IN THE COURT OF APPEALS OF IOWA

No. 0-751 / 00-0529
Filed February 28, 2001

IN RE THE MARRIAGE OF LINDA M. BAKER AND CHARLES P. BAKER

FILED
FEB 2 8 2001
CLERK SUPREME COURT

Upon the Petition of
LINDA M. BAKER,
Petitioner-Appellee,

And Concerning

CHARLES P. BAKER,
Respondent-Appellant.

Appeal from the Iowa District for Marshall County, David R. Danilson, Judge.

Respondent-Appellant appeals the property division ordered by the district court. **AFFIRMED AS MODIFIED.**

Barry S. Kaplan of Fairall, Fairall, Kaplan, Hoglan, Condon & Frese, Marshalltown, for appellant.

James L. Goodman of Harrison, Brennecke, Moore, Smaha & McKibben, Marshalltown, for appellee.

Considered by R. Peterson, S.J. and Honsell, S.J. and C. Peterson, S.J.*

Senior judge assigned by order pursuant to Iowa Code Section 602.9206 (2001).

HONSELL, S.J.

Respondent-appellee Linda M. Baker appeals from the dissolution decree provision awarding Petitioner-appellee Charles P. Baker her retirement account in the amount of $13,078. We affirm as modified.

I. Background Facts and Proceedings.

The parties were married in February of 1970. They have two children, Kimberly, who is twenty-four years old, and Stephanie, who is eighteen and attending college. Linda filed for divorce on August 3, 1999. Child support and division of the marital assets were the issues at trial. The court determined that since Charles provided Stephanie with health insurance and money he did not have to pay a portion of the college expenses. Each party was awarded their personal property, automobiles, and pension plans. The court also ordered that Linda receive $2000 in marital assets for reimbursement of household living expenses accrued between August 1999 and January 2000. Charles had started his job as a long-haul truck driver in August. The court further ruled that Linda was entitled to reimbursement of $581 for family expenses incurred after Charles left the marital home.

Charles appeals contending he should have received an equitable distribution of Linda's pension plan which had a value of $13,078 at time of trial.

The parties each enjoy good health. Both parties are employed outside of the home and each earn between $25,000 and $30,000 per year, Charles as a long-haul truck driver and Linda as a bookkeeper. Their daughter, Stephanie, is

in her first year of college and has a scholarship that covers her tuition and books expenses.

During their marriage the parties acquired both real and personal property. Their real property was being sold at the time of trial. The trial court decreed that any sale proceeds remaining after payment of the enumerated matters be divided equally between the parties. The enumeration included the setoff of the following amounts to Linda: $2000 for a gift received during the marriage; $2000 for family expenses paid by her during the period of time after the dissolution petition was filed; and $581 for a portion of the family expenses incurred after the parties separated.

The court also divided the personal property equally between the parties, except for their respective retirement accounts. Linda was awarded her retirement account. Charles was awarded an annuity contract that was in his name and apparently was purchased with money provided by a former employer of Charles who provided him with $2000 for some type of retirement plan. Its cash value at time of trial was $5879.68. There was a loan balance of $2118.95 due at the time, leaving a cash surrender value of $3760.73. At least $1000 of the loan funds had been applied to Charles's oral surgery bill, which was incurred during the marriage. Charles was also awarded the specific items of personal property that he requested, i.e., a lawn mower, desk, tools, etc. The value of these specific items was not testified to by either party.

The parties were married for thirty years and raised two children to adulthood. They both contributed to the marriage. The trial court divided all of

the their marital assets and debts equally, except for the retirement funds. Linda was awarded reimbursement for a portion of family expenses incurred from the time Charles started his employment as an over-the-road truck driver.

I. Standard of Review.

Our scope of review in this equity action is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of fact, especially in matters of credibility, but are not bound by them. Iowa R. App. P. 14(f)(7). The appeal in an equity case is not a trial de novo, but is limited to de novo review of identified and preserved error. *Hyler v. Garner*, 548 N.W.2d 864, 870 (Iowa 1996).

II. The merits.

The partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). Iowa courts do not require an equal division or percentage distribution. *Id.* The determining factor is what is fair and equitable in each circumstance. *Id.* The distribution of the property should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1999). See *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983). Among the many factors to consider are the length of the marriage, property brought to the marriage by each party, the contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking, and the earning capacity of each party. Iowa Code § 598.21.

Pension benefits are treated as marital property in Iowa and are properly subject to equitable distribution. *In re Marriage of Mott*, 444 N.W.2d 507, 510-11 (Iowa App.1989).

In considering all of the circumstances alluded to above and reviewing the submitted record de novo; we find that Linda should pay Charles $4658.50 as a lump sum property settlement to provide for an equitable distribution of that portion of the marital property involving the retirement funds ($13,078, Linda's retirement fund which was awarded to her, + $3761, Charles' retirement fund awarded to him, = $16,839/2 = $8,419.5 – $3,761, Charles has already been awarded this amount = $4,658.50).

AFFIRMED AS MODIFIED.