FILED
SEP 25 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF DARLA M. MILLER AND DuWAYNE E. MILLER

106

Upon the Petition of	)	
DARLA M. MILLER,	)	Filed September 25, 1984
Petitioner-Appellee,	)	
And Concerning	)	
DuWAYNE E. MILLER,	)	4-286 83-1228
Respondent-Appellant.	)	

Appeal from the Iowa District Court of Black Hawk County, Dale S. Missildine, Judge.

Respondent appeals from the property division and child support provisions of the decree dissolving the parties' marriage. AFFIRMED.

Jay A. Nardini, of Ball, Kirk & Holm, Waterloo, for respondent-appellant.

Walter W. Rothschild, Waterloo, for petitioner-appellee.

Considered by Oxberger, C.J., Schlegel, and Sackett, JJ.

Respondent, DuWayne Miller, appeals from the property division and child support provisions of the decree dissolving the parties' marriage. On appeal, he asserts that (1) the increase in value of the house he brought to the marriage should have been awarded entirely to him; and (2) the amount of child support he was ordered to pay is inequitable.

We affirm.

Our review in this equitable proceeding is de novo. Iowa R. App. P. 4.

I. Property Settlement

Because of a pretrial agreement between the parties, the sole contested issue regarding property division was how to properly dispose of the homestead. DuWayne, at the time he married petitioner, Darla Miller, owned a house. The house was mortgaged, however, and DuWayne's equity in the property at the time of marriage—based on the purchase price—was $2,455. After DuWayne and Darla were married, they used the house as the family home. Approximately three years after the marriage, the parties sold that house and used the proceeds to purchase another home. The second home was subsequently sold and the proceeds used to buy a third home. During the marriage, both DuWayne and Darla were employed full time, except for short periods when Darla took time off to bear the parties' two children. The parties combined their incomes to make mortgage payments on the homes.

In dividing the proceeds from the third home, the trial court gave DuWayne credit for his equity interest in the house he owned at the time of the marriage, and for a $10,776 inheritance that he had received during the marriage and invested in the second home. In addition, the trial court credited DuWayne $5,208 for appreciation in the value of the first house that occurred before the marriage. These credits, totaling $18,419, were to be subtracted from the proceeds of the third house, with the remaining proceeds divided equally by the parties.

On appeal, DuWayne contends he should be awarded all of the appreciation in the value of the first house, not just the appreciation that occurred before he married Darla. He argues that the appreciation was due solely to inflation of market prices, that the efforts during the marriage of the parties did not contribute in any way to the appreciation. He goes on to argue that since Darla did not contribute to the appreciation, it is inequitable for her to receive any interest in it, especially when he owned the property before he married her. In support of his arguments, he cites In re Marriage of Lattig, 318 N.W.2d 811, 815 (Iowa Ct. App. 1982), which states:

> [I]n dividing appreciated property acquired before the marriage, we consider whether the appreciation which occurred during the marriage was fortuitous or due to the efforts of the parties. The underlying premise of our analysis is that 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.

While Marriage of Lattig is relevant to this case, we reject DuWayne's argument.

Our analysis begins with the applicable statute, section 598.21 of the Iowa Code (1983). See In Re Marriage of Castle, 312 N.W.2d 147, 149 (Iowa Ct. App. 1981). Subsection 598.21(1) states, "The court shall divide all property, except inherited property or gifts received by one party, equitably between the parties . . . ." (Emphasis added.) Although this subsection specifically excepts from division inheritances and gifts to one party, subsection (2) allows the court to divide such property where refusal to do so would be inequitable. Iowa Code §598.21(2) (1983). In determining what division is equitable, the court must consider the twelve specific factors listed in the statute, as well as any other relevant factors. The property brought to the marriage by each party—the main factor upon which DuWayne bases his appeal—is but one of the twelve specific factors listed in the statute.

After reviewing all the facts in this case and considering all the factors listed in section 598.21(1), we conclude that it is equitable to award Darla a 1/2

share in the appreciation of the first homestead that occurred after the marriage. Darla "contributed to the marriage not only as a wage earner, but also as a homemaker and mother." In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980). If "the court recognizes as substantial, the contribution of the wife as housemaker and mother," Marriage of Lattig, 318 N.W.2d at 815, a wife who in addition works full time must also be recognized as contributing substantially to the marriage. Such a contribution can justify an equal property division even when the husband earns more money. See Marriage of Schissel, 292 N.W.2d at 423.

DuWayne argues, however, that Darla's contribution to the marriage did not in any way cause the appreciation in the value of the house. He argues that the appreciation was fortuitous and thus should be awarded to him because he owned the house before the marriage. We agree the appreciation was fortuitous. But we do not agree that only DeWayne should benefit from the increase in the value of the most significant marital asset. His efforts were no more the cause of the appreciation than were the efforts of Darla. Moreover, he already has been credited for the value of the house at the time he was married. We therefore believe that any fortuitous increase in the value of the family home after the date of marriage should be considered marital property to be divided between the parties as equity demands, in this case evenly.

We find the trial court's property division equitable and affirm it.

II. Child Support Payments.

The parties were awarded joint custody of their two children. Darla is to have physical care of the children during the school year. DuWayne is to have physical care of them during the summer months. Each party must pay child support during the time the children are in the other party's physical care. DuWayne's payments were set at $60 a week per child. Darla's were set at $55 a week per child.

DuWayne appeals only the amounts awarded. He asks that his payments be reduced from $120 per week to $70 per week and that Darla's payments be reduced to $65 per week. In the alternative, DuWayne wants Darla's payments increased to be more nearly equal to the payments he must make. We affirm the trial court.

There is ample evidence in the record that Darla will need more than $70 per week to adquately support the two children at a standard of living similar to that which they enjoyed during the marriage. Darla's day care costs alone will be $75 a week. We therefore find no reason to change the amount of support DuWayne must pay.

We also decline to increase the amount of support Darla must pay. The evidence at trial indicated Darla's salary was 91% of DuWayne's salary. Her support payments are 91.66% of DuWayne's support payments. DuWayne argues that she should pay a greater percentage because on the day the trial began he started a new, lower paying job. DuWayne's brief, however, admits there is no basis "for determining exactly what DuWayne's weekly pay would be for his new job . . ." We therefore have no basis for increasing the support to be paid by Darla.

AFFIRMED.