FILED
JAN 24 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ROBERT W. JOHNSON AND ROBERTA J. JOHNSON

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Upon the Petition of	)	
ROBERT W. JOHNSON,	)	Filed January 24, 1984
Petitioner-Appellant,	)	
And Concerning	)	
ROBERTA J. JOHNSON,	)	3-441 83-825
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Linn County - August F. Honsell, Jr., Judge.

Petitioner appeals from the decree dissolving the parties' marriage asserting that the trial court's division of the parties' assets was inequitable. AFFIRMED AS MODIFIED.

James W. Affeldt of Eells, Blackstock, Affeldt & Harms, Cedar Rapids, Iowa, for petitioner-appellant.

Byron G. Riley and Gregory J. Seyfer of Bradley & Riley, Cedar Rapids, Iowa, for respondent-appellee.

Considered by Snell, P.J., and Hayden and Sackett, JJ.

Petitioner appeals from the decree dissolving the parties' marriage asserting that the trial court's division of the parties' assets was inequitable. We affirm as modified.

Petitioner, Robert W. Johnson, and respondent, Roberta J. Johnson, were married in 1954. At the time of trial Robert was fifty-two and Roberta was forty-nine years of age. The parties have two adult children. Robert is employed as a building official earning $29,172 per year. Roberta is employed as an accountant earning $21,710 per year. Both parties are in good health.

The trial court made an equal division of the parties' assets, but ordered Robert to pay substantially all of the parties' debts. This resulted in a net award of $8,765 to Robert and $48,224 to Roberta. Robert has appealed asserting that this division is inequitable.

Roberta claims that the parties reached an oral agreement concerning a property settlement in which Robert would receive all of the parties' real estate and would pay her $30,000 for her interest in the property. Roberta claims that she would not have joined in mortgaging the real property for extensive remodeling of the house and lake cabin absent this agreement. Consequently, she claims that this mortgage should not be considered a marital debt since she never received the payment due her under the agreement.

Our scope of review of this equitable proceeding is **de novo**. Iowa R. App. P. 4. While we are not bound by the findings of the trial court, we do give them weight, especially when the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7).

The factors to be considered in arriving at a property division are set forth in Iowa Code section 598.21(1). The facts and circumstances of each case determine whether a particular distribution is equitable. In re Marriage of Callenius, 309 N.W.2d 510, 514 (Iowa 1981). In this case the length of the marriage

and the age, health, and financial position of the parties call for an approximately equal division. Allocation of the marital debts is an integral part of the property division. In re Marriage of Johnson, 299 N.W.2d 446, 467 (Iowa 1980).

An equal property division can be made in this case by modifying the trial court's decree and awarding Robert the lake cabin. Robert is also ordered to be solely responsible for payment of the $2,500 debt for remodeling the cabin and for the real estate taxes on the cabin. With this modification Robert receives $73,628.17 in assets reduced by $45,124.75 of debts for a net award of $28,503.72. Roberta receives $28,486 in assets and is not responsible for any of the parties' debts. We feel that under the circumstances of this case this is a more equitable distribution than the one made by the trial court. It has the advantage of not only equalizing the division, but also giving the cabin to the party who has, in the past, made more use of it. See In re Marriage of Wallace, 315 N.W.2d 827, 832 (Iowa Ct. App. 1981). Roberta has indicated that she is not particularly interested in keeping the cabin or the residence.

Roberta claims that this division of property violates the terms of an oral agreement she made with Robert. Furthermore, she claims that it is unfair to include the mortgage on the residence as a marital debt since she would not have joined in the mortgage absent this agreement. Undoubtedly, a husband and wife can make a settlement agreement of their property rights which constitutes a contract conditioned upon approval of the court. Travelers Indemnity Co. v. Cormaney, 258 Iowa 237, 243-44, 138 N.W.2d 50, 54 (1965); In re Voss' Estate, 237 Iowa 1092, 1094-95, 24 N.W.2d 399, 400 (1946). Iowa Code section 598.21(1)(k), however, directs the court to consider "any written agreement made by the parties concerning property distribution." The alleged agreement between Robert and Roberta was never reduced to writing. Furthermore, although the court refers to the oral agreement in its findings of fact, there is no indication that the trial court approved the agreement. The distribution made by the trial court does

not follow the terms of the oral agreement. We find that the trial court properly included the mortgage executed by both parties during the marriage on the marital residence for remodeling of that residence as a liability of both parties.

Roberta has requested that we clarify the dissolution decree regarding ownership of the personal property in the lake cabin. This personal property is awarded to Robert.

Therefore, the trial court's decree dissolving the marriage is affirmed except as herein modified.

AFFIRMED AS MODIFIED.