



IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF GARY L. DICKERSON AND SHARRY K. DICKERSON

Upon the Petition of	)	105
GARY L. DICKERSON,	)	
Petitioner-Appellee,	)	Filed June 4, 1986
And Concerning	)	
SHARRY K. DICKERSON,	)	<u>6-126</u>
Respondent-Appellant.	)	85-1234

Appeal from the Iowa District Court for Story County (No. EQ 3979) -
Dale E. Ruigh, Judge.

Respondent wife appeals from the decree dissolving the parties' marriage.
AFFIRMED AS MODIFIED.

William R. Tysseling of Tysseling & White, Ames, for respondent-appellant.

John Friederich and Robert L. Huffer of Huffer & Friederich, Story City,
for petitioner-appellee.

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

DONIELSON, J.

Respondent wife appeals from the decree dissolving the parties' marriage. She asserts (1) that the property division is inequitable, and (2) that the trial court should have awarded her attorney fees and expenses. Respondent wife also requests attorney fees on appeal.

Petitioner Gary L. Dickerson and respondent Sharry K. Dickerson were married in 1973. The only property brought to the marriage was a house Sharry had purchased in 1971, which was approximately 18 months prior to the marriage. This became the parties' homestead. No children were born of the marriage. Both parties have been employed by the Iowa Department of Transportation since before the marriage; their net monthly incomes are each about \$1,080. Gary is now 43 years old; Sharry is 42.

In its dissolution decree, the trial court awarded Sharry a car and Gary a car, a motorcycle, and his photography equipment; it also awarded each party his or her personal effects, the household goods and other personal property in his or her possession, and the bank accounts in his or her name. The trial court awarded Sharry the parties' homestead and Gary a \$6,000 lien on it for his equity. The trial court directed Sharry to pay debts of \$6,483 and Gary to pay debts of \$13,500. Each party was to pay his or her own attorney fees, and Gary was to pay court costs. Sharry has appealed from the dissolution decree.

I.

Before addressing Sharry's contentions regarding the property division, we shall briefly review the salient features of division of marital property in Iowa. Iowa Code section 598.21(1) (1985) does not statutorily sanction a percentage division of property. In re Marriage of Bornstein, 359 N.W.2d 500, 503 (Iowa Ct. App. 1984). Rather, the ultimate issue is whether the distribution

is equitable under the circumstances. In re Marriage of Callenius, 309 N.W.2d 510, 514 (Iowa 1981).

The trial court valued the parties' home at \$30,000, which we will not disturb on appeal because testimony indicated the house was worth between \$40,000 to \$28,233. The encumbrances entered into by the parties during their marriage consisting of a refinancing in 1977 of \$19,000 when the parties valued the home at \$23,000. With these refinancing funds, the parties used \$11,783 to retire the initial mortgage and \$3,000 to pay a second mortgage. Presently, encumbrances on this property total \$17,290. Thus, the equity in the home was \$12,710. The trial court found that Sharry purchased the home for \$12,750 and her equity was \$250 at the time of the parties' marriage.

We find that the trial court's placing of a \$6,000 lien on the property represents an equitable portion of Gary's interest in the home given that Gary assumed almost \$7,000 more of the debt load than Sharry. Due to our concern that Sharry not be required to sell her home, we modify the award so that Gary's \$6,000 lien is removed and that Sharry be responsible to pay \$6,000 on the debt owed to the Iowa Department of Transportation Credit Union which was originally assigned to Gary.

We find no merit in any of the other property division issues Sharry raises.

II.

Sharry seeks trial and appellate attorney fees totalling \$3,783. The primary consideration in awarding attorney fees in a dissolution proceeding is the resources of the parties. In re Marriage of Lattig, 318 N.W.2d 811, 817 (Iowa Ct. App. 1982). The court considers the resources of the party requesting such fees, the ability of the other party to pay, and whether the requesting party was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981).

Given the outcome of this appeal taken by Sharry, the parties' assets, and their equal earning capacity, we do not award any attorney fees to Sharry.

AFFIRMED AS MODIFIED.