IN THE COURT OF APPEALS OF IOWA

No. 8-642 / 97-2341

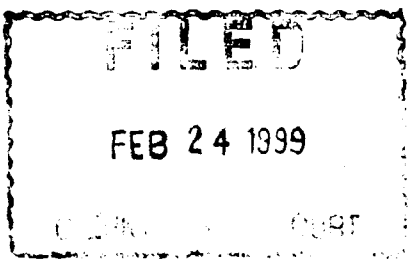
IN RE THE MARRIAGE OF JOHN CLIFFORD WAX AND PHYLLIS JEAN WAX

Upon the Petition of JOHN CLIFFORD WAX,

Petitioner-Appellee,

And Concerning PHYLLIS JEAN WAX,

Respondent-Appellant.



Appeal from the Iowa District Court for Woodbury County, Richard J. Vipond, Judge.

Respondent appeals challenging economic provisions of a dissolution decree.

AFFIRMED.

Michael W. Ellwanger of Rawlings, Nieland, Probasco, Killinger, Ellwanger Jacobs & Mohrhauser, L.L.P., Sioux City, for appellant.

Dean L. Meine and Kendra M. Zirbel Olson, Sioux City, for appellee.

Considered by Sackett, C.J., and Streit and Mahan, JJ.

SACKETT, C.J.

Respondent-appellant Phyllis Jean Wax appeals challenging the economic provisions of the decree dissolving her fourteen-year marriage to petitioner-appellee John Clifford Wax. We affirm.

This was a second marriage for both John and Phyllis. At the time of marriage, they each had separate assets. There was no prenuptial agreement, but throughout the marriage they each kept their assets separate and did not share financial information with each other. At the time of marriage, they were both employed. Phyllis worked for the City of Sergeant Bluff; John was with the Air National Guard. John had a net worth at the time of marriage of over $300,000. Phyllis owned her home. There was a mortgage on the home. Phyllis also had some personal property, a minimal amount in savings, and a retirement account.

During the marriage, John's income, including retirement income, exceeded Phyllis's. They each paid certain living expenses. Phyllis made the mortgage payments on her home, which included principal and interest. By the end of 1990, over half of each payment was applied to principal. By 1995, the mortgage on her home was paid in full.

John, sixty-five years of age at the time of dissolution, had retired from the Air National Guard in 1985. Phyllis, fifty-two, was yet employed by the City of Sergeant Bluffs.

The district court valued the parties' assets and then awarded John $430,027 and Phyllis $198,194, not including her IPERS account. Neither party was awarded alimony. Additionally, Phyllis retained survivor benefits under John's pension.

Phyllis was vested in IPERS. She had contributed $26,349, the death benefit equaled $49,329, and upon retirement at age sixty-five, if her employment continued, it was anticipated she would receive $1127 in monthly benefits. Phyllis has contributed to IPERS for approximately nineteen years, fourteen years of which were during the marriage. John received no part of Phyllis's IPERS.

John's pension had been accumulated almost entirely before his marriage to Phyllis. At the time of dissolution, he drew nearly $2200 monthly from two plans. The record does not reflect the value of Phyllis's survivor benefit.

The district court determined the allocation basically returned to each party property they had at the time of marriage or property they had inherited. Additionally, the district court determined Phyllis had paid more expenses for the home than John. The final distribution of assets included a provision that basically gave Phyllis an additional $20,000 to compensate her for these contributions.

Phyllis contends she should have been awarded more property. She contends she should have been awarded approximately an additional $56,000.

In assessing the economic provisions of a decree dissolving a marriage, we look to the economic provisions of the decree as a whole in assessing the equities. Iowa is an equitable distribution state, which means the partners in a marriage to be

dissolved are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Robison*, 542 N.W.2d 4, 5 (Iowa App. 1995); *In re Marriage of Havran*, 406 N.W.2d 450, 452 (Iowa App. 1987). An equitable division does not necessarily mean an equal division of each asset. *See In re Marriage of Peterson*, 491 N.W.2d 535, 537 (Iowa App. 1992). Rather, the issue is what is equitable under the circumstances. *In re Marriage of Webb*, 426 N.W.2d 402, 405 (Iowa 1988).

The distribution of the parties' property 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 Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983). Iowa Code section 598.21(1) provides in relevant part:

> The court shall divide all property, except inherited property or gifts received by one party, equitably between the parties after considering all of the following:
>
> (a) The length of the marriage.
>
> (b) The property brought to the marriage by each party.
>
> (c) The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services.
>
> (d) The age and physical and emotional health of the parties.
>
> (e) The contribution by one party to the education, training or increased earning power of the other.
>
> (f) The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.
>
> . . . .
>
> (i) Other economic circumstances of each party, including pension benefits, vested or unvested, and future interests.

> (j) The tax consequences of each party.
> (k) Any written agreement made by the parties concerning property distribution.
> . . . .

Iowa Code § 598.21(1).

With these principles in mind, we address Phyllis's concerns. Phyllis does not challenge that part of the property division setting aside to John property he brought into the marriage. She contends only that his property increased by $152,000 and she should have been awarded half of that amount. Phyllis's argument centers almost exclusively on her contention she paid more of the parties' living expenses during the marriage than did John.

Equitably allocating the assets in a dissolution does not necessitate a complete accounting of the income of each party during the marriage and the expenses he or she paid. *See In re Marriage of Driscoll*, 563 N.W.2d 640, 643 (Iowa App. 1997). Nor does it anticipate valuing other duties one or both spouses may perform. *See In re Marriage of Miller*, 552 N.W.2d 460, 464 (Iowa App. 1996).

It would not be equitable to allow a spouse to leave a marriage with all the assets and accumulations he or she entered the marriage with if the accumulations came at the disadvantage of the other spouse. Phyllis contends she should have a greater share because she paid more of the household bills. The record shows their contributions to household expenses were similar. The trial court gave Phyllis's expenditures adequate recognition when it awarded her an additional $20,000.

Furthermore, in addressing Phyllis's claim she was not equitably treated, we look at the allocation of pension benefits. Pension benefits should be considered in making an equitable division of property. *See In re Marriage of Whelchel*, 476 N.W.2d 104, 107 (Iowa App. 1991). Pension benefits are subject to equitable distribution. *See In re Marriage of Mott*, 444 N.W.2d 507, 510 (Iowa App. 1989). Pensions are subject to division in dissolution cases, just as any other property. *See In re Marriage of Howell*, 434 N.W.2d 629, 632 (Iowa 1989); *In re Marriage of Bevers*, 326 N.W.2d 896, 900 (Iowa 1982).

Phyllis takes her entire IPERS account, though nearly 75 percent of it was accumulated during the marriage. Additionally, she has survivor benefits in John's retirement accounts, nearly all of which were accumulated prior to the marriage.

Looking at the entire property division, including the allocation of pension funds, we find the district court made an equitable allocation.

We award no appellate attorney fees. Costs on appeal are taxed to Phyllis.

AFFIRMED.