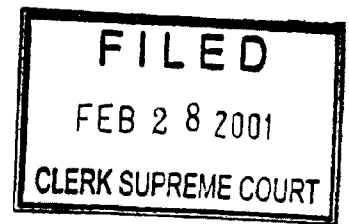


IN THE COURT OF APPEALS OF IOWA

No. 1-030 / 00-0616
Filed February 28, 2001



IN RE THE MARRIAGE OF AMY M. SCHROEDER-KLEIN AND STEVEN D. KLEIN

Upon the Petition of
AMY M. SCHROEDER-KLEIN,
Appellee,

And Concerning
STEVEN D. KLEIN,
Appellant.

Appeal from the Iowa District Court for Des Moines County, D.B.
Hendrickson (decree) and Cynthia H. Danielson (findings/conclusions), Judge.

The respondent appeals the property distribution provisions of the parties'
dissolution decree. **AFFIRMED.**

Michael J. Schilling of Cahill, Dieterich & Schilling Law Office, Burlington,
for appellant.

J. Bryan Schulte of Bauer, Schulte, Hahn, Swanson & Brown, Burlington,
for appellee.

Considered by Huitink, P.J., and Vogel and Mahan, JJ.

VOGEL, J.

Steven D. Klein appeals the property distribution provisions of the parties' dissolution decree. We find the trial court properly and equitably resolved the property dispute in this dissolution and we affirm.

Background facts. Amy M. Schroeder and Steven D. Klein were married on March 21, 1987. Steven was employed by a utility company during the marriage, while Amy completed two years of schooling and then obtained work as a dental hygienist. The parties have one child together, Kevin, born on October 16, 1996. The trial court entered a decree of dissolution on March 6, 2000. Each party was awarded net assets of approximately \$172,200. Steven now appeals, alleging the economic provisions ordered were inequitable.

Scope of review. The court's standard of review in dissolution of marriage proceedings is de novo. *In re Marriage of Wagner*, 604 N.W.2d 605, 608 (Iowa 2000). The court is obliged to examine the entire record and adjudicate rights anew on the issues properly presented. *Id.* The partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa Ct. App. 1991). Iowa courts do not require an equal division or percentage distribution. *Id.* The determining factor is what is fair and equitable in each circumstance. *Id.*

Inheritance. Steven alleges the trial court inequitably divided the assets by failing to set aside to him the entire amount of his inheritance, along with the growth accumulated from those funds. In November 1991, Steven inherited

\$2,000 from an aunt. From this money, he invested \$1,500 in General Motors (GM) stock, which he claims had appreciated to a value of \$8,717 at the time of trial. He also claims forty-seven shares of Raytheon stock, valued at \$1,236, are a product of a sale of some GM stock and, therefore, should also be set aside to him as part of his original inheritance. Amy asserts Steven failed to provide the appropriate documentation to allow the court to determine the growth of the funds throughout the marriage. The trial court agreed and limited Steven's inherited property from the GM account to \$1,500. In a 179(b) ruling, the court found Steven had failed to provide requested discovery to Amy regarding this disputed inheritance and investment. The court further found the evidence introduced at trial was insufficient to support his claim regarding the alleged appreciation of his original investment. We agree and affirm.

Gifts. Steven next contends he received several gifts during the marriage, which should have been set aside to him in the property division. A \$3,000 gift from his mother was used as a down payment on a new truck, which depreciated during the marriage and had a \$12,000 value at the time of the dissolution. Steven was awarded the truck in the dissolution. Another \$4,500 gift from Steven's mother was given to both parties. Steven and Amy used \$3,500 to make major improvements on their home, thus increasing its value. The remaining \$1,000 went to reducing Steven's credit card indebtedness.

The trial court found these gifts were either joint or had been validly consumed during the length of the marriage. The truck purchased new for \$21,000 had depreciated during the marriage to a value of \$12,000. Therefore,

the gift used for this purchase was no longer divisible, as it was lost in the depreciation of the asset. We agree with the trial court's analysis of the gifts received during the marriage and affirm.

Premarital property. Steven complains he did not get credit for any of his pre-marital injury worker's compensation award. The trial court identified \$3,054.02 but not the \$5,458.19 Steven claims to have received. The trial court stated, "While other deposits were made, they were not in amounts matching workers' compensation payments and the Court cannot conclude from the record before it that the source of those deposits was the workers' compensation award." Despite the trial court's identification of a portion of the award, it allowed Steven no credit for that amount, as it appeared that money was co-mingled and eventually invested in the marital home. Steven also owned a boat prior to the marriage and its sale proceeds of \$6,000 were used, in combination with part of the worker's compensation award, as a down payment on the family home. He complains this amount should also have been set-aside exclusively to him.

The Kleins enjoyed a thirteen-year marriage and the trial court found that both the worker's compensation and the boat proceeds were converted into marital funds during the course of the marriage. We have previously found it to be an impossible task to "delve into a complete accounting of the parties' income and expenses during the marriage." *In re Marriage of Driscoll*, 563 N.W.2d 640, 643 (Iowa Ct. App. 1997). Premarital assets, unlike gifted and inherited property, are subject to division. *In re Marriage of Garst*, 573 N.W.2d 604, 606 (Iowa Ct. App. 1997). A factor in dividing appreciated property acquired before the

marriage is whether the appreciation which occurred during the marriage was fortuitous or due to the efforts of the parties. *In re Marriage of Lattig*, 318 N.W.2d 811, 815 (Iowa Ct. App. 1982). An equitable property division of the appreciated value of the property should be a function of the tangible contributions of each party and not the mere existence of the marital relationship. *Id.*

Amy contributed heavily to the upkeep and improvement of the home, which protected and enhanced the investment of the funds in dispute, and Steven is sharing equally in the benefit of the appreciation of this property. Further, the trial court found "much of Steven's discretionary income was applied to his personal entertainment, whereas Amy's was applied to the appreciation of marital assets." The court then recognized Amy's contributions to the marriage as having a similar value to Steven's premarital contributions. Upon our review of the record, we agree with the inclusion of Steven's premarital property in the division of assets made by the trial court, finding Amy's contributions to the marriage of similar value to Steven's premarital contributions.

Attorneys fees. Amy asserts she was required to defend the trial court's decision on appeal and has requested attorney fees in the amount of \$3,616.25. Both parties were awarded substantial assets, yet there remains a disparity in their net monthly incomes. Considering the financial position of both parties and Amy's correct assertion that she was forced to defend the trial court's ruling, we grant Amy \$1,000 attorney's fees on appeal. Costs are assessed to Steven.

AFFIRMED.