IN THE COURT OF APPEALS OF IOWA

No. 7-622 / 97-96

IN RE THE MARRIAGE OF RICHARD DEAN HAMILTON AND DEBORAH JEAN HAMILTON

FILED
MAY 29

Upon the Petition of
RICHARD DEAN HAMILTON,

Appellant,

And Concerning
DEBORAH JEAN HAMILTON,

Appellee.

Appeal from the Iowa District Court for Linn County, William L. Thomas, Judge.

Richard Hamilton appeals the property division of the parties' dissolution decree. **AFFIRMED.**

Gregory J. Epping of Terpstra, Terpstra & Epping, Cedar Rapids, for appellant.

Stephen B. Jackson of Jackson Law Office, Cedar Rapids, for appellee.

Considered by Cady, C.J., and Huitink, and Mahan, JJ.

CADY, C.J.

This is an appeal by a husband claiming the distribution of property in the parties' dissolution decree was inequitable. We affirm on appeal.

Richard and Deborah Hamilton were married in 1980. They have one child, Richard Jr., who was born in 1980. During the marriage, Richard was self-employed as a carpenter. He had annual gross income of about $18,000. Deborah worked for nine years at Econo Foods. When she left that employment she placed her pension funds (about $5,000) in an annuity.

Richard filed a petition for dissolution of marriage in March 1995, and the parties separated soon after. They sold their home in Cedar Rapids. The proceeds from the sale were used to pay off all marital debts except for a loan for Richard's van. The parties expected Richard Jr. to live with Deborah. They purchased a mobile home for Deborah and Richard Jr. to reside. The parties each received about $3,200 in excess funds from the proceeds.

After the parties' separated, Deborah went back to school and obtained a two-year degree in management. She incurred student loans of $14,125. Deborah worked for a period of time, earning $6.45 per hour. The juvenile court placed Richard Jr. in a youth home. When he was released, the parties agreed he should live with Richard. During the period of separation, Richard obtained cash advances of more than $16,000 on the parties' credit cards.

The district court issued a decree of dissolution for the parties on January 6, 1997. The court placed Richard Jr. in the physical care of Richard. Deborah was unemployed at the time of the dissolution hearing. The court found she had the ability to earn a gross annual income of $9,675. Deborah was ordered to pay child support of $145 per month.

The court awarded Richard his vehicle, credit union account, household contents, and tools. The court ordered him to pay certain debts, which included his credit card debts. Deborah was awarded her vehicle, the mobile home, a bank account, her annuity, a ring, and a shed. She was ordered to pay certain debts, including her student loan.

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 the opportunity to view, firsthand, the demeanor of the witnesses when testifying. *In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa App. 1995).

Richard has appealed the distribution of assets and debts. He believes the parties' assets and debts should have been divided equally. He asserts he received assets worth $10,553, and was ordered to pay debts worth $24,085, which gives him a negative property award of $13,532. He asserts Deborah received assets worth $45,362, and was ordered to pay debts worth $19,869, which left her with net assets of $25,493. He contends Deborah should pay him a cash property settlement of $14,827 in order to equalize the property distribution.

Deborah asserts Richard overvalued the assets awarded to her. She states she was awarded assets worth about $41,390. Deborah also asserts Richard was properly ordered to pay the debts assigned to him. She claims the marital debts were largely paid off when the house was sold, and Richard was solely responsible for the debts he was ordered to pay. Deborah claims Richard has a greater earning potential than she does, and he is better able to pay the parties' debts. Deborah believes Richard may file for bankruptcy in order to discharge his debts.

The partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Gonzalez,* 561 N.W.2d 94, 98 (Iowa App. 1997). Iowa courts do not require an equal division or percentage distribution. *Id.* The determining factor is what is fair and equitable in each circumstance. *In re Marriage of Kurtt,* 561 N.W.2d 385, 388 (Iowa App. 1997).

Although the distribution of property in this case is unequal, it is equitable. We consider the factors found in Iowa Code section 598.21(1) (1995). Richard earns twice as much as Deborah. Also, the debts Richard was required to assume were incurred, for the most part, after the separation. Richard received the sole benefit of the debts he incurred after the separation. We found no information in the record concerning what Richard did with the cash advances. We note no alimony was awarded. We affirm the distribution of assets and debts as set forth in the parties' dissolution decree.

Deborah seeks attorney fees for this appeal. An award of appellate attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Applegate*, 567 N.W.2d 671, 675 (Iowa App. 1997). In determining whether to award appellate attorney fees, the court considers the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the decision of the district court on appeal. *In re Marriage of Ask*, 551 N.W.2d 643, 646 (Iowa 1996). We determine Richard should be required to pay $500 for Deborah's appellate attorney fees.

We affirm the provisions of the parties' dissolution decree. Costs of this appeal are assessed to Richard.

AFFIRMED.