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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF JANICE L. LUUKKONEN AND JAMES R. LUUKKONEN

Upon the Petition of)
JANICE L. LUUKKONEN,)
Petitioner-Appellee,)
And Concerning)
JAMES R. LUUKKONEN,)
Respondent-Appellant.)

Filed March 31, 1987

6-478
86-233

Appeal from the Iowa District Court for Scott County (No. 35835) - James E. Kelley, Judge.

Respondent-husband appeals from the judgment and decree dissolving the parties' marriage, challenging the trial court's distribution of the marital assets. **AFFIRMED.**

Harold J. DeLange II of Wehr and DeLange, Davenport, for respondent-appellant.

Seymore M. Raben of Davenport for petitioner-appellee.

Considered by Oxberger, C.J., Donielson & Snell, JJ.

OXBERGER, C.J.

In this appeal, respondent James Luukkonen challenges the distribution of assets formulated by the trial court in its decree dissolving his six-year marriage to petitioner Janice Luukkonen. The record discloses that shortly after the parties were separated, their marital residence, which was also their principal asset, was completely destroyed by fire. The sole question before us is whether the trial court divided the insurance proceeds from the fire in an equitable manner. We determine that it did, and affirm.

Before addressing the aforesaid issue, we set forth the general principles governing the division of a marital couple's assets. The factors to be considered in ascertaining whether the trial court's division of property was appropriate are set froth in Iowa Code section 598.21(1). The critical inquiry is whether the division was equitable in the particular circumstances of the case. In re Marriage of Wallace, 315 N.W.2d 827, 830 (Iowa Ct. App. 1980). Our decisions do not mandate a precisely equal division of property; rather, the "division. . . is based on each marital partner's right to a just and equitable share of the property accumulated as a result of their joint efforts." In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981). In making this determination, we review the record de novo. Iowa R. App. P. 4.

The basic facts in the present case are undisputed. The record discloses that approximately three months before the fire, Janice, the parties only child, Brian, and Janice's son from a prior marriage, Chad, moved out of the marital home and into an apartment. Janice took with her about $780 worth of furniture and household goods. James remained in the family home.

After the fire, Janice and James received approximately $69,947 in insur-

ance.[1] Although the checks were written jointly to both parties, Janice endorsed them because James told her that he would deposit the money in an account and let the court disburse the funds; the record reveals, however, that James expended most of the money. The record discloses that $31,368 was spent to satisfy the outstanding mortgage on the home, $2,379.35 was utilized for debris removal, $500 was given to James for emergency living expenses, $2,000 was used to compensate James for additional expenses he incurred in removing the debris, James spent $18,061.69 to replace the household goods destroyed by the fire, and $250 was given to Janice.

At the time of the trial, only $8,103.81 of the insurance proceeds remained. In addition, the parties had $15,632.21 held in escrow which was received after the lot on which the house had been located was sold. The trial court awarded both of these sums exclusively to Janice. In addition, the court granted her exclusive rights to the $9,702.28 insurance claim for the replacement of the house.[2] The court also awarded Janice a remaining $5,436.67 insurance claim for the replacement value of the personal property, an automobile with a fair market value of $3,625, the household goods which she took with her at the time of the separation totalling $800, a $400 television set, and $582 held in a credit union account. The court added the $250 which Janice previously received from the insurance proceeds in subscribing a $44,556.45 total value to the assets she was awarded. In addition, the court required Janice to assume $6,880 in liabilities, leaving a net award of $37,756.45.

Relatedly, the court included in James' property award the $2,000 which he claims he spent in removing the debris, $4,500 in cash, the $18,061.69 of

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[1]In his calculations, James has erroneously failed to include the last insurance check received by the parties valued at $7,036.33.

[2]Pursuant to the policy, the parties were entitled to this sum if they purchased another home within a prescribed period of time.

the insurance proceeds which he spent to replace the household items destroyed by the fire, a 1985 Blazer valued at $12,800, a 1971 pick-up truck valued at $75, and $32 held in a credit union account. The court additionally determined that because James had exercised control over the insurance proceeds and $5,663.24 was unaccounted for, this amount should be included in his property award. The court required him to assume liabilities of $11,566.50, leaving him a net award of $31,565.53.

James' principal contention in attacking the decree is that the trial court erred by including in its division the $18,061.69 which he spent to replace the household items destroyed by the fire. In support of this assertion, James argues that he and Janice divided their personal property when they separated, and that Janice took the property that she wanted with her; James contends that the items remaining in the house were his and that he is thus exclusively entitled to the replacement value of these goods. He asserts that this amount should be subtracted from the value of his property award, and that after doing so, the property division is grossly uneven. We disagree.

In In re Marriage of Novak, 220 N.W.2d 592, 596 (Iowa 1974), the supreme court noted that insurance proceeds are merely a marital asset and are divided just as any other item of marital property. See also generally Bangs v. Bangs, 59 Md. App. 350, 475 A.2d 1214 (1984); Williams v. Williams, 424 So.2d 638 (Ala. Cir. App. 1982). Clearly, the trial court in the present case treated the proceeds accordingly. In essence, the court added all of the parties' assets, which consisted of the proceeds which had been distributed, the remaining insurance claims, the automobiles, and the personal property which Janice took with her when she separated from James. The court then divided these items, noting the amounts of the proceeds that James had used for himself, and including these sums in the amount of his property award. We find no error in this procedure.

James argues that this methodology cannot be utilized because if the $18,061.69 figure is included in his property award, the amount of his assets is inflated because this figure represents the replacement value rather than the fair market value of the goods. While we are mindful that the replacement value may necessarily exceed the fair market value of the destroyed items, we think that any alternative manner of treating the issue will necessarily be inequitable to Janice. Clearly, if we interpret James' argument to suggest that the $18,061.69 which he spent to replace his household items and the $780 fair market value of the goods Janice took with her should be excluded from the division and the remaining assets divided evenly, the result is illogical and inequitable. Initially, we think that it strains credulity to suggest that the $17,281.69 differential between these assets is simply due to the replacement price of James' property. Furthermore, we think that the fire completely altered the circumstances; even if James and Janice did divide their personal property before the separation, the fire intervened to change the terms of any separation agreement they may have had. In these circumstances, we think that the division of assets fashioned by the trial court represented the most equitable manner of treating the proceeds. The trial court sought to approximate an equitable distribution between the parties. This distribution would be seriously distorted by adhering to any pre-fire agreements.

We have reviewed the record in light of the considerations enumerated in Iowa Code section 598.21(1), and conclude that the trial court's property division was proper in all respects. Although Janice's award is slightly greater than James', we find no impropriety in this differential. The record discloses that Janice has been named physical custodian of the parties' minor child, and that because James is unemployed, he has been required to pay a very

small amount of child support. In these circumstances, we conclude that the property division formulated by the trial court is equitable and should be affirmed. See Iowa Code § 598.21(1)(f)(1985).

Finally, Janice has requested that James be required to pay the costs and attorney's fees which she has incurred in connection with this appeal. We have considered her request in light of the parties' relative obligations and resources and conclude that James should bear responsibility for Janice's costs and fees.

AFFIRMED.