

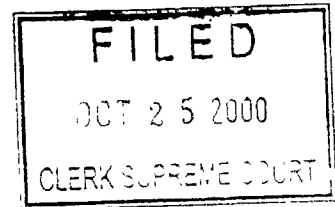
IN THE COURT OF APPEALS OF IOWA

No. 0-510 / 99-1939
Filed October 25, 2000

**IN RE THE MARRIAGE OF KATHLEEN LOUISE MULLEN
AND LARRY LEE MULLEN**

**Upon the Petition of
KATHLEEN LOUISE MULLEN,
Petitioner-Appellant,**

**And Concerning
LARRY LEE MULLEN,
Respondent-Appellee.**



Appeal from the Iowa District Court for Floyd County, Bryan H. McKinley,
Judge.

The petitioner appeals the property distribution provisions of the parties' dissolution decree. She contends the district court's property division was inequitable. Respondent seeks an award of appellate attorney fees.

AFFIRMED.

Russell, Schroeder, Jr., of Schroeder Law Office, Charles City, for
appellant.

Judith O'Donohoe of Elwood, O'Donohoe & Stochl, Charles City, for
appellee.

Considered by Vogel, P.J., and Miller and Hecht, JJ.

MILLER, J.

Petitioner Kathleen Louise Mullen appeals the trial court's division of the parties' property as contained in the decree dissolving her marriage to Respondent Larry Lee Mullen. She contends the court's valuation of the parties' real estate was in error, which caused the property division to be inequitable. Larry seeks appellate attorney fees. We affirm.

Background Facts

Larry and Kathleen Mullen were married on September 8, 1963 and separated approximately December 1, 1998. All of the parties' children are adults. Kathleen filed a petition for dissolution of marriage in January of 1999. At the time of the dissolution trial on August 25, 1999 Kathleen was fifty-five years of age and a high school graduate. She was working as a production laborer and lived in Rockford, Iowa. Larry was fifty-six years of age at the time of trial and was employed at Fox River Mills as a mechanic. He was residing in Charles City at the time of trial.

During the course of the parties' marriage they accumulated significant assets, including a boat, three vehicles, assorted personal property, savings accounts, IRA's, and mutual funds. In addition, the parties had two residences, their marital home and a rental property, both located in Rockford. The principal issue on appeal is whether the trial court's valuation of these two properties was correct.

At trial, Larry Stewart, a real estate broker, testified as an expert for Kathleen as to the value of these properties. He valued the marital home at \$43,000 and the rental property at \$21,000. Richard Pump, a real estate sales

agent, testified as an expert for Larry regarding the properties' values. He valued the home at between \$50,000 and \$52,000, and the rental property at \$27,500. The trial court valued the marital home at \$51,000 and the rental property at \$27,500. The court then reduced the value of both properties by seven percent for sales commissions and by the amount of one year's real estate taxes, resulting in a final valuation of the marital home at \$46,818 and the rental property at \$25,245.

The trial court awarded certain personal property and both of the homes to Kathleen resulting in a total overall award to her of \$100,164. Larry was awarded a total of \$60,824. The court ordered Kathleen to pay an equalization payment to Larry of \$20,170.

Kathleen filed a timely appeal on December 2, 1999 arguing that the district court erred in failing to adopt Mr. Stewart's property valuation and that the values placed upon the property by Mr. Pump were questionable and should have been given little weight by the court. She seeks to have the real estate valued in accordance with Larry Stewart's opinion. If that is done, she then wants a \$10,682 Edward Jones Mutual Fund awarded to her rather than Larry, and her payment to Larry reduced from \$20,170 to \$20,000.

Standard of Review

In this equity case our review is de novo. Iowa R. App. P. 4. We examine the entire record and adjudicate rights anew on the issues properly presented. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

Merits

Our analysis of the property division is governed by Iowa Code section 598.21(1) (1999). The ultimate question is whether the distribution of property is equitable under the specific facts of the particular case. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). The partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *Id.* However, Iowa courts do not require a mathematically equal division or percentage distribution. *In re Marriage of Richards*, 439 N.W.2d 876, 880 (Iowa App. 1989); *See also In re Marriage of Conley*, 284 N.W.2d 220, 223 (Iowa 1979). All economic aspects of the divorce decree must be viewed as an integrated whole when considering the equity of the distribution. *In re Marriage of McFarland*, 239 N.W.2d 175, 179 (Iowa 1976).

It is clear to the court that both of the experts who testified at the dissolution trial have substantial experience in real estate, each with over twenty years of experience in the field. While it is true that Mr. Stewart has more overall experience than Mr. Pump, Mr. Pump has conducted more actual sales in the real estate market in Rockford specifically, which is where the properties are located. In addition, Mr. Pump resides in Rockford whereas Mr. Stewart resides in Charles City. The fact that Mr. Pump both sells more homes, and lives, in the town where the properties in dispute are located gave the trial judge a sound and reasonable basis for finding that Mr. Pump has the better working knowledge as to the realty in Rockford. An examination of the record fails to disclose any reason for us to disagree with that finding. "Without question, the trier of fact is at

liberty to accept or reject any or all such opinion evidence.” *Schantz v. Schantz*, 163 N.W.2d 398, 404 (Iowa 1968).

We find the values placed on the real estate by the trial court to be well within the permissible range of evidence and will not disturb them on appeal. *In re Marriage of Roberts*, 545 N.W.2d 340, 344 (Iowa App. 1996); See also *In re Marriage of Bare*, 203 N.W.2d 551, 554 (Iowa 1973). We further find the treatment of the real estate by the trial court in the property distribution to be equitable and we decline to disturb it on appeal.

We have considered all of Kathleen’s arguments and find them to be without merit. Even if we were to accept Kathleen’s suggested valuations of real estate and personal property (she does suggest small increases totaling less than \$2000 in the values of certain personal property items awarded to Larry and a \$200 decrease in the value of an item awarded to her), the final distribution ordered by the trial court would nevertheless be equitable. We reiterate that the property distribution does not have to be exactly equal in order to be equitable. *Roberts*, 545 N.W.2d at 344. Given the circumstances and facts of the case at hand we find the trial court made an equitable distribution of the marital property as a whole.

Larry’s Request for Appellate Attorney Fees

Larry asks for attorney fees for this appeal. Appellate attorney fees are discretionary. *In re Marriage of Ask*, 551 N.W.2d 643, 646 (Iowa 1996). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court’s decision on appeal. *In re Marriage of Dieger*, 584 N.W.2d 567,

570 (Iowa App. 1998). We find Larry was obligated to defend the trial court's decision due to Kathleen's appeal and he has done so successfully. We award Larry \$1250 in appellate attorney fees.

AFFIRMED.