FILED
OCT 18 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

68

IN RE THE MARRIAGE OF JOLETA RIPLEY AND ROBERT L. RIPLEY

Upon the Petition of)
JOLETA RIPLEY,) Filed October 18, 1979
Petitioner-Appellant,)
And Concerning)
ROBERT L. RIPLEY,) 179
Respondent-Appellee.) 2-61144

Appeal from Polk District Court - Thomas S. Bown, Judge.

Petitioner appeals economic provisions of dissolution decree, particularly division of appreciated value of property acquired by respondent prior to marriage. AFFIRMED.

Mike Christensen of Martyn & Christensen, West Des Moines, for petitioner-appellant.

Charles J. Cardamon, Des Moines, for respondent-appellee.

Submitted to Oxberger, C. J., Donielson, Snell, Carter and Johnson, JJ.

DONIELSON, J.

Petitioner, Joleta Ripley, appeals decree dissolving her marriage to respondent, Robert L. Ripley. Respondent cross-appeals the trial court's supplemental order of July 19, 1978. We affirm both judgments.

Our review is de novo. Iowa R. App. P. 4. We are bound to review the facts and law, determining anew from credible evidence all properly presented contentions of the parties. While we give weight to the trial court's findings of fact, especially when the credibility of witnesses is involved, we are not bound by them. In re Marriage of Novak, 220 N.W.2d 592, 597; Iowa R. App. P. 14(f)(7).

I.

The primary issue raised by Joleta is whether the appreciated value of property acquired prior to the marriage is a marital asset subject to division on dissolution of the marriage. Joleta claims the trial court did not properly divide the marital assets because she received only $3,000 of the alleged $296,000 appreciation in the value of Robert's ranch in Oklahoma that occurred during the five years of their marriage.[1] Robert had owned the ranch prior to the marriage. We hold such appreciation is subject to division between the parties, but only on clear and convincing proof that it is required to reach an equitable result. We believe this holding comports closely with relevant statutory and case law.

The starting point of our analysis of this question is section 598.21, The Code 1977, which provides that "[w]hen a dissolution of marriage is decreed, the court may make such order in relation to the children, property, parties, and the maintenance of the parties as shall be justified." Id. Justified property divisions are those that are equitable under the circumstances. In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975); Bowman v. Bowman, 259 Iowa 820, 822, 146 N.W.2d 333, 334 (1966). Precedents are of little aid in determining what is a fair division of assets between the parties to a dissolved marriage. In re Marriage of Kehrli, 241 N.W.2d 923, 926 (Iowa 1976). The

[1] The trial court's property division included a $20,000 cash award to Joleta. Assuming the trial court evenly split the couple's $34,000 equity interest in the West Des Moines property, which they had purchased during the marriage, $17,000 of the $20,000 cash award represented Joleta's share in the property's equity. The remaining $3,000, therefore, represents her share in the appreciation of the Oklahoma property.

Supreme Court of Iowa has, however, set forth in Schantz v. Schantz, 163 N.W.2d 398 (Iowa 1968), criteria to be used in arriving at an equitable property division:

A. Premarital Criteria

1. Social position and living standards of each party.
2. Their respective ages.
3. Their respective mental or physical condition.
4. What each sacrificed or contributed, financially or otherwise to the marriage.
5. The training, education and abilities of each party.

B. Postmarital Criteria

1. Duration of the marriage.
2. Number of children, their respective ages, physical or mental conditions, and relative parental as opposed to financial needs.
3. Net worth of property acquired, contributions of each party thereto by labor or otherwise, net worth and present income of each party.
4. Conduct of the spouses and particularly that of the guilty party. [Eliminated by In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972).]
5. Present physical and mental health of each party.
6. Earning capacity of each party.
7. Life expectancy of each party.
8. Any extraordinary sacrifice, devotion or care by either spouse in furtherance of a happy marriage or in preservation of the marital relationship.
9. Present standards of living and ability of one party to pay balanced against relative needs of the other.
10. Any other relevant factors which will aid in reaching a fair and equitable determination as to respective rights and obligations of the parties.

Id. at 405.

II.

While these factors provide the framework of our analysis, the unique characteristics of appreciated value as divisible marital property require us to further refine these criteria in their application to this question. Appreciation may either result from the efforts of the parties, general economic conditions, fortuitous events, or some combination of these causes. It may be a gradual accretion over a long span of time or multiply instantaneously. Moreover, there is the inherent risk the increased value may disappear completely, even in the most inflationary of times. Particularly concerning farmland, appreciated market value may exceed the cash flow generated by the property, possibly necessitating a sale of the property to comply with an ordered division.

We have found no Iowa case addressing precisely the issue of apportioning the appreciated value of property acquired prior to marriage. Thus, we set out at length our analysis. Following the general principles elucidated in Iowa cases and realizing that precedents are of little value, In re Marriage of Kehrli, 241 N.W.2d 923, 926 (Iowa 1976); In re Marriage of Beeh, 214 N.W.2d 170, 173 (Iowa 1974), we consider the following considerations along with the other Schantz criteria especially applicable to this issue:

1. The duration of the marriage.

2. The contribution, financial and otherwise, of each party that enhanced the value of the property.

3. The reduced standard of living resulting from the financial drain of maintaining or enhancing the value of the property.

4. The appreciation due to general economic conditions.

5. The fortuitous nature of a rapid appreciation occurring during the marriage.

6. The need to sell the property to comply with an ordered division. See In re Marriage of Andersen, 243 N.W.2d 562, 564 (Iowa 1976).

The underlying premise of our analysis is that an equitable property division of the appreciated value of property acquired prior to marriage should be a function of the tangible contributions of each party, and not the mere existence of the marital relationship. We find support for this proposition in the Schantz guidelines and the cases applying them. See In re Marriage of Anderson, 243 N.W.2d 562, 563-64 (Iowa 1976); Zinger v. Zinger, 243 N.W.2d 639, 640-42 (Iowa 1976); In re Marriage of Woodward, 229 N.W.2d 274, 278-79 (Iowa 1975); In re Marriage of Cooper, 225 N.W.2d 915, 920 (Iowa 1975); In re Marriage of Beeh, 214 N.W.2d 170, 175 (Iowa 1974); Knipfer v. Knipfer, 259 Iowa 347, 353, 144 N.W.2d 140, 143-44 (1966). A cogent example of such reasoning is found in In re Marriage of Ralston, 242 N.W.2d 269, 271 (Iowa 1976), which upheld an approximately equal property division as fair and reasonable. In that case, the parties were married 39 years and each made substantial contributions to the accumulation of property. Id.

Particularly noteworthy in the Ralston case was the reaffirmation of the view that the husband was not entitled to a greater share merely because he brought the bulk

of the income into the home, while the wife worked in the home and devoted her attention to homemaking and child-rearing. Id. This view had been expressed in an earlier case by the supreme court when it recognized the substantial contribution of the wife by noting that "[w]hile [the husband's] accomplishments may have been more financially productive, this does not mean [the wife's] efforts as wife and mother were less important." In re Marriage of Biggs, 225 N.W.2d 911, 913 (Iowa 1975).

Where, however, the accumulated property is not the product of the joint efforts of both spouses over a considerable period, financial or otherwise, or where one party brings the property into the marriage, there need not necessarily be a division. Arnold v. Arnold, 257 Iowa 429, 439-40, 133 N.W.2d 53, 60 (1965); Lane v. Lane, 253 Iowa 92, 96-97, 111 N.W.2d 286, 289 (1961). Cf. J.D.P. v. F.J.H., 399 A.2d 207, 211 (Del. 1979) (increase in retained corporate profits due to the economic conditions not divisible); Mol v. Mol, 147 N.J. Super. 5, 9, 370 A.2d 509, 510 (Super. Ct. App. Div. 1977) (wife not entitled to share in that portion of enhancement in value due solely to inflation or economic factors to which she did not contribute). But see In re Marriage of Moffatt, 279 N.W.2d 15, 20 (Iowa 1979) (inheritance may be subject to division); Locke v. Locke, 246 N.W.2d 246, 252 (Iowa 1976); In re Marriage of Beeh, 214 N.W.2d 170, 175 (Iowa 1974). This concept of compensation for contributions of the parties complies with the statutory and case law standard—equitable and justified. See In re Marriage of Moffatt, 279 N.W.2d 15, 20 (Iowa 1979) (parties' contributions is important but not sole consideration). The parties receive according to their efforts, no more and no less. We hold that appreciation must likewise be evaluated for division.

III.

While our view is grounded in the general equitable principles of Iowa law concerning property division, we also find support in the similar analysis found in section 307 of the Uniform Marriage and Divorce Act and statutes of some states. These statutory provisions generally provide that property acquired prior to the marriage is assigned to its original owner and property acquired during the marriage is divided in just proportions after considering all factors. This method of division is in essence an adoption of the partnership theory of marriage.

The Commissioners on Uniform Laws approved in August 1970 the original Uniform Marriage and Divorce Act that adopted the partnership concept. Handbook of National Conference of Commissioners on Uniform Laws 111-12 (1970). Viewing marriage as a partnership to which each spouse makes a different but equally important contribution, the Commissioners recommended the "distribution of property upon the termination of marriage should be treated, as nearly as possible, like the distribution of assets incident to the dissolution of a partnership." Id. at 173. The Commissioners recognized that "this proposal [for the division of property in the Uniform Act] was in substance . . . a community property rule." Family Law Reporter, Desk Guide to the Uniform Marriage and Divorce Act 57 (1974). The theory of community property is that "with respect to marital property acquisitions, the marriage is a community of which each spouse is a member, equally contributing, by his or her industry to its prosperity." W. DeFuniak & M. Vaughn, Principles of Community Property 2 (1971); see Krauskopf, A Theory for "Just" Division of Marital Property in Missouri, 41 Mo. L. Rev. 165, 167 (1976). Marital property is defined in the Uniform Act as "all property acquired by either spouse subsequent to marriage except . . . (5) The increase in value of property acquired prior to marriage." Handbook of National Conference of Commissioners on Uniform Laws 203 (1970).

The Act was opposed by the ABA Family Law Section on the basis that it would require the use of complex and unfamiliar community property principles to distinguish between marital and separate property. Podell, The Case for Revision of the Uniform and Divorce Act, 18 S.D.L. Rev. 601, 607 (1973). As a result, the Uniform Act was amended to offer alternative sections. Uniform Marriage and Divorce Act §307 (1973 version); see Family Law Reporter, Desk Guide to the Uniform Marriage and Divorce Act 57 (1974). Alternative A permits the division of all property on the consideration of various factors including the contributions of each party to the acquisition and appreciation of assets. Uniform Marriage and Divorce Act § 307 (1973 version). Alternative B retains the originally proposed community property rule. Id. It is significant to note for our purposes here that both alternatives rely on the notion of party contributions as the basis for property division, which we believe is essential to any equitable consideration.

A number of states have adopted property division sections modeled on the community property-based Alternative B of the Uniform Act. [2] While section 598.21 of the Iowa Code differs in its language from the Uniform Act and these other statutes, the interpretation and application of it as illustrated in the cases cited is moving toward this partnership theory of marriage.

IV.

We now move to a consideration of Joleta's appeal using the Schantz criteria and our refinements of them. Their marriage lasted five years. Robert bought the property in Oklahoma in 1964; nothing was spent during the marriage for mortgage payments on that property, nor was any money expended to improve the property during the marriage. Practically no time or effort was required of Robert to maintain the property during the marriage. Joleta did make some improvements to the ranch home in 1976, thereby enhancing its value, but only marginally when compared to the total appreciation. While Joleta's efforts may have helped to maintain the value of the ranch, there is no substantial evidence the appreciation in value of the ranch was due even in part to her efforts. Rather, a far more reasonable inference is the alleged $296,000 appreciation was due to the generally favorable economic conditions regarding land valuation. Further, Joleta's standard of living was not noticeably diminished by any financial commitments necessitated by maintenance of the Oklahoma land and she lived a comfortable life. Joletta has established no extraordinary sacrifice during the marriage on her part in personal or financial terms. It is also likely the property would have had to be sold if a more substantial division were ordered. Lastly, Joleta at the time of the marriage was 33 years of age and in sound health; Robert was 52 and complained of several physical ailments.

The trial court awarded Joleta property in Colorado and a house in Wichita; both belonged to her prior to the marriage. She was also awarded a 1975 Chevrolet Nova, a Honda motorcycle, household goods and furnishings she had at the time of this marriage and one-half of such items acquired during the marriage, a diamond ring, a tape

[2] Ariz. Rev. Stat. §25-318 (Supp. 1973); Colo. Rev. Stat. §46.1-13 (1972); Ky. Rev. Stat. §403.190 (Supp. 1974); Me. Rev. Stat. tit. 19, §722-A (Supp. 1975); Mo. Rev. Stat. §452.330.1 (Supp. 1973).

recorder, and a $20,000 property settlement. The trial court granted Bob the house in West Des Moines, a business office, the ranch in Oklahoma that he owned prior to the marriage, the remainder of the household goods and furnishings, a 1974 Plymouth, three motorcycles, business wares and equipment, and a savings account that resulted from the sale and exchange of some land he owned prior to the marriage.

After a careful evaluation of these considerations, the facts of the case, and the other elements of the decree's property division, we conclude the trial court's award was justified as correct and equitable. The portion of the appreciation awarded petitioner was a fair division of that asset; equitable does not mean equal. In re Marriage of Andersen, 243 N.W.2d 562, 564 (Iowa 1976).

V.

Joleta also challenges the validity of the dissolution decree because the trial court entered its decree after a hearing but prior to the expiration of the statutory 90-day waiting period prescribed by section 598.19, The Code 1979. Although both parties moved for a waiver of the waiting period, neither did so in writing as provided for in the statute. Joleta, however, did not object to the form of the motion at trial and we do not consider the issue on appeal. In re Marriage of Boyd, 200 N.W.2d 845, 850 (Iowa 1972).

Each party shall pay their own attorney fees. Costs on appeal are taxed to Joleta.

Robert cross-appeals the trial court's supplemental findings and order made on remand from the Supreme Court of Iowa. On review, we find the supplemental order was within the trial court's equity discretion and affirm it.

AFFIRMED.

Oxberger, C. J., dissents.

OXBERGER, C.J. (dissenting)

Joleta, in addition to improvements to the ranch home, made significant contributions to the marriage. Her endeavors around the ranch and the Des Moines home included painting, gardening, landscaping, canning food and raising the two children that lived with the couple. Additionally, she devoted substantial time to their partnership business. The contributions of the housewife expressly have been recognized and "our law does not contemplate a division of property on a price-per-hour basis, as though marriage is a business venture." In re Marriage of Briggs, 225 N.W.2d 911, 913 (Iowa 1975). It is inequitable to award her but $3,000 of $296,000 in appreciation. I would modify the decree to effectuate a fair and just property division.