IN THE COURT OF APPEALS OF IOWA

FILED
MAR 2 9 2000
CLERK SUPREME COURT

No. 1999-439 (9-696) / 98-1289
Filed March 29, 2000

IN RE THE MARRIAGE OF JOHN ARCHER and PAMELA ARCHER,

Upon the Petition of
JOHN ARCHER,

Petitioner-Appellee,

And Concerning,
PAMELA ARCHER,

Respondent-Appellant.

Appeal from the Iowa District Court for Des Moines County, D.B. Hendrickson, Judge.

Respondent appeals from the decree dissolving the parties' marriage. **AFFIRMED.**

John E. Wunder, Muscatine, for appellant.

Mitchell L. Taylor of Cray, Goddard, Miller & Taylor, L.L.P., Burlington, for appellee.

Considered by Huitink, P.J., and Streit and Miller, JJ.

STREIT, J.

Pamela Archer appeals the district court's decree dissolving her marriage to her husband, John Archer. She alleges the premarital agreement which governed the distribution of the parties' assets in the event of dissolution should be revoked due to fraud and that the trial court erred in equitably dividing the property and failing to award alimony. Upon reviewing the evidence de novo, we find the premarital agreement was contractually sound and find the court's decree both fair and equitable. The district court is affirmed.

I. Background Facts & Proceedings.

John and Pamela Archer married in early November of 1993. A month earlier, the couple signed a prenuptial agreement that purported to determine the interest each spouse would have in the assets of the other. The initial drafts of the proposed prenuptial agreement were prepared by John's attorney. Pamela reviewed and modified those drafts with assistance from her attorney. The parties attached a list of assets to the final draft of the agreement. Pamela alleges she agreed to sign the agreement after John orally promised to give her his home at the time of his death. The agreement, however, provided Pamela would only receive the home in the event the parties were still married at the time of his death. Pamela recognized she agreed to this provision, but stated she thought John would honor his promise.

At the time of the marriage, John was a spry seventy years old, and Pamela was thirty-seven. John brought considerable wealth to the marriage from the car dealership he owned, whereas Pamela had relatively little, as she was a

factory worker. Soon after the marriage, Pamela claimed she was incapable of working due to a series of injuries resulting from both car and work-related accidents. Despite her claim, the Social Security Administration denied her disability benefits. John retired and began receiving social security.

In midsummer 1997 John filed for dissolution. Pamela left the Archer home pursuant to a temporary protective order. John sought such relief after alleging Pamela made a series of threats against him. At trial Pamela claimed she was fraudulently induced to sign the premarital agreement and wanted it set aside. The court found the agreement binding as Pamela voluntarily entered into the agreement and the agreement itself contained no unconscionable terms. The court did not order any alimony citing the length of the marriage and the parties' ages, health, and earning capacities. Pamela appeals, claiming the trial court erred in not setting aside the premarital agreement, in permitting the agreement to control the disposition of assets and liabilities, and in failing to order alimony.

II. Standard of Review.

In an equity action our review is de novo. *In re Marriage of Brauer*, 511 N.W.2d 645, 646 (Iowa App. 1993). We have a duty to examine the entire record and adjudicate anew the issues properly presented. *Id.* We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. *Id.*

III. The Prenuptial Agreement.

Pamela first claims the trial court erred in not revoking the prenuptial agreement. She claims the agreement was procured through fraud and misrepresentation.

Parties wishing to marry may contractually agree before the nuptials as to the disposition of property in the event of separation or death. Iowa Code § 596.5(1)(c) (1997). Such agreements are held to the same legal standards as ordinary contracts. *In re Marriage of Gonzalez*, 561 N.W.2d 94, 96 (Iowa App. 1997). A party may unilaterally seek revocation of a premarital agreement if it was entered into involuntarily. Iowa Code § 596.7(2)(a). Evidence of involuntariness includes the traditional contractual defenses of fraud, duress, and undue influence. *In re Marriage of Gonzalez*, 561 N.W.2d at 97.

The trial court properly determined Pamela entered into the agreement free of any fraudulent entanglement. The record is satiated with evidence Pamela recognized not only the terms of the agreement but their ramifications as well. Pamela consulted with independent counsel on early drafts of the agreement. Pamela acknowledged her counsel explained the rights she was giving up and the consequences embroiled in such an agreement. Despite her claim John promised her the home if she signed the agreement, Pamela read the agreement prior to its signing and understood the agreement contained a provision that granted her the home only if she remained married to him at the time of his death. Finally, there was no undue pressure placed on her to sign the agreement. The agreement was not signed as the couple prepared to stride

down the aisle but a month prior to the marriage. The antenuptial agreement was entered into under procedurally fair circumstances and is contractually binding.

IV. Property Division.

Pamela has alternatively argued, if the agreement is deemed proper, the trial court erred in ruling the agreement governed the distribution of the parties' assets and liabilities.

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). A fastidious adherence to equal property division does not bind the courts of this state. *In re Marriage of Webb*, 426 N.W.2d 402, 405 (Iowa 1988). The proper goal of the courts is to "achieve an equitable and just award under the circumstances." *Id.* In discerning a just and equitable distribution, a court should evaluate and consider the factors enumerated in Iowa Code section 598.21(1) (1997).[1] *In re Marriage of Mott*, 444 N.W.2d 507, 511 (Iowa App. 1989).

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[1] Iowa Code section 598.21(1) (1997) states in part:

> The court shall divide all property . . . equitably between the parties after considering all of the following:
>
> *a.* The length of the marriage.
>
> *b.* The property brought to the marriage by each party.
>
> . . .
>
> *d.* The ages and physical and emotional health of the parties.
>
> *f.* The earning capacity of each party, including educational background, training, employment skills, [and] work experience.
>
> . . .
>
> *l.* The provisions of an antenuptial agreement.

The trial court's division of property was equitable under the circumstances. The marriage was relatively short, and the age and health of John prevented him from actively pursuing a livelihood. He lived on a fixed income and interest and dividends on the stock he owned in the car dealership. John would likely incur significant medical costs associated with his health. Pamela had health problems as well but was relatively young and could acquire the skills to make her employable.[2] Additionally, the premarital agreement clearly provided for the distribution of property in the event of dissolution. As we have previously found the agreement was both fair and voluntarily entered into, we see no reason to disregard the contractual intent of the parties manifested at the time of the agreement's signing. The trial court properly distributed the parties' assets and liabilities.

V. Alimony.

Pamela's final claim of error is the trial court erred in failing to award her alimony.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Kurtt,* 561 N.W.2d 385, 387 (Iowa App. 1997). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3). *In re Marriage of Sychra,* 552 N.W.2d 907, 908 (Iowa App. 1996). We consider the length of the marriage, the age and health of the parties, the parties' earning capacities, the

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[2] Pamela claims she is unable to work, but the trial court in weighing her credibility concluded she was capable of employment. The court's conclusion is corroborated by the Social Security Administration's denial of her request for disability benefits.

levels of education, and the likelihood the party seeking alimony will be self-supporting at a standard of living comparable to the one enjoyed during the marriage. *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa App. 1998).

The trial court's decision refusing to grant alimony was proper. Jack was seventy-five years old at the time of the dissolution, was suffering from throat cancer, and his earning capacity was limited to social security benefits and dividends from stock. Pamela too suffered from health problems and had limited education, but she was only forty-four and was still capable of providing for herself. When the short duration of the marriage is factored into the above set of circumstances, we too find alimony inappropriate. The trial court is affirmed.

AFFIRMED.