IN THE COURT OF APPEALS OF IOWA

No. 7-141 / 96-538

000535

IN RE THE MARRIAGE OF CLAUDIA JANE WADDELL AND RICKIE LEE WADDELL

Upon the Petition of
CLAUDIA JANE WADDELL,

Appellee,

And Concerning
RICKIE LEE WADDELL,

Appellant.

Appeal from the Iowa District Court for Linn County, Kristin L. Hibbs, Judge.

Rickie Waddell appeals the parties' dissolution of marriage decree.

AFFIRMED AS MODIFIED AND REMANDED.

Frank J. Nidey of Maher & Nidey Law Firm, Cedar Rapids, for appellant.

Franklin R. York, Cedar Rapids, for appellee.

Considered by Habhab, C.J., and Cady and Vogel, JJ.

CADY, J.

Rickie and Claudia Waddell were married on May 27, 1977. They have one child, Amanda, born September 29, 1981. When they married, both parties were regularly employed, Claudia at General Mills and Rickie at Rockwell Goss. Claudia is still employed at General Mills, and from 1990 through 1995 earned a salary ranging from $51,000 to $58,000.

In 1987, Rickie left his employment with Rockwell to spend more time with Amanda. He cashed in his pension plan, worth approximately $2000, and started his own business. He purchased equipment and vehicles and depreciated these assets on the parties' joint income tax returns. He reported losses on those returns averaging $6500 per year. Ultimately, the business was not successful. In 1990, he sold some of the equipment for $13,268, and in 1991 he sold other property for $11,400. He salvaged the remaining equipment or donated it to charity. Rickie testified he did not know what happened to the proceeds, and assumed he deposited them in the joint checking account to cover living expenses. Claudia testified she never saw the proceeds and argues her salary sufficiently provided for the family's living expenses.

Rickie's business endeavors allowed him the flexibility to care for Amanda. Because Claudia left for work very early, Rickie was responsible for ensuring Amanda was awake and ready for school. He cared for Amanda after school and helped with the cooking and other household chores. Although Claudia questioned how much supervision Rickie provided, we are persuaded he was significantly

involved in Amanda's care due to her age and the absence of any alternative child care services.

Rickie accumulated debt to finance the business. His debts totaled $22,767, which the parties satisfied by refinancing the mortgage on their home in 1993. In addition, Claudia paid $4000 to repay a debt Rickie had with his present employer.

The district court determined Claudia's net monthly income was $3114. The court considered benefits provided by Rickie's employer, in the form of free housing and utilities, and set his net monthly income at $1200. The parties stipulated to the division of personalty. The stipulation provided Rickie would be paid $6964 from one of the investment assets as divided by the court. The court divided the remaining assets as follows:

Asset	Value	Amount awarded to Claudia	Amount awarded to Rickie
Templeton Growth Fund	7,874.40	2,874.40	5,000
Templeton IRA	21,896.23	21,896.23	0
SOGEN Account	1,987.60	1,987.60	0
General Mills VIP	32,318.62	22,318.62	10,000
General Mills RSA	14,918.60	7,954.60	6,964
Homestead Equity	38,374	19,187	19,187
Total	$117,369.45	$76,218.45	$41,141.00

The court's property division awarded Claudia $35,067.45 more than it awarded Rickie.

The court also awarded Claudia her pension plan, which had vested and was scheduled to pay an estimated monthly benefit of $234 beginning at age fifty-five,

$320 at age sixty-two, and $320 at age sixty-five. Claudia testified the benefit amounts are frozen, she could not cash in this plan to receive any financial benefit, and would not receive any benefits if she left General Mills before retirement.

The parties had another Templeton Growth Fund, worth approximately $27,000 at trial, which was considered Amanda's college fund. The court ordered this fund be maintained for Amanda's post high school education. Rickie does not appeal this ruling, or any of the provisions relating to child custody, support, or visitation. He appeals only the division of the homestead equity and investment assets.

Our review of this case is de novo. *In re Marriage of Shivers*, 557 N.W.2d 532, 534 (Iowa App. 1996) (citing Iowa R. App. P. 4). We must examine the entire record and adjudicate anew the equity between the parties. *Id.* We must look primarily to the particular circumstances of this case, which makes prior cases of little precedential value. *In re Marriage of Kunkel*, 555 N.W.2d 250, 253 (Iowa App. 1996). The trial court's findings of fact are entitled to weight, but they are not binding upon us. *Id.* (citing Iowa R. App. P. 14(f)(7)).

Partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Hass,* 538 N.W.2d 889, 892 (Iowa App. 1995). Such an accumulation should be distributed fairly and equitably under the circumstances, rather than equally or according to a percentage distribution. *In re Marriage of Hardy,* 539 N.W.2d 729, 731 (Iowa App. 1995); *cf.*

In re Marriage of Miller, 552 N.W.2d 460, 464 (Iowa App. 1996) ("[a]lthough an equal division is not necessary, it should nevertheless be a general goal of trial courts to make the division of property approximately equal"). We are guided by the factors codified in Iowa Code section 598.21(1) (1995). *In re Marriage of Miller*, 552 N.W.2d at 463.

Claudia requested the district court reduce the amount of homestead equity awarded to Rickie by the amount of his debt retired through the refinancing. The court recognized Claudia provided the majority of support throughout the marriage, and Rickie's business endeavors failed to provide support and caused the family to suffer financial losses. The court divided the equity equally, however, reasoning Rickie pursued his endeavors during the marriage, and the parties commingled their funds, filed joint tax returns, and benefitted from income and the tax benefits of losses.

When the court divided the investment assets, however, it focused on Claudia's frugality, Rickie's action of cashing in his retirement funds, and the refinancing of the home to pay off business debts. The court also found Rickie had use of the proceeds from the sale of business assets.

We hold the property division must be modified to be fair and equitable. During the first decade of the marriage, Rickie contributed regular income through his job at Rockwell. He gave up that job to care for Amanda, which has interrupted his employment history. Rickie cashed in his retirement fund, but received only

$2000. His business venture may have indebted the family, but his supervision of Amanda freed up funds that otherwise would have to be spent for child care. His income during the first decade, his care of Amanda during the second, and the favorable tax consequences of the business losses allowed Claudia to contribute to the investment assets.

We believe Rickie should receive an additional $17,000 to reduce the present disparity of $35,067.45. We modify the decree to provide Rickie shall be paid $17,000 from the Templeton IRA. We remand the case to the district court for entry of a qualified domestic relations order for the division of the IRA. We do not retain jurisdiction.

AFFIRMED AS MODIFIED AND REMANDED.