

CLERK SUPREME COURT

2-67683

Considered en banc.

Petitioner Delbert Christopherson and respondent Rae LaVonne Christopherson were married in 1971. Both had been married before, and Rae had custody of three children from a previous marriage. Two days before their marriage, the parties signed a prenuptial agreement prepared by Rae's attorney. The contract provided that in the event of dissolution of the parties' marriage,

each of the parties hereto does hereby relinquish any right, title and interest in and to the separate property of the other party to this agreement...including any rights to any property or accumulations to property hereafter acquired as the separate property of either of the parties hereto.

The agreement included a disclosure of the assets owned by each party prior to the marriage: Rae owned a house in Spencer subject to a real estate mortgage, the furnishings therein, a car, a \$500 savings account, and personal effects, and Delbert owned a truck, auto, carpentry tools, and personal clothing.

During the marriage both parties were employed full time. Delbert was employed in a family home construction business; Rae worked at various jobs requiring manual labor. The parties lived in Rae's Spencer home for two years after their marriage, together with her three children. In 1975 Delbert's parents gave him a real estate lot in Milford, upon which Delbert built a house and carpentry shop financed from a bank mortgage note co-signed by Delbert and his parents. The family then moved into the Milford house and Rae leased the Spencer house, using the rental income to retire the mortgage indebtedness.

The trial court granted a petition for dissolution of the parties' marriage in 1981. At the time of trial Rae was fifty years old and was employed as a sewing machine operator with a gross income of approximately \$188 per week for a four-day week. Delbert was fifty-six years old, and had not worked for several months because of his deteriorating health condition, although he planned on returning to work eventually. The income reported on their income tax returns which were

introduced into evidence reflect that over a four-year period Rae earned approximately \$36,000 and Delbert earned approximately \$30,000. The trial court determined the approximate net worth of the parties to be \$130,000. The court then proceeded to award the Spencer house (valued at \$35,000) to Rae, and the Milford house (valued at \$91,000) to Delbert subject to a lien in favor of Rae in the amount of \$30,000. The remaining personal property was awarded to its respective owners. Neither alimony nor attorney fees was awarded.

Delbert filed a motion for a new trial, alleging that the prenuptial agreement was not given adequate consideration in dividing the parties' property, that the value of the Milford house and shop was not correctly determined by the trial court, and that the trial court erroneously found that Rae's income was used to provide household needs, whereas the evidence was that her only contribution was food staples. This motion was denied. On appeal Delbert challenges the property division on the same grounds alleged in the motion for a new trial.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. We review the facts as well as the law and determine anew those rights properly presented and preserved. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977). We give weight to the findings of the trial court, particularly when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

An appropriate property division is one that is equitable under the circumstances. Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976). Iowa Code § 598.21(1) lists several factors to be considered by the courts in determining what constitutes an equitable division. One of these factors is "any written agreement made by the parties concerning property distribution." Iowa Code § 598.21(1)(k). The Iowa Supreme Court has additionally acknowledged a general presumption in favor of such agreements. In re Marriage of Winegard, 278 N.W.2d 505, 512 (Iowa

1979), cert. denied, 444 U.S. 951.

Applying the factors listed in Iowa Code § 598.21(1), including the parties' prenuptial agreement, we conclude on our de novo review that the trial court achieved an equitable division of the parties' property. The prenuptial agreement provided, in effect, that each party would retain his or her separate property in event of dissolution. Accordingly, the court awarded Delbert, inter alia, his pickup, the checking account in his name, the household furniture and personal effects in his possession, the interest in the shop he built in Milford, and his carpentry tools. Likewise, Rae was awarded, inter alia, the car she used, the checking account in her name, and the household furniture and personal effects in her possession. Since the house in Spencer was brought into the marriage by Rae and therefore constituted her "separate property," it was awarded solely to Rae. See 598.21(1)(b), (1). The Milford house, on the other hand, was acquired during the marriage through the joint effort and contributions of both parties. Although the house was built on a lot given to Delbert by his parents, the trial court found that the lot was not a sizeable gift, and since Delbert offered no evidence to dispute that conclusion, we give it great weight. See Iowa R. App. P. 14(f)(7).

An equitable property division under such circumstances would be one which allowed both parties to share in the value of the property. See Iowa Code § 598.21(1)(c). As the trial court pointed out: "The increased net worth of the parties is attributable to the combined income of the parties and the inflation of real estate values. Both should share in the accumulated net worth." We therefore conclude that the trial court did not abuse its discretion in awarding the Milford house to Delbert, subject to a \$30,000 lien in favor of Rae. Since Delbert has the option of extinguishing the lien in installments of \$3000 per year, we are unpersuaded by his argument that the creation of the lien will force the sale of

the house. Nor do we find support for this argument in the record. We also think the amount of the lien created by the trial court, although not precisely one-half the value of the house, was fair to Rae in light of Delbert's greater initial contributions to the construction of the house and his deteriorating health. See Iowa Code § 598.21(1)(c), (d). The trial court's property division was consistent with the terms of the parties' prenuptial agreement and with the other factors listed in Iowa Code § 598.21(1).

In her brief Rae contends that Delbert should be required to pay her attorney fees on appeal. We find it unnecessary to address this contention because Rae fails to supply this court with an itemized statement of her attorney fees. We will not award attorney's fees based merely upon conjecture. The decision of the trial court is affirmed, and both parties are ordered to pay their own expenses on appeal.

AFFIRMED.