

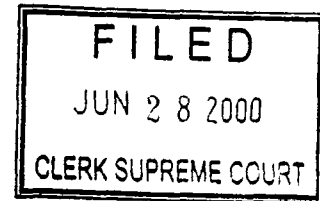
IN THE COURT OF APPEALS OF IOWA

No. 1999-451 (9-708) / 98-1828
Filed June 28, 2000

**IN RE THE MARRIAGE OF TERRY L. YOUNG
and JULIE ANN ANDERSEN YOUNG**

**Upon the Petition of
TERRY L. YOUNG,**
Petitioner-Appellee,

**And Concerning
JULIE ANN ANDERSEN YOUNG,**
Respondent-Appellant.



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

Respondent appeals various economic provisions of the parties' dissolution decree and contends the court erred in failing to grant her request for a legal name change. She also asserts the trial court erred in not awarding her attorney fees and requests an award of appellate attorney fees. **AFFIRMED AS MODIFIED AND REMANDED WITH DIRECTIONS.**

Gary J. Shea of Shea Law Offices, Cedar Rapids, for appellant.

Christine L. Crilley, Cedar Rapids, for appellee.

Considered by Sackett, C.J., and Vogel and Hecht, JJ.

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HECHT, J.

Julie Ann Andersen Young appeals various economic provisions of the parties' dissolution decree and contends the court erred in failing to grant her request for a legal name change. She also asserts the trial court erred in not awarding her attorney fees and requests an award of appellate attorney fees. We affirm as modified and remand to the district court.

I. Factual Background and Proceedings. Julie and Terry Young married on September 3, 1993. At the time of trial, Julie was thirty-eight years old and Terry was forty-six years old. Terry has a son, Ryan, from a previous marriage. Julie has two daughters from a prior marriage, Shaundi and Melissa. She receives child support in the amount of \$775 per month from her former husband. Ryan, Shaundi, and Melissa lived with Terry and Julie during the marriage.

Both parties brought property into the marriage. Terry owned the house the parties lived in, some household items, a savings plan, savings bonds, and a pension plan. Terry testified at trial that the parties cashed in and used the savings bonds for living expenses during the marriage. Julie brought a vehicle, household furniture, and a retirement plan into the marriage. The parties cashed and spent Julie's retirement plan early in the marriage to pay for household expenses. They gave away or sold most of Julie's furniture.

Rockwell Collins had employed Terry for almost twenty years before his marriage to Julie. He continues to work for Rockwell as a senior engineering technician and makes approximately \$50,000 per year. During the marriage,

Julie was employed as a dental technician making \$9.50 per hour. After the separation, Julie continued working part-time (sixteen hours a week) as a dental technician and started attending massage therapy school.

Trial of this matter commenced on February 5, 1998. Because of the trial judge's illness, the case was reassigned pursuant to Iowa R. Civ. P. 367(b). The district court entered its findings of fact, conclusions of law, and decree of dissolution on September 10, 1998. Julie appeals.

II. Standard of Review. Because this is an equity action, our review is de novo. Iowa R. App. P. 4. In our review, we examine the entire record and adjudicate anew the rights on the issues properly presented. *In re Marriage of Maher*, 596 N.W.2d 561, 564 (Iowa 1999); *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). Although we give weight to the district court's factual findings, we are not bound by them. Iowa R. App. P. 14(f)(7).

III. Property Distribution. Julie challenges several provisions of the district court's decree related to property distribution. The partners to a marriage are entitled to a just and equitable share of the property accumulated during the marriage through their joint efforts. *In re Marriage of Gonzalez*, 473 N.W.2d 94, 98 (Iowa App. 1997). An equal division or a percentage division is not required in determining a just and equitable share of the property. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). The distribution of the property of the parties should be that which is equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(1). *In re Marriage of Clark*, 577 N.W.2d 662, 664 (Iowa App. 1998).

A. Real Estate. Julie asserts the district court erred by failing to award her any interest in the increased value of Terry's home. Terry owned the house for approximately ~~sixteen~~ years before his marriage to Julie. The fair market value of the residence at the time of marriage was \$70,000.¹ During the marriage, the parties both spent considerable time and effort in maintaining, decorating, and making improvements in the home. After subtracting the mortgage balance at the time of the marriage, \$27,600, we find the net value of the house at the time of the marriage was \$42,400. The fair market value of the house increased to \$104,000 as of the time of trial. The mortgage balances at the time of the dissolution totaled \$49,725.87, and the property's net value was therefore \$54,274.13. Thus, the increase in the net value of the house during the marriage was \$11,874.13. Julie is entitled to receive one-half of this amount or \$5,937.07.

B. Rockwell Savings Plan. Julie next contends the district court erred by failing to award her a portion of Terry's Rockwell savings plan. Terry argues Julie should take nothing from the plan because she contributed nothing to it. The value of the plan at the time of marriage was \$20,000. When considering an equitable property division, property that a party brings into the marriage is a factor to be weighed by the court. Iowa Code § 598.21(1)(b). In some instances, this factor may justify a full credit to the party who brought the asset into the marriage, but a full credit is not required. *In re Marriage of Miller*, 552 N.W.2d

¹ Terry's interrogatory answer assigned a value of \$65,000 to the house at the time of the marriage. In his trial testimony, however, he claimed his interrogatory answer was incorrect and the house was actually worth \$75,000 at the time of the marriage.

460, 465 (Iowa App. 1996). In considering accumulations to the parties' assets, we do not limit our focus to the parties' direct contributions to the increases. We broadly consider the contributions of each party to the overall marriage as well as all other factors bearing upon equitable distribution of the parties' property. *Id.* at 464. The savings plan increased during the marriage to a value of \$44,070.53. We conclude the increase in value of \$24,070.53 during the marriage should be equally divided between the parties.

C. Rockwell Pension Plan. Julie claims the value of Terry's pension plan increased by 28.74% during the marriage. To support this assertion, she compares Terry's estimated monthly accrued benefit of \$715.18 as of December 31, 1992, with his estimated accrued monthly benefit as of January 22, 1998. Julie claims an equitable division of the property requires an allocation of one-half of the increased value to her. Terry again argues Julie is not entitled to any share of the increased value of the plan because she made no financial contribution to the plan and offered no insight or guidance affecting the increase in the value of this asset. Although Julie did not contribute directly to the pension account, she did contribute to the household in many other important ways, including working full time and using her earnings to pay household expenses, providing child care for the parties' three children, and cashing in her own pension at the time of the marriage to contribute to the family's finances. We conclude Julie is entitled to an equitable division of the pension plan. Accordingly, we modify the decree and remand the case to the district court for entry of a Qualified Domestic Relations Order (QDRO) giving Julie a share of the

pension at the time it becomes payable equal to fifty percent of a fraction wherein the numerator is the number of years of the marriage during which benefits accumulated (i.e., five years) and the denominator is the total number of years during which benefits accumulate prior to maturity. See *In re Marriage of Benson*, 545 N.W.2d 252, 255 (Iowa 1996).

D. Motor Vehicles. Julie contends the district court erred in the valuation and distribution of the parties' motor vehicles. In view of our modification of the decree with respect to other aspects of the property division, we believe the district court's valuation and distribution of the vehicles is equitable and we affirm as to this issue.

E. Julie's Debts. Julie next contends the district court erred by not including all of her debts in the distribution of the property. Specifically, she points out the district court failed to consider her unpaid attorney fee bill incurred during a prior modification action brought against her former spouse. We note both parties incurred attorney fees during the marriage in legal proceedings to modify divorce decrees from prior marriages. We have considered Julie's attorney fee debt in arriving at our decision with respect to the modification of the decree. Under the terms of the decree as modified herein, we conclude Julie will be able to pay the attorney fees incurred in her modification action.

IV. Name Change. Julie requested the restoration of her maiden name, Julie Ann Andersen. The district court failed to address the issue in its decree. Terry's brief indicates he has no objection to Julie's name change. Iowa Code section 598.37 authorizes a dissolution court to change a person's name to either

the name appearing on the person's birth certificate or the name the person had immediately before the marriage. Iowa Code § 598.37 (1997); *In re Marriage of Erickson*, 553 N.W.2d 905, 908 (Iowa App. 1996). The district court erred in failing to grant Julie's request for restoration of her maiden name.

V. Attorney Fees.

A. Julie's Trial Attorney Fees. Julie contends the district court erred by not awarding her attorney fees at the trial level. Attorney fees are not awarded as a matter of right. *In re Marriage of O'Rourke*, 547 N.W.2d 864, 867 (Iowa App. 1996). An award of attorney fees is based on the parties' respective needs and abilities to pay. *In re Marriage of Lattig*, 318 N.W.2d 811, 817 (Iowa App. 1982). Terry and Julie have substantially different incomes. In addition, we note Terry leaves this marriage with a greater net worth than Julie does. We therefore order Terry to pay \$1000 of Julie's trial attorney fees.

B. Appellate Attorney Fees. Julie also requests appellate attorney fees. Terry resists her application and requests Julie be ordered to pay his appellate attorney fees. We are to consider 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 trial court's decision on appeal. *In re Marriage of Ales*, 592 N.W.2d 698, 704 (Iowa App. 1999). We may also consider whether one party was obligated to challenge the trial court's findings. *In re Marriage of Christensen*, 543 N.W.2d 915, 919 (Iowa App. 1995). As stated above, Terry's income and net worth are substantially greater than Julie's. Terry shall pay \$1000 for Julie's appellate attorney fees.

C. Costs. Costs of this appeal are taxed to Terry.

VI. Conclusion. We affirm the decree as modified herein. Terry shall pay Julie the sum of \$5,937.07 representing her one-half of the increase in the net value of the house during the marriage. We remand this case to the district court for entry of a QDRO effectuating the transfer to Julie of one-half of the increase in value of the Rockwell savings plan (\$12,035.26) and a percentage interest in the pension plan consistent with this opinion; and for entry of an order granting Julie's request for a name change to Julie Ann Andersen. Interest shall accrue on the judgment from September 10, 1998, at the rate of eight percent per annum.

AFFIRMED AS MODIFIED AND REMANDED WITH DIRECTIONS.