IN THE COURT OF APPEALS OF IOWA

No. 2-085 / 91-851

IN RE THE MARRIAGE OF GERALDINE DESSIE ST. PETER AND CECIL ST. PETER

Upon the Petition of

GERALDINE DESSIE ST. PETER,

Appellee,

And Concerning

CECIL ST. PETER,

Appellant.

FILED
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Appeal from the Iowa District Court for Monroe County, James D. Jenkins, Judge.

The husband appeals from the terms of the property division in the parties' dissolution decree. **AFFIRMED.**

Burns H. Davison III of Adams, Howe & Zoss, P.C., Des Moines, for appellant.

John A. Pabst of Clements, Pabst, Hansen & Maughan, Albia, for appellee.

Heard by Oxberger, C.J., and Sackett and Habhab, JJ.

OXBERGER, C.J.

Geraldine and Cecil St. Peter were married on September 10, 1980. Geraldine was seventy-one years old and Cecil was seventy-four years old at the time of the marriage. Both Geraldine and Cecil had adult children from their prior marriages. The district court dissolved the marriage on May 7, 1991.

Geraldine is now eighty-two years of age and in poor health. She was unable to testify at trial. Her sole support is social security. Cecil is now eighty-four years of age and has Parkinson's disease. He receives income from social security and a farm in which he owns a life interest. His property and person are under the control of his daughter serving as a conservator/guardian. Cecil's attempt to testify at trial was unintelligible.

In 1988 Cecil's health began to deteriorate and Geraldine cared for him until 1989 when Cecil was placed in a nursing home. Cecil's children then removed him from Geraldine's Albia home to a son's home in northern Iowa. Geraldine continued to live in the Albia home.

The principal dispute in this appeal involves the division of property that occurred at the time of the parties' separation in 1989. Cecil's children believe Geraldine cheated their father out of his money. This dispute is between the parties' respective children, not the parties themselves who, due to their ages and

illnesses, were unable to express their desires or views at trial.

On appeal, Cecil contends that the district court's distribution of the parties' marital assets in accordance with the parties' division of property at the time of their separation in October 1989 was inequitable. Cecil contends that the parties abandoned the antenuptial agreement because of their extensive commingling of profits and proceeds from their premarital assets. He maintains he should receive some additional benefit from the marital estate because the proceeds from his premarital property, commingled during the marriage, were used to improve Geraldine's property for her individual benefit. He maintains that two-thirds of the revenues deposited into the parties' joint accounts during the marriage were generated from sources owned by him.

Cecil asks that the terms of the district court's property distribution be modified to make the division more equitable. He wants to be awarded an undivided interest in Geraldine's Albia home, the parties' car, and some of the household furnishings. He asks the court to direct Geraldine's Albia home be sold and the proceeds distributed in an equitable manner.

SCOPE OF REVIEW: We review this matter in equity, de novo. Iowa R. App. P. 4. 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 Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983).

DISTRIBUTION OF MARITAL ASSETS: We consider whether the trial court's distribution of Cecil and Geraldine's marital assets was inequitable. The parties entered into an antenuptial agreement to keep their financial interests separate during the marriage. The parties, however, commingled their funds during the entire marriage. The court noted that even though "[b]oth parties agreed to a antenuptial agreement before their marriage; both parties thereafter ignored most of its provisions." There does not appear to be any dispute on appeal that the antenuptial agreement is not enforceable.

The district court found the parties' division of property at the time of their separation in October 1989 was fair, equitable, and proper. The court declined to change the division of property that the "parties themselves thought reasonable and proper at the time of their separation almost eighteen months ago" in October 1989. We agree and affirm the trial court.

Geraldine owned a home in Albia and Cecil owned a home in Sioux City. After the marriage, Cecil sold his Sioux City home and moved into Geraldine's home in Albia. He placed the proceeds of the sale of his Sioux City home in the parties' joint checking account. When Cecil moved

into Geraldine's home, he closed all of his accounts in Sioux City and deposited the funds into the parties' joint account in Albia. During the five years immediately preceding the parties' separation, they handled their financial transactions, involving both marital property and property subject to the antenuptial contract, through a single joint account.

The trial court stated:

> ". . .Money, and property, commingled and mixed together, cannot be reconstituted separately. Any effort to do so would be inherently inequitable.

At the time of the parties' October 1989 separation, they divided their property as follows: they divided cash on hand equally; Geraldine kept her Albia home; Cecil kept his life interest in his family farm and all of his farm income; Geraldine and Cecil both kept their respective social security incomes. The parties' children moved some of Cecil's furniture and personal effects from the Albia home as directed by the parties. The record indicates that both Cecil and Geraldine were kind, loving, friendly people. Their marriage was a happy one. Both were described as intelligent, reasonable adults. Under the circumstances of this case, the trial court's decision was equitable. We decline to undo or change what Cecil and Geraldine themselves thought reasonable and proper at the time of their separation. We have considered all issues and affirm the trial court.

Each party will pay his or her own attorney's fees. Costs are taxed to the appellant.

AFFIRMED.