

IN THE COURT OF APPEALS OF IOWA

No. 2-664 / 92-178

FILED

SEP 02 1993

CLERK SUPREME COURT

IN RE THE MARRIAGE OF CAREN C. AHERNS AND RAYMOND E. AHERNS

Upon the Petition of
CAREN C. AHERNS,

000015

Appellee,

And Concerning
RAYMOND E. AHERNS,

Appellant.

Appeal from the Iowa District Court for Pottawattamie
County, Leo F. Connolly, Judge.

The husband appeals the property division in the
district court's decree dissolving the parties' marriage.

AFFIRMED.

Richard D. Crotty, Council Bluffs, for appellant.

A. W. Tauke of Porter, Tauke & Crowl, Council Bluffs,
for appellee.

Considered by Donielson, P.J., and Hayden and Habhab,
JJ.

PER CURIAM **000016**

Caren and Raymond Aherns were married on November 26, 1988. However, they began living together in 1982. It was a second marriage for both parties.

Caren brought substantial assets to the marriage. She was awarded the Purple Turtle Lounge in the 1981 dissolution proceedings involving her first husband. Caren also owned Strawberries Lounge, which she purchased in September 1985. Caren and Raymond each owned a house prior to the marriage.

Shortly after the marriage, the parties leased Baby O's, now known as Yellow Rose. Caren borrowed \$10,000 to open the bar. Caren sold Strawberries Lounge in February 1991 for \$90,000. She received \$40,000 cash and the rest was to be paid in installments. She used a portion of the cash proceeds to buy cars and five lots on Avenue C in Council Bluffs.

Caren worked as the manager of the three bars in which she had an interest. Raymond had an automobile repair shop which closed in 1983. After 1983 Raymond had no outside employment.

The district court issued a dissolution decree for the parties on January 2, 1992. The court awarded each party his or her premarital assets. Thus, Caren was awarded her interest in the Purple Turtle Lounge, the Strawberries Lounge contract, her house, and household goods. Raymond was awarded his house and household goods.

The court divided the marital assets to give Caren her interest in Yellow Rose, the five lots on Avenue C, a rental property on Avenue O, a car, a boat and trailer, her business equipment, and an IRA worth \$4,000. Raymond was awarded two cars, a pickup truck, and \$5,000. Raymond has appealed.

Our review of this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992).

Raymond contends the property division was not equitable to him. He claims from the time the parties began cohabiting in 1982 he devoted his time exclusively to helping at the three bars. Raymond believes the district court incorrectly set aside to Caren, as premarital property, assets which were accumulated while the parties cohabited.

The partners in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. In re Marriage of Russell, 473 N.W.2d 244, 246 (Iowa App. 1991). The Iowa courts do not require an equal division or percentage distribution. Id. The determining factor is what is fair and equitable in each particular circumstance. Id.

We have previously determined there is no equity in setting aside to one spouse property which at the time of marriage was in the name of only one party, but was the result of premarital funds accumulated by both parties. See In re Marriage of Miller, 452 N.W.2d 622, 624 (Iowa App. 1989).

In the present case, however, the evidence showed the premarital assets awarded to Caren were acquired through her efforts alone. Raymond did not extend any financial help to the businesses. The evidence also showed he did very little of the work at the businesses. We agree with the district court's conclusion Raymond did not earn outside income or accumulate any assets which were commingled with Caren's assets while cohabiting with her before the marriage.

We determine the property division in this case is equitable. We affirm the district court.

Each party seeks attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Hunt, 476 N.W.2d 99, 103 (Iowa App. 1991). We determine each party should pay his or her own attorney fees. Costs of this appeal are assessed to Raymond Aherns.

AFFIRMED.