, training or increased earning power of the other, and the earning capacities of each party. Iowa Code §§ 598.21(1)(d) – (f).

In November of 1999, Maxine began employment at CUNA Mutual Life Insurance, earning approximately \$34,000 per year. Maxine was able to secure this employment in part due to the education, training and experience she gained through her partnership with Stephen. Meanwhile, Stephen is disabled and unable to work. Stephen's anticipated income at the time of the dissolution was approximately \$16,000 per year. He may supplement his income by drawing against his pension.

Given the circumstances in which the parties now find themselves, we cannot conclude the district court erred in denying Maxine an equal amount of the commissions, residuals and asset trailers.

C. Valuation of the Marital Home. Maxine next contends the trial court erred in valuing the home at the time of trial rather than at the time of separation. She contends this is because she assumed all the homes expenses, including the mortgage payments, after Stephen left in December of 1998. However, “[i]t is the net worth of the parties at the time of trial which is relevant in adjusting their

property rights.” *In re Marriage of Muelhaupt*, 439 N.W.2d 656, 661 (Iowa 1989). The valuation found by the trial court was well within the permissible range of evidence and we are not inclined to disturb it. *In re Marriage of Versluis*, 521 N.W.2d 760, 761 (Iowa Ct. App. 1994). Therefore, we affirm the decision of the district court.

D. Lump Sum Payment. Finally, Maxine alleges the district court erred in determining the amount of lump sum payment she owed to Stephen. She alleges that the thirty thousand dollar amount the court uses does not comport with its early determination that Stephen was entitled to one half of the fifty thousand dollar equity in the marital home.

In its decree, the court stated the following:

The court has reviewed all of the division of assets and debts in an attempt to reach a fair and equitable division of assets and debts between Maxine and Steve, also keeping in mind that the parties should be restored to the position they were in at the time of this marriage. The court has also taken into consideration the fact that Maxine received no individual salary or wages as part of her partnership in this brokerage business, nor the corresponding contributions to establish a Social Security record. While the court would normally order Maxine to pay Steve Thirty Thousand and No/100 Dollars (\$30,000) as a lump sum property settlement, taking the above factors into consideration the court hereby orders that Maxine shall pay to Steve as a lump sum property settlement the sum of Fifteen Thousand and No/100 Dollars (\$15,000).

There is no indication in the decree that the court was only considering the division of the equity in the home when making its determination of the lump sum property settlement. In fact, when determining the value of the real estate, the court never even uses the twenty-five thousand dollar figure urged by Maxine. Instead, the court states the marital net equity in the home is fifty thousand dollars and that it will “make an equitable division of this net equity in real estate

in conjunction with the issue of Social Security, and the other division of debts and assets to follow.” Therefore, we find the district court has made no computational error in determining the lump sum payment Maxine owes to Stephen.

III. Stephen’s Cross-Appeal. On cross-appeal, Stephen contends that he deserves a greater portion of the equity in the home. Additionally, he claims the district court erred in denying him alimony.

A. Decrease in the Property Award. Stephen first contends that his lump sum property award should not have been decreased from thirty thousand dollars to fifteen thousand dollars. He argues the circumstances of the parties entitle him to a greater share of the equity in the home. Additionally, he argues his lump sum payment should not have been decreased because the court is forbidden from considering social security in its property distribution.

When determining an equitable division of premarital property that has appreciated during the marriage, we look to the tangible contributions of each party to the marital relationship. *In re Marriage of Grady-Woods*, 577 N.W.2d 851, 852-53 (Iowa Ct. App. 1998). We then consider whether the appreciation is attributable to fortuitous circumstances or the efforts of the parties. *Id.* at 853. Finally, we consider the length of the marriage. *Id.* We also look to the factors set forth in Iowa Code section 598.21(1). “The critical inquiry is always whether the distribution is equitable in the particular circumstances.” *Id.*

In this case, it appears that both parties made substantial contributions to the marriage. Additionally, the appreciation in the home’s value is attributable to the efforts of the parties throughout their marriage of nearly ten years. Therefore,

an equal division of the increase in the home's equity during the marriage is supported by the facts. However, Stephen believes he is entitled to a greater award based on the circumstances of both parties.

As we have stated, Stephen is disabled and unable to work. His income is limited. Meanwhile, Maxine is healthy and productive. Stephen believes that this entitles him to a greater percentage of the home's equity. However, Stephen also has a large pension. Additionally, he was not required to pay Maxine one half of the commissions, residuals or trailer assets to which she would otherwise be entitled. We find that, based on the evidence and the decree's provisions in their entirety, a one half award of equity is equitable.

Stephen next challenges the court's reduction of his lump sum payment because it considered social security benefits in deciding the reduction. While we agree the court may not directly or indirectly divide social security benefits in their formulation of dissolution decrees, *In re Marriage of Boyer*, 538 N.W.2d 293, 295 (Iowa 1995), we don't believe the district court has violated this rule.

In *Marriage of Boyer*, the Iowa Supreme Court drew a distinction between adjusting property division to impermissibly invade one party's social security benefits and adjusting a property division to reflect an inequity in one party's ability to enjoy a secure retirement. *Id.* at 296. "It should not invalidate a property division if a disproportionate expectation regarding social security benefits is acknowledged in the court's assessment of the equities." *Id.*

Here, the court was simply acknowledging a disproportion in the social security benefits of the parties. This disproportion results from the fact that Maxine forewent any contribution to her social security throughout the duration of

the marriage in order to be Stephen's business partner and not a separate employee of Lutheran Brotherhood. This arrangement benefited both parties during the marriage. However, now that the marriage has dissolved, Maxine alone faces the burden of not having been an employee; mainly, she has not accrued the social security contributions to which she would otherwise be entitled. In its decree, the trial court was not attempting to reallocate Stephen's social security benefits. It was simply weighing one of several factors in trying to adjust any inequity in the property distribution. Therefore, we affirm the district court's reduction in the lump sum property payment.

B. Alimony. Finally, Stephen claims the district court erred in not awarding him alimony.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Kurtt*, 561 N.W.2d 385, 387 (Iowa Ct. App. 1997). Rather, it is a discretionary award made after considering those factors listed in Iowa Code section 598.21(3). *In re Marriage of Applegate*, 567 N.W.2d 671, 675 (Iowa Ct. App. 1997). We consider property division and alimony together in evaluating their individual sufficiency. *In re Marriage of Tzortzoudakis*, 507 N.W.2d 183, 186 (Iowa Ct. App. 1993). When determining the appropriateness of alimony, the court must consider "(1) the earning capacity of each party, and (2) present standards of living and ability to pay balanced against the relative needs of the other." *In re Marriage of Gonzalez*, 561 N.W.2d 94, 99 (Iowa Ct. App. 1997) (citations omitted).

Maxine is currently earning a salary of \$34,000. Stephen's anticipated income is \$16,000 per year. In addition, Stephen has a large pension on which

he may draw. Upon balancing Maxine's ability to pay against Stephen's need, and considering the property division, we agree with the district court that it would be inappropriate for Maxine to pay Stephen alimony.

Having considered all arguments properly before us on appeal, we affirm the district court's decree.

AFFIRMED.