IN THE COURT OF APPEALS OF IOWA

No. 2-303 / 91-1608

FILED
DEC 29 1992
CLERK SUPREME COURT

IN RE THE MARRIAGE OF ANN L. ROGERS AND KENNETH L. ROGERS

Upon the Petition of
ANN L. ROGERS,

Appellant/Cross-Appellee,

And Concerning
KENNETH L. ROGERS,

Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Peter Van Metre, Judge.

The wife appeals and the husband cross-appeals certain economic provisions of a dissolution decree. **AFFIRMED.**

John R. Walker, Jr., of Beecher, Rathert, Roberts, Field, Fister, Walker & Morris, Waterloo, for appellant.

Robert D. Fulton and C.A. Frerichs of Fulton, Frerichs, Martin & Andres, P.C., Waterloo, for appellee.

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

HAYDEN, J.

Kenneth and Ann Rogers were married on June 17, 1974. The parties have one child, Kelly, born January 1, 1977. Kelly elected to live with Kenneth when the parties separated. The parties have agreed to custody, placement, support, and visitation of Kelly.

The present marriage was a second marriage for both parties. Ann had physical care of twin sons from her first marriage. Kenneth helped support these children. Ann had a high school education when the parties married and was employed to run a grinder-bandsaw at the Dawson Foundry Company. She brought property worth about $6,500 to the marriage. At the time of the marriage Kenneth had a master's degree and was employed as an industrial arts teacher by the Waterloo Community School District. He brought substantial assets to the marriage, including a house and three rental properties.

Ann was forty-three years old at the time of trial. Ann quit working after the marriage and was absent from the work force for about five years. She then obtained a degree in nursing and is now a registered nurse (RN) employed by the Black Hawk County Health Department. She earned about $24,900 in 1990.

Kenneth was fifty-two years old at the time of the trial. He is still employed as an industrial arts teacher. Kenneth earned $38,237 in 1990. Kenneth inherited a farm and a cattle herd during the marriage.

Ann filed a petition for dissolution in November 1990. The district court entered a dissolution decree on August 20, 1991. The parties had agreed to joint legal custody of Kelly, with Kenneth having primary physical care. Ann was ordered to pay $258 per month in child support. No spousal support was awarded.

The primary issue before the court was the division of the parties' property. The court concluded Ann was not entitled to a portion of Kenneth's premarital and inherited property. Ann was awarded property valued at about $25,896. In addition, Kenneth was ordered to pay her a property settlement of $75,000, payable in five installments. Deducting the amount of the property settlement, Kenneth was awarded marital property valued at approximately $11,200 and his individual property valued at about $232,900. Ann appealed, and Kenneth cross-appealed.

Our review of this equity action is de novo. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992). We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. Id.

Ann asks to be awarded one-half of Kenneth's premarital and inherited property. Kenneth asks us to reduce the property settlement to $50,000. We address both of these issues together.

The partners in 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 App. 1991). The Iowa courts do not require an equal division or percentage distribution. Id. The determining factor is what is fair and equitable in each particular circumstance. Id.

Property which a party inherited or received as a gift prior to or during the marriage is the property of the party and is not subject to a property division except upon a finding refusal to divide the property would be inequitable. In re Marriage of Thomas, 319 N.W.2d 209, 210 (Iowa 1982).

In the present case we find the property division set forth by the district court is equitable. As the district court found, the title to the properties in question was solely in Kenneth's name. The income from these properties was not commingled with the general finances of the family. While Ann did provide bookkeeping services, this factor alone is not sufficient to require the division of Kenneth's premarital and inherited properties. Ann has not shown the property division is inequitable to her.

Furthermore, although Ann received a greater portion of the marital assets, we note no spousal support was awarded. Kenneth has a greater earning capacity than Ann and has spent a longer period of time contributing to his pension plan. We consider property division and alimony

together in evaluating their individual sufficiency. In re Marriage of Whelchel, 476 N.W.2d 104, 110 (Iowa App. 1991). Kenneth has not shown the property division is inequitable to him.

We affirm the district court. Costs of this appeal are assessed one-half to each party.

AFFIRMED.