IN THE COURT OF APPEALS OF IOWA

No. 0-482 / 99-1482
Filed December 22, 2000

IN RE THE MARRIAGE OF SHARON KAY HARPER AND CLYDE CHANDLER HARPER

Upon the Petition of
SHARON KAY HARPER,
Petitioner-Appellee,

And Concerning
CLYDE CHANDLER HARPER,
Respondent-Appellant.

FILED
DEC 22 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Jackson County, Mark J. Smith, Judge.

Clyde Harper appeals various economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Eric Borseth of Borseth, Genest & Suddreth Law Office, Altoona, for appellant.

Robert L. Sudmeier and Norman J. Wangberg of Fuerste, Carew, Coyle, Juergens & Sudmeier, P.C., Dubuque, for appellee.

Heard by Streit, P.J., and Vogel and Hecht, JJ.

STREIT, P.J.

A successful stockbroker complains his ex-wife received too much property and alimony after the dissolution of their marriage. We affirm the district court's dissolution decree as modified.

I. Background Facts & Proceedings.

Clyde and Sharon Harper's nineteen-year marriage was dissolved in September 1999. At the time of the dissolution, Clyde was fifty-nine, and Sharon was fifty-seven. They did not have any children together.

Clyde became a stockbroker in 1991 and, in 1998 and 1999, had an annual gross income of over $185,000. Sharon regularly volunteers in the community, but she has not been gainfully employed since 1996. Clyde and Sharon were able to amass a net worth of roughly one million dollars.

The district court awarded both Clyde and Sharon marital assets worth over $486,000. Sharon also received the marital home and $2400 alimony per month. Clyde was ordered to pay $2560 for the accrued real estate taxes on the home and to designate Sharon as the beneficiary on his $100,000 life insurance policy. He appeals these economic provisions of the dissolution decree.

II. The Merits.

Our review is de novo. *In re Marriage of Grady-Woods*, 577 N.W.2d 851, 852 (Iowa App. 1998). We examine the entire record and adjudicate anew the issues properly presented on appeal. *Id.* We give weight to the fact findings of the district court, but are not bound by those findings. *Id.*

A. Property and Debt Distribution.

Clyde claims the district court should have ordered the parties to sell their marital home and divide the net proceeds equally. He argues the court improperly awarded the $170,000 home—and its $66,770 in equity—to Sharon to offset the estimated $65,000 in assets she brought to the marriage.[1] These premarital assets were but one factor the court should have considered in making its ultimate distribution of property. *In re Marriage of Miller*, 552 N.W.2d 460, 465 (Iowa App. 1996). The court's goal should have been to divide the parties' property equitably—not to ensure each party received a full credit for their respective premarital assets. *See* Iowa Code § 598.21(1) (1999); *In re Marriage of Brainard*, 523 N.W.2d 611, 616 (Iowa App. 1994). However, even if the court was driven by the latter goal in this case, we believe it still achieved an equitable result. Clyde received property worth $486,551 while Sharon received property worth $553,320—or 53.2% of the marital assets. Such a distribution is "approximately equal." *Miller*, 552 N.W.2d at 464 ("Although an equal division is not necessary, it should nevertheless be a general goal of trial courts to make the division of property approximately equal."). The slight discrepancy between the total value of the property each party received is equitable given Sharon brought substantially more assets to the marriage, appears to be in poorer health, and has a lesser earning capacity. *See* Iowa Code § 598.21(1). We will not order the parties to sell their marital home and divide the net proceeds equally.

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[1] According to Sharon, she brought a house, a car, a workers' compensation claim, a camper, a pension, and household furniture and appliances to the marriage. She claims Clyde only brought stock worth about $2000 to the marriage.

Clyde also claims the district court's property distribution was not equitable because the court did not divide the parties' pretax assets equally. In his appellate brief, he proposes a distribution that purportedly has fairer tax consequences. We cannot verify the soundness of Clyde's proposal from the record. Clyde did not offer testimony or other evidence at trial revealing if, when, or how the parties' various assets would be taxed. Nor did he file a 179(b) motion asking the court to enlarge or amend whatever findings the court had made regarding such matters. *See* Iowa R. Civ. P. 179(b). Thus, the only information available to us in the record consists of the terminology the parties have used to label their assets and a few investment account statements. We will not disturb the court's property distribution based on this information alone.

Finally, Clyde claims the district court should not have required him to pay the $2560 of real estate taxes that accrued on the parties' marital home before their marriage was dissolved. He argues Sharon should be ordered to pay these taxes from the $1000 in monthly alimony she was entitled to pursuant to the court's January 1999 temporary order. However, given the temporary order also required Clyde to pay $191 per month for "residence tax," the $1000 in alimony was not intended to cover real estate taxes. In any event, requiring Clyde to pay the $2560 of real estate taxes is equitable. We will not order Sharon to pay the taxes.

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B. Alimony.

Clyde claims the district court's alimony award was overly generous. The court ordered Clyde to pay Sharon $2400 of alimony per month until she "dies, remarries, or cohabitates with another nonrelative male." The court also ordered

Clyde to "maintain his life insurance policy with Edward Jones Company in the amount of $100,000, naming [Sharon] as beneficiary thereon as long as she is entitled to receive alimony . . . ."

Alimony is not an absolute right. *In re Marriage of Kurtt*, 561 N.W.2d 385, 387 (Iowa App. 1997). A discretionary award of alimony may be made after considering those factors listed in Iowa Code section 598.21(3). *In re Marriage of Sychra*, 552 N.W.2d 907, 908 (Iowa App. 1996). Among those factors are the length of the parties' marriage, the parties' ages and health, the parties' earning capacities, and the likelihood the party seeking alimony will be self-supporting at a standard of living comparable to the one enjoyed during the marriage. Iowa Code § 598.21(3).

Given these factors, we modify Sharon's alimony award as specified below. Clyde's earning capacity greatly exceeds Sharon's, and it is fair he pay her $2400 per month at the present time. However, when Clyde retires, his income stream will greatly diminish. Accordingly, Clyde must only pay Sharon alimony of $2400 per month until he retires or reaches age sixty-five, whichever event occurs later. If Clyde dies before he retires or reaches age sixty-five, his obligation to pay Sharon alimony will terminate upon his death. Similarly, if Sharon dies, remarries, or cohabits with another nonrelative male before Clyde retires or reaches age sixty-five, Clyde's obligation to pay her alimony will terminate upon the occurrence of any of those three events.

Clyde seems to assume the dissolution decree's life insurance provision requires him to pledge $100,000 of life insurance to an alimony trust to guarantee his alimony payments to Sharon after his death. Since the decree did not say

this, we do not believe this was the district court's intent. In any event, given our previous modification, Clyde must only maintain the $100,000 Edwards Jones life insurance policy and designate Sharon as its beneficiary until he retires or reaches age sixty-five, whichever occurs later. Thus, if Clyde dies before either of these events occurs, Sharon will receive the proceeds from the life insurance policy in lieu of alimony. We will not make any additional modifications to the district court's alimony award.

We have considered all the issues and arguments presented, whether discussed in detail or not. Having done so, we affirm the district court's property and debt distribution and affirm as modified its alimony award.

III. Attorney Fees.

Finally, Clyde claims the district court should not have required him to pay $1500 of Sharon's attorney fees. Finding no abuse of discretion, we affirm the award. *See In re Marriage of Guyer*, 522 N.W.2d 818, 822 (Iowa 1994).

Sharon requests we order Clyde to pay a portion of the attorney fees she has incurred on appeal as well.[2] In evaluating such requests, we consider the needs of the requesting party, the ability of the other party to pay, and whether the requesting party was obligated to defend the district court's decision on appeal. *In re Marriage of Castle*, 312 N.W.2d 147, 150 (Iowa App. 1981). In light of these factors, we order Clyde to pay $1000 of Sharon's appellate attorney fees.

AFFIRMED AS MODIFIED.

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[2] Clyde's contention Sharon "lost her right to argue attorney fees on appeal as she did not preserve this issue by filing a Notice of Appeal" has no merit.