IN THE COURT OF APPEALS OF IOWA

FILED
MAY 31 1996
CLERK SUPREME COURT

No. 6-002 / 94-1378

IN RE THE MARRIAGE OF LINDA M. WILSON-BROWN AND GERALD V. BROWN

Upon the Petition of
LINDA M. WILSON-BROWN,

Appellee/Cross-Appellant,

And Concerning
GERALD V. BROWN,

Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Webster County, Louie F. Beisser, Judge.

The husband appeals, and the wife cross-appeals, challenging certain economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Jerry L Schnurr, III, Fort Dodge, for appellant.

Kurt T. Pittner, Fort Dodge, for appellee.

Considered by Huitink, P.J., Streit, J., and McCartney, S.J.* Vogel, J., takes no part.

* Senior judge from the Second District serving on this court by order of the Iowa Supreme Court.

PER CURIAM

In this case, the husband appeals the distribution of property in the parties' dissolution decree and the award of attorney fees. The wife cross-appeals, challenging the district court's order that certain property should be sold by auction. We affirm as modified by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Linda Wilson-Brown and Gerald Brown were married in 1991. At that time Linda was forty-one and Gerald was fifty-eight. Both parties are employed at Fort Dodge Laboratories. Gerald's annual income is $43,830 and Linda's is $26,936.

Prior to the marriage, the parties entered into a pre-nuptial agreement, which provided that in the event of divorce, each party would retain title to the property he or she brought to the marriage. At the time of the marriage, Linda owned a condominium and Gerald owned eighty acres of farmland. During the marriage, Gerald sold the farm and purchased two buildings.

The district court entered a dissolution decree for the parties on June 21, 1994. Linda was awarded the condominium and Gerald was awarded the two buildings. The court also awarded Linda $5,351, which represented a portion of the increase in Gerald's 401K plan. The parties could not agree to the valuation or distribution of certain items. The court ordered these items sold at an auction, and the proceeds equally divided. Gerald was ordered to pay $2,000 for Linda's attorney fees. Gerald appealed and Linda cross-appealed.

I. Gerald contends the property division was not equitable in several respects. 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).

A. During the marriage the condominium increased in value. Gerald claims he should have been awarded a portion of this increased value. He used proceeds from the sale of the farm to pay off the mortgage on the condominium. However, the parties later obtained a home equity loan on the condominium, which allowed Gerald to purchase one of the buildings. Linda's net equity in the condominium was actually reduced during the marriage. We do not find Gerald is entitled to share in the condominium's increased market value.

B. Gerald claims he should have been awarded the value of some stock which was purchased with proceeds from the sale of his farm. This stock was sold during the marriage, and the proceeds spent by the parties. We agree with the district court that there is nothing now to distribute.

C. Gerald believes the district court should not have awarded Linda a portion of the increase in value of his 401K. The increase in value of Linda's IRA during the marriage was $350, while the increase in value of Gerald's 401K was $11,052. The court subtracted $350 from $11,052 and awarded Linda one-half of the difference, $5,351. We find this award to be equitable under the facts of the case.

We remand the case and direct the district court to enter an order correcting an error on the Qualified Domestic Relations Order which uses the term Respondent where Petitioner is meant.

D. Gerald loaned Linda $3.000. Linda paid this money back by transferring funds to a joint account. The money in the joint account was subsequently spent for household expenses. Gerald asks to be awarded $2,500 because he believes he did not receive full enjoyment of the funds used to repay the loan. We find the loan was paid in full and Gerald is not entitled to an additional award of assets due to the loan.

E. Gerald argues that instead of auctioning the parties' personal property, the court should have adopted his values. The items on the list to be auctioned included a television, refrigerator, loveseat, Indian art and miscellaneous. Gerald claims Linda has possession of items on the list worth $4,800 and he has possession of items worth $1,200. He asks that Linda pay him one-half of the difference, $1,800.

In her cross-appeal, Linda also challenges the court's order requiring the parties to auction these pieces of personal property. Linda testified some items of Indian art were gifts to her from Gerald. She also claimed the list was not complete because it did not include items she purchased for Gerald.

We modify the decision of the district court to eliminate the requirement that the items on respondent's Exhibit A should be auctioned and the proceeds equally divided. We value the items Linda received as follows: television, $100; refrigerator, $50; loveseat, $100; bed, $75; luggage, $50; kitchen chairs, $100; portable cooler,

$25; and Indian art, $1200. We determine these are the values for the items Gerald received: washer and dryer, $500; camcorder, $700; pheasant, $300; and bookshelves, $400. Using these values, Linda received personal property worth $1,700 and Gerald received personal property worth $1,900. We conclude each party should retain the items in his or her possession. No monetary awards are necessary to equalize the division of personal property.

II. Gerald claims the district court should not have ordered him to pay $2,000 for Linda's trial attorney fees. Iowa trial courts have considerable discretion in awarding attorney fees. *In re Marriage of Hunt*, 476 N.W.2d 99, 103 (Iowa App. 1991). Gerald has a greater earning capacity than Linda, and we find no abuse of discretion in the award of attorney fees.

III. Linda seeks attorney fees for this appeal. We order Gerald to pay Linda $500 for her attorney fees for this appeal.

We affirm the district court except as we have modified in this opinion. Costs of this appeal are assessed to Gerald.

AFFIRMED AS MODIFIED.