IN THE COURT OF APPEALS OF IOWA

No. 4-195 / 93-0817

FILED
SEP 16 1994
CLERK SUPREME COURT

IN RE THE MARRIAGE OF DARLENE K. WOOD AND MICHAEL L. WOOD

Upon the Petition of
DARLENE K. WOOD,

Petitioner-Appellee,

And Concerning
MICHAEL L. WOOD,

Respondent-Appellant.

Appeal from the Iowa District Court for Washington County, Phillip R. Collett, Chief Judge.

Michael Wood appeals the property division of the parties' dissolution decree and the interpretation of a prenuptial agreement. **AFFIRMED.**

Richard H. Zimmermann of Zanville and Zimmermann, Iowa City, for appellant

Clemens Erdahl, Iowa City, for appellee.

Considered by Hayden, P.J., and Habhab and Cady, JJ.

HABHAB, J.

Prior to their marriage in 1991, Michael and Darlene Wood lived in town in a house owned by Darlene. Michael wanted to live in the country, so as to be closer to his farming operation, on land owned by his parents. He suggested that Darlene sell her home and use part of the proceeds to purchase and build a new home on the property owned by his parents.

Darlene was reluctant to do so for, on one hand, the property was owned by Michael's parents and, on the other hand, Michael's financial condition was poor. Reacting to her concern, Micheal, on the day prior to their marriage, took Darlene to his lawyer, Timothy Wink, for the purpose of signing a prenuptial agreement. The agreement was explained to Darlene and she signed the same.[1] She was not represented by separate counsel. The agreement appears in the record as respondent's exhibit 1, although offered into evidence by the Petitioner.

After their marriage, Darlene did sell her home and at the urging of Michael she took $10,000 from the proceeds and put that amount into the home built on Michael's parent's property.

The parties' marriage was dissolved in 1993. The major dispute at trial was whether Darlene was entitled to some

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1. This prenuptial agreement is dated April 11, 1991. Chapter 596 of the Code titled Premarital Agreements, applies to Premarital agreements executed on or after January 1, 1992. (Citation)

or all of the $10,000 she put into the new house. The premarital agreement recognized that Darlene was contributing approximately $10,000 to the purchase of the home and that she would receive $10,000 from the property that Michael died seized. In addition, the premarital agreement provided that she would receive an additional sum from the property to the extent that she could prove that she contributed more than $25,000 for a total potential of $35,000. In a separate paragraph of the agreement there is the following provision:

> That each party, in the event of a separation, shall have no right against the other by way of claims for support, alimony, attorney fees, costs, or division of property, except as provided herein.

The house was purchased for approximately $50,000 (excluding a basement which Michael installed), had a mortgage of $46,000 and the evidence at trial suggested it could not be sold for more than the price the parties paid for it. The district court found the following: (1) the prenuptial agreement was ambiguous; (2) Darlene's understanding of the agreement, as explained to her by Michael's attorney, was that she would get her money back in the event of a separation; (3) Michael's attorney did not testify as to what he told Darlene; (4) the language "except as provided herein" supported Darlene's interpretation of the agreement; (5) it would be inequitable to not return the $10,000 since the new house was Michael's idea, it was on his parents' land and he

would continue living there; and (6) it was inconsistent to suggest Darlene would get her money back if Michael died but not if the parties' brief marriage was dissolved. The district court thus ordered Michael to pay Darlene the $10,000 payable on or before May 1, 1993. The award was to be a lien on the parties' real estate until all sums due and owing were paid.

Darlene was awarded the living room furniture and one-half of the wedding gifts. Michael was awarded all of the rest of the property of the parties including the real estate and the pending litigation concerning the same. Michael was to assume any indebtedness thereon and hold Darlene harmless therefrom. Michael was also ordered to pay all costs of the action. Michael appeals.

I. Scope of Review. In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. Prenuptial Agreement. Michael contends the district court erred in interpreting the prenuptial agreement. As a general rule, prenuptial agreements are favored in the law and should be construed liberally to effectuate the intent of the parties. Norris v. Norris,

174 N.W.2d 368, 369 (Iowa 1970); In re Marriage of Van Brocklin, 468 N.W.2d 40, 45 (Iowa App. 1991).

Darlene testified repeatedly, without objections, that she understood the prenuptial agreement protected her $10,000. She testified:

> Q. Now, when you read that and signed this document, what did you understand this document was doing in terms of your $10,000 in the event of your being separated from Mike? A. It was protecting my $10,000, meaning it [sic] was going to give my $10,000 back.
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> Q. And did Mr. Wink basically indicate to you what this contract, prenuptial agreement, was doing, or did he just give it to you to sign? A. He explained things as we went. Q. And your understanding was then based on his explanation. A. Yes.

Michael was not asked about the agreement, and the attorney who wrote the agreement did not testify. There is testimony in the record that upon the death of Michael the home would pass to Michael's mother.

We agree with that part of the trial court's ruling that the clear intent of the parties was, in the event of a separation, Darlene was to receive her $10,000. We affirm the trial court in this respect.

Further, this was a very short term marriage as it lasted for less than two years. 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 Oler, 451 N.W.2d 9, 11 (Iowa App. 1989). In a short term

marriage, equity requires the court to consider the assets each party brought into the marriage in determining the property distribution. See In re Marriage of Knust, 477 N.W.2d 687, 688 (Iowa App. 1991). With these principles in mind, we also agree with the district court that Darlene is entitled to the award of $10,000.

III. Property Distibution. Michael contends the district court's property distribution was inequitable. 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 Oler, 451 N.W.2d 9, 11 (Iowa App. 1989). We find the distribution made by the district court was equitable and will not disturb it on appeal.

IV. Attorney Fees. Darlene has asked for attorney fees on appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We determine each party should pay his or her own attorney fees for this appeal.

We affirm the district court. Costs of this appeal are assessed to the appellant.

AFFIRMED.