

IN THE COURT OF APPEALS OF IOWA

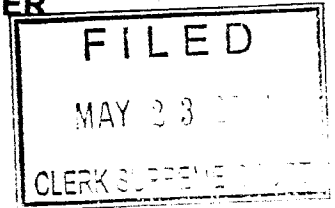
No. 0-812 / 00-0355

Filed May 23, 2001

IN RE THE MARRIAGE OF SHARON HEYER AND DENNIS HEYER

Upon the Petition of
SHARON HEYER,
Appellee,

And Concerning
DENNIS HEYER,
Appellant.



Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

The respondent appeals various economic provisions of the parties' dissolution decree. **AFFIRMED.**

Dave Nagel, Waterloo, for appellant.

David S. Kelsen, Waterloo, for appellee.

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

VOGEL, P.J.

Dennis Heyer challenges the district court's distribution of assets and liabilities between the parties, specifically attacking the date the court employed for property valuation and the standard applied in determining property distribution.¹ Because we find the terms of the dissolution decree to be fair and equitable, we affirm the district court.

Background Facts and Proceedings. The parties were married on September 14, 1968, and the marriage produced two children, now both adults. Each party worked during the marriage, Sharon in various service or clerical jobs, and Dennis in the maintenance department at the University of Northern Iowa. Dennis worked for UNI from 1969 until 1998, when he retired due to back problems. Dennis reported that he was unemployable after 1998 due to his health problems, but did receive retirement benefits. In 1999 Sharon's health severely deteriorated, and she began receiving public assistance.²

In 1971 they purchased the marital residence, which they both occupied until 1989. While Sharon continued to occupy the home up to and through the time of the decree, Dennis's occupancy of the home was irregular after 1989, and ended completely in 1994 upon the parties' final physical separation. The income of the parties was commingled until 1994, each contributing to the upkeep of the marital home until that time. After their separation each

¹ The marriage was dissolved by decree entered January 15, 1998. On January 27, 2000, an order was entered dividing the parties' assets and liabilities

² At the time of the property settlement hearing she reported she had been approved for Social Security and SSI, but had yet to receive a check.

contributed nothing to the living or housing expenses of the other, but joint tax returns were filed through tax year 1996.

The fair market value of the home was approximately \$30,000. Prior to the dissolution Sharon received a total of approximately \$37,000 from inheritances, which she used to make physical improvements to the home including the addition of a garage, pay off the home's indebtedness, purchase appliances and furniture, purchase the predecessor to the couple's camper, and for living expenses. Dennis also received an inheritance during the marriage in the form of a residence from his mother's estate. The fair market value of that home was approximately \$25,000. Since receiving the inheritance the home has been rented to the parties' oldest daughter and her two children, and Sharon has participated in the management and upkeep of the home. The monthly rental payments of \$190 are only sporadically received.

When the parties separated in 1994 Sharon remained in the marital residence and retained the majority of the household furnishings, valued at \$5,000. She maintained two autos, one worth \$500 and one of indeterminate value with an indebtedness of \$2,000, had financial accounts of less than \$100, and had medical bills in the amount of \$12,278 and a \$4,200 credit card bill.³ In addition to some tools Dennis received the family camper, which contained a number of household items and was worth \$9,000. Dennis also possessed a car valued at \$1,000 and an unvalued pickup truck with a \$5,000 indebtedness, and had an additional loan indebtedness of approximately \$5,400.

³ Although Sharon's brief makes reference to an additional debt of \$2,000 to the University of Northern Iowa Credit Union, Sharon testified that the \$2,000 owed to UNI and the indebtedness on the car were one and the same.

In 1996 Sharon filed a petition for dissolution, and in 1998 a decree was entered which dissolved the parties' marriage, reserving ruling on the issues of property division and support. In January 2000 the remaining issues came on for hearing, and the court divided the parties' assets and liabilities as described above. In addition, Dennis was awarded the house he inherited from his mother, and Sharon was awarded a one-half interest in Dennis's retirement account, valued at roughly \$200,000. The approximate net distribution to Dennis was \$124,600 and to Sharon, \$115,100. Dennis appeals.

Scope of Review. Dissolution proceedings, as equitable actions, are reviewed de novo. Iowa R. App. P. 4. For any properly presented issue, we examine the entire record and adjudicate anew the rights of the parties. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981).

Valuation of Property. Dennis argues that the district court erroneously valued property at the date of the hearing on the property division, rather than at some earlier time. We need not address the propriety of this decision, however, as we only consider those issues the parties presented to the district court. *In re Marriage of Okonkwo*, 525 N.W.2d 870, 872 (Iowa Ct. App. 1994). Here the record is devoid of any indication Dennis objected to using the date of the property division hearing as the date of valuation, or even suggested another date be used. In fact, the comparative market analysis of the marital residence offered by Dennis appears to have been undertaken sometime in early 2000. Since the issue is raised for the first time on appeal, it is deemed waived. See *In re Estate of Crabtree*, 550 N.W.2d 168, 171 (Iowa 1996).

Property Division. Dennis claims the distribution of assets and liabilities is generally inequitable and that the district court employed an improper standard for property distribution when it penalized him for failing to support Sharon after the separation but prior to the divorce. Even if we assume that the district court's property division was influenced by this fact, and that such influence was improper, it assists Dennis only if the overall distribution scheme was inequitable. We find it was not.

As no spousal support was ordered, we consider only the fairness of the property distribution. Looking to the established value of each party's personal property (with the exception of the pension fund), Dennis's assets significantly outweigh those of Sharon's, while his debts are slightly less than half of Sharon's total debt. In addition, each party received one residence of approximately equal value. This is Dennis's main area of complaint, in that he feels the house he inherited from his mother was inappropriately treated as marital property.

As a general matter inheritances received during the marriage are not subject to a property division, unless failing to include them among the marital assets would be inequitable to the other party. *In re Marriage of Muelhaupt*, 439 N.W.2d 656, 659 (Iowa 1989); Iowa Code § 598.21(2) (1999). In making this decision we consider a number of factors, including contributions to each party's economic welfare and the care, preservation and improvement of the property, the special needs of either party, the length of the marriage, and any other consideration that would render the property's exclusion unfair to the other spouse or a child. *Id.* Here, the inherited house was used to assist the parties'

daughter and grandchildren, the record indicating that it was effectively treated as marital property, with Sharon participating in its maintenance. In turn, a large portion of Sharon's cash inheritance was exhausted in maintaining and improving the marital residence.

The house was treated in the same manner as the cash inheritances received by Sharon – both were used by and for the benefit of the family. Moreover, if we exclude this house from the distribution scheme, then we must also remove that portion of Sharon's inheritance used to improve and maintain the marital residence, and make some allowance for the fact the inherited money was used to purchase a camper that, through a series of trade-ins, led to the joint purchase of the camper Dennis now owns. In doing so we would be required to decrease Dennis's half-share in the marital residence by a proportionate share of the improvements and the equity effected by Sharon. The more reasonable and equitable solution, as understood by the trial court, was to grant to each party one of the residences. We concur with that assessment.

Dennis also complains of Sharon's award of half of his pension account, essentially claiming that while she does not need one-half of his monthly pension check to meet her basic living needs, he cannot meet his financial obligations on his reduced retirement allotment. In apportioning pension proceeds, the future retirement needs of the parties should be considered. *In re Marriage of Fall*, 593 N.W.2d 164, 167 (Iowa Ct. App. 1999). However, the overriding concern remains a just and equitable division of the property that has been accumulated through their joint efforts. See *In re Marriage of Hass*, 538 N.W.2d 889, 892

(Iowa App.1995). This is a marriage of nearly thirty years, with pension benefits being accrued by Dennis during almost the entire length of the marriage, while Sharon maintained the parties' home and made her own financial contributions to the family coffer. The record reflects that Sharon's retirement needs will be as great as, if not greater than, those of Dennis. Under the circumstances, allocating Sharon a half share of the pension was just and equitable.

AFFIRMED.