



IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JONI DAWN McNEW AND DONALD DUANE McNEW

Upon the Petition of	)	161
JONI DAWN McNEW,	)	
Petitioner-Appellant/ Cross-Appellee,	)	Filed December 23, 1986
	)	
And Concerning	)	
	)	
DONALD DUANE McNEW,	)	<u>6-222</u>
	)	85-961
Respondent-Appellee/ Cross-Appellant.	)	

Appeal from the Iowa District Court for Jasper County (No. D.M. 2786;
DD-8-40) - M. C. Herrick, Judge.

Petitioner wife appeals and respondent husband cross-appeals from a decree
of dissolution of marriage. **AFFIRMED.**

Eugene Knopf of Diehl, Cleverly, Knopf & Williams, Newton, for peti-
tioner-appellant.

Brad McCall of Brierly, McCall, Girdner, Chalupa & McCall, Newton,
for respondent/cross-appellant.

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

DONIELSON, P.J.

Petitioner wife appeals and respondent husband cross-appeals from a decree of dissolution of marriage. Petitioner asserts that the property division was inequitable and that the trial court failed to exercise its discretion due to the extent to which respondent's proposed findings and conclusions were adopted. We affirm.

Joni and Don McNew were married in 1980 and were, respectively, twenty-four and twenty-six at the time of trial. Throughout the marriage, Joni worked as a general manager of a car dealership business owned by her father. Don was employed as a carpenter and was self-employed at the time of trial. Joni purchased the marital home shortly before the marriage. During the marriage both parties contributed to an extensive remodeling of the home, which did not increase its market value. The extent and value of their relative contributions to the project was the subject of heated dispute, as was the value of certain personal property owned by each party at the time of marriage.

Following trial, the court awarded Joni the home, subject to encumbrance, her 1984 Fiero automobile, and sixteen shares of Maytag stock valued at \$824.00 which she had owned prior to marriage. Don was awarded his 1981 pickup truck, his business accounts and liabilities, tools, and various other items of personal property. Joni, whose income was considerably greater than Don's during the marriage, was ordered to pay Don \$7,500.00 over a five-year period. The trial court adopted Don's proposed findings and conclusions with two exceptions: (1) the amount Joni was to pay Don was reduced from \$15,000.00 to \$7,500.00 and (2) an award to Don of \$245.00 from Joni's income tax refund was deleted.

The standard of review which we employ in an equitable proceeding is *de novo*. Iowa R. App. P. 4. Thus, it is our responsibility to review the facts and the law and to determine anew the rights of the parties where the issues

have been properly presented and preserved. In re Marriage of Phipps, 379 N.W.2d 26, 27 (Iowa Ct. App. 1985). Although we give weight to the trial court's findings, particularly where the credibility of witnesses is concerned, we are not bound by them. Iowa R. App. P. 14(f)(7).

Joni contends that the trial court erred in determining the value of property that each party brought into the marriage and also erred in its determination as to the contribution of each party during the marriage. In addressing such claims, we note that there are no hard and fast rules governing economic issues in a dissolution action, and, because precedent is of little value, our decision must ultimately rest on the particular facts of each case. In re Marriage of Urban, 359 N.W.2d 420, 423 (Iowa 1984). In a marriage dissolution, there need be neither an equal division nor a percentage division of property; the determinative factor is that which will constitute an equitable and just award under the circumstances. In re Marriage of Hoak, 364 N.W.2d 185, 194 (Iowa 1985).

In the present case, we note that neither party has been completely forthcoming concerning the valuation of various items of property that were brought into the marriage. A number of discrepancies exist in Don's financial affidavits concerning whether his C.D. in the amount of \$5,100.00 was cashed before or after the parties' marriage in December of 1980. Don also listed several cars as assets on his financial affidavit, though both were sold immediately after the parties were married. Joni's financial affidavit also contains discrepancies concerning various items of property within her possession. Much of the evidence offered by both parties was incomplete, which made the difficult task of determining within a reasonable amount the value of marital assets that much more difficult to ascertain. Some of this confusion could be partly attributable to the fact that Joni kept most of the records of the parties' expenses during the marriage.

While both parties disagree on the valuation of numerous items brought into the marriage, the main dispute between the parties appears to be the value of improvements made to the marital home and the contributions of each party. Joni testified that the total contribution to the extensive gutting and remodeling of the home was approximately \$4,000.00. Don testified that the total cost of all materials was in excess of \$10,000.00. Joni testified that she worked side-by-side with Don in remodeling the home. Don testified that Joni helped out when she could, but that he performed the great majority of the work on the home. Don also testified that an independent contractor would have charged approximately \$16,000.00 for the work he did for free.

It is apparent from the record that both parties contributed substantially to the betterment of the parties' marital property, though each party attempts through computations to show that their contributions or sacrifices to the marriage exceeded those of the other party. Our de novo review indicates that both parties are in good health; are both currently employed and have the potential to earn comparable incomes. While both parties contributed to the marriage in different ways, neither has made extraordinary sacrifices. We have stated that "[o]ur law does not contemplate a division of property on a price-per-hour basis, as though a marriage is a business venture. Husband and wife need not, during happy days, keep a ledger to prove his or her economic value should the marriage later founder." In re Marriage of Byall, 353 N.W.2d 103, 106 (Iowa Ct. App. 1984) (citing In re Marriage of Briggs, 225 N.W.2d 911, 913 (Iowa 1975)).

In evaluating the method chosen by the district court in accomplishing its objective of an equitable division of property, Iowa courts have recognized that equality need not be achieved with mathematical exactness. In re Marriage of Conley, 284 N.W.2d 220, 223 (Iowa 1978). Upon an examination of all the facts in this case and taking into consideration all the factors enumerated in

Iowa Code section 598.21(1) (1985), we believe that the \$7,500.00 award payable to Don was within the permissible range of evidence.

In its findings of fact and conclusions of law, which the district court adopted from those propounded by Don, the district court found that Joni owned assets worth \$57,750.00 and liabilities of \$41,039.16, for a total net worth of \$16,710.84. The court found Don to own \$13,000.00 in assets and \$3,400.00 in liabilities for a net worth of \$9,600.00. Joni, however, listed assets of \$48,829 and liabilities of \$41,178.38 for a net equity of \$7,650.72. Joni listed Don's assets at \$17,079.64 and liabilities of \$3,400.00 for a net worth of \$9,600.00. Upon our own independent examination of the financial affidavits filed by both parties, together with the exhibits and testimony offered by both parties, and the property brought into the marriage, we cannot say that the findings of the district court were not within the permissible range of evidence. While other evidence offered by the parties may have justified findings other than those adopted by the district court; because we give weight to the district court's findings regarding the credibility of witnesses, we hold that the award of \$7,500.00 to Don was within the permissible range of evidence, and we are therefore not inclined to disturb it. See In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973).

Don has also cross-appealed from the dissolution decree. Because Don has not set forth any separate issues and because of our holding today, we need not address Don's cross-appeal.

Joni also asserts that the district court abused its discretion in adopting Don's proposed findings of fact and conclusions of law as its own. Iowa courts have recognized that it is the better rule for the trial court to choose and temper and select those portions of the findings and conclusions of both sides and select those portions which better fit its own concept of the case. Kroblin v. ROR

Motels, Inc., 347 N.W.2d 430, 435 (Iowa 1984). The United States Supreme Court has held that when a court adopts the findings and conclusions of one of the parties, they are not to be rejected out of hand if supported by substantial evidence. United States v. El Paso Natural Gas Co., 376 U.S. 651, 656, 84 S. Ct. 1044, 1049, 12 L. Ed. 2d 12, 17 (1964). In the present case, while it may have been the better rule to draft its own findings and conclusions, given the heavy work load in today's court docket, we cannot say the district court abused its discretion in adopting Don's findings and conclusions.

AFFIRMED.