IN THE COURT OF APPEALS OF IOWA

No. 2-992 / 11-1839
Filed February 13, 2013

IN RE THE MARRIAGE OF SUE LYNN KLINGAMAN AND KENNETH IRVIN KLINGAMAN

Upon the Petition of

SUE LYNN KLINGAMAN,
Petitioner-Appellee,

And Concerning

KENNETH IRVIN KLINGAMAN,
Respondent-Appellant.

Appeal from the Iowa District Court for Madison County, Randy Hefner, Judge.

A husband appeals the property division in the parties' dissolution decree.

AFFIRMED.

G. Stephen Walters of Jordan, Oliver, Walters & Smith, P.C., Winterset, for appellant.

Carmen E. Eichmann, Des Moines, for appellee.

Considered by Potterfield, P.J., and Danilson and Tabor, JJ.

DANILSON, J.

Kenneth and Sue Klingaman were married on July 17, 1998. Sue filed a petition for dissolution of marriage on December 28, 2010. The dissolution hearing was held in September 2011. Kenneth appeals the property division in the dissolution decree, claiming the property division was inequitable and the court should have set aside to him gifted and inherited property. We affirm the decision of the district court.

I. Background Facts & Proceedings

At the time of the dissolution hearing Sue was fifty years old. She began employment at Bridgestone/Firestone in 1995, and earns about $32,881 per year working in supplies. Sue has helped Kenneth in his farming operation by physical labor, by assistance in obtaining financing, and by helping to pay down debt on the farm. Sue has two children from a previous marriage. She brought little property to the marriage other than a 1995 Ford F-150 pickup.

At the time of the trial Kenneth was forty-eight years old. He has been employed at Bridgestone/Firestone since 1995, where earns about $34,380 per year as a mechanic. Kenneth also conducts a farming operation which did not show a profit during the parties' marriage. In addition, he is a co-owner of Discount Diggers, a trenching business, and NMT, LLC, a company that purchases farm real estate. At the time of the marriage Kenneth had more property than Sue, but also more debt.

Kenneth's parents owned farmland in Madison County. Kenneth's father died on August 15, 1991, and a substantial portion of his estate was conveyed

into a trust. The trust set up a life estate for Kenneth's mother, with the remainder to go to Kenneth and his sister, Mary, at her death. Kenneth purchased 360 acres of farmland from his mother for $207,000 in November 1991 through a real estate contract. Kenneth's mother conveyed her interest in the real estate contract to the trust. Kenneth's mother died on March 5, 1997. Her will bequeathed her estate to Kenneth and Mary equally. Also, at her death the assets from Kenneth's father's trust were to be distributed to Kenneth and Mary.

On September 8, 1998, which was after Kenneth and Sue were married, Kenneth and Mary entered into a family settlement agreement. Under the agreement Kenneth received the farmland which is at issue in this case. In addition, he was required to pay Mary $126,723.51. Kenneth and Sue obtained a loan of $218,000, which was used to pay Mary and other debt on the farm. The district court determined that at the time of the marriage Kenneth had assets of $455,720, less debt of $218,000, giving him net assets of $237,720. The district court found that of the property received by Kenneth, fifty-two percent represented inherited or gifted property, and forty-eight percent was funded by the loan.

During the marriage the parties placed their wages in a joint checking account. Each month $500 from the checking account was transferred to a savings account. They also kept a farm account, and during the marriage transfers were made between the three accounts. As noted above, the farm was never profitable, and the district court found, "[a] substantial portion of debt

service for the farming operation was paid from the parties' wages earned at Firestone." Sue's income, as well as that of Kenneth, was used to subsidize the farming operation and to pay down the parties' debt for the purchase of Mary's interest in the property obtained in the family settlement agreement.

The district court issued a dissolution decree for the parties on October 17, 2011. The district court determined the property acquired in the 1998 family settlement agreement was funded in part by a loan for which both Kenneth and Sue were liable. Regarding this property the court found:

> The Court thus concludes that 50% of the current value of the real estate should be set aside to Kenneth as inherited property. The remaining 50% is marital property and will be divided accordingly based upon its current value. This percentage of division is justified both by the details of the 1998 family settlement agreement and the values of the various items of property distributed or exchanged, and the broader recognition that Kenneth was purchasing his sister's interest in one-half of the real estate which he now owns.

Thus, the court set aside to Kenneth one-half of the value of the property received in the family settlement agreement, and this one-half was considered non-marital property. The court determined the other one-half of the value of the property received from the family settlement agreement was marital property. The court also determined the remaining debt from the loan entered into at the time of the family settlement agreement, about $262,000, was a marital debt.

The district court awarded Kenneth the farmland, farm equipment, and his interest in the two other companies in the division of marital assets. Sue was awarded her 401(k), vehicle, and personal property. In order to equally divide the parties' marital assets the court ordered Kenneth to pay Sue $448,107. No

spousal support was awarded and each party was made responsible for his or her own attorney fees. Kenneth appeals the property division in the dissolution decree.

II. Standard of Review

Our review in dissolution cases is de novo. Iowa R. App. P. 6.907; *In re Marriage of Fennelly*, 737 N.W.2d 97, 100 (Iowa 2007). We examine the entire record and determine anew the issues properly presented. *In re Marriage of Rhinehart*, 704 N.W.2d 677, 680 (Iowa 2005). We give weight to the factual findings of the district court, but are not bound by them. *In re Marriage of Geil*, 509 N.W.2d 738, 741 (Iowa 1993).

III. Property Division

Under our statutory distribution scheme, the first task in dividing property is to determine the property subject to division and the proper valuations to be assigned to the property. *Fennelly*, 737 N.W.2d at 102; *In re Marriage of Vieth*, 591 N.W.2d 639, 640 (Iowa Ct. App. 1999). The second task is division of that property in an equitable manner according to the enumerated factors in Iowa Code section 598.21(5) (2009). *See Fennelly*, 737 N.W.2d at 102. "'Although an equal division is not required, it is generally recognized that equality is often most equitable.'" *Id.* (quoting *Rhinehart*, 704 N.W.2d at 683). Ultimately, what constitutes an equitable distribution depends upon the circumstances of each case. *In re Marriage of Hansen*, 733 N.W.2d 683, 702 (Iowa 2007); *In re Marriage of Anliker*, 694 N.W.2d 535, 542 (Iowa 2005).

In considering the equity of the district court's property distribution, we note that section 598.21(5) requires the court to divide "all property, except inherited property or gifts received by one party" equitably between the parties. "This broad declaration means the property included in the divisible estate includes not only property acquired during the marriage by one or both of the parties, but property owned prior to the marriage by a party." *In re Marriage of Schriner*, 695 N.W.2d 493, 496 (Iowa 2005) (citing *In re Marriage of Brainard*, 523 N.W.2d 611, 616 (Iowa Ct. App. 1994)).

Premarital property is not set aside like gifted and inherited property. *Fennelly*, 737 N.W.2d at 102; *In re Marriage of Miller*, 552 N.W.2d 460, 465 (Iowa Ct. App. 1996). The district court should not separate a premarital asset from the divisible estate and automatically award it to the spouse who owned it prior to the marriage. *Fennelly*, 737 N.W.2d at 102; *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). Rather, property brought into the marriage by a party is merely a factor among many to be considered under section 598.21(5). *Schriner*, 695 N.W.2d at 496. "This factor may justify full credit, but does not require it." *Miller*, 552 N.W.2d at 465. Other factors under section 598.21(5) include the length of the marriage, contributions of each party to the marriage, the age and health of the parties, each party's earning capacity, and any other factor the court may determine to be relevant to any given case. *See Fennelly*, 737 N.W.2d at 102.

In contrast, gifted and inherited property is considered non-marital property. Section 598.21(6), however, contains a qualification to the gift and

inheritance set-aside rule: "Property inherited by either party or gifts received by either party prior to or during the course of the marriage . . . is not subject to a property division . . . except upon a finding that refusal to divide the property is inequitable to the other party." Our supreme court has identified a number of factors for courts to consider in determining whether gifted or inherited property should be divided:

> (1) contributions of the parties toward the property, its care, preservation or improvement;
> (2) the existence of any independent close relationship between the donor or testator and the spouse of the one to whom the property was given or devised;
> (3) separate contributions by the parties to their economic welfare to whatever extent those contributions preserve the property for either of them;
> (4) any special needs of either party;
> (5) any other matter which would render it plainly unfair to a spouse or child to have the property set aside for the exclusive enjoyment of the donee or devisee.

In re Marriage of Goodwin, 606 N.W.2d 315, 319 (Iowa 2000) (quoting *In re Marriage of Muelhaupt*, 439 N.W.2d 656, 659 (Iowa 1989)).

Further, in *Goodwin*, 606 N.W.2d at 319-20, our supreme court concluded that factors to consider in determining whether gifted or inherited property should be subject to division included: the length of the marriage, the parties' contributions to the improvement of the property, whether the property served as the family home and provided a source of the family's livelihood, and whether the parties were able to support themselves after dissolution. Our supreme court has stated, "[We do not] find it appropriate when dividing property to emphasize how each asset appreciated—fortuitously versus laboriously—when the parties have been married for nearly fifteen years." *Fennelly*, 737 N.W.2d at 104.

We observe that the district court awarded all farm assets including farmland to Kenneth and thus, he received all of his inherited property and premarital property. The parties' dispute centers around the amount of the equalization payment to Sue. Kenneth contends the district court should not have found that part of the property he received in the family settlement agreement was through the purchase of that property. He claims all of the property he received in the family settlement agreement was inherited property. Kenneth cites Iowa Code section 598.21(6), which provides:

> Property inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage.

Kenneth claims that if properly considered as an inheritance, Sue has not proven that it would be equitable to divide the property as a marital asset. "Iowa has a unique hybrid system that permits the court to divide inherited and gifted property if equity demands in light of the circumstances of a spouse or the children." *Schriner*, 695 N.W.2d at 496.

We must first determine whether the property specified in the family settlement agreement was received by Kenneth through inheritance, or whether it was purchased during the marriage by funds provided by both Kenneth and Sue. In considering the family settlement agreement, we determine it was a mixture of both. Kenneth received one parcel that was 120 acres ($57,000), another that was 134 acres ($95,550), a pickup ($1000), and a backhoe ($2000). His debt to the trust for the 360 acres he had previously purchased and other

debts were considered to be an asset received by him ($486,639.64). We conclude that to the extent he agreed to pay Mary $126,723.51, this was a purchase by him of her interest in the assets he received. Sue subsidized this purchase by signing the loan documents and becoming liable for the debt of $218,000.[1]

The district court recognized that the parties purchased some of the property from Kenneth's sister, Mary in stating:

> Equally undisputed is the fact that in September of 1998, after the parties were married, Kenneth purchased his sister's interest in a substantial portion of the assets which the parties now own. This purchase was funded by a loan for which both Kenneth and Sue were liable, and that debt, through several refinancings, remained joint debt. To the extent payments have been made upon that debt, it has been made in whole or substantial part by joint funds. On one occasion, the parties borrowed money from Sue's 401(k) plan to make a farm payment. That debt still has not been completely paid. It would be inequitable to deprive Sue of the benefits of her years of work and sacrifice resulting in the enhanced value of this portion of the real estate.

We agree with the district court's conclusion that the property obtained in the family settlement agreement was partially property inherited by Kenneth and partially property purchased by the parties during the marriage. The land was all inherited only in the sense that the title to all of the lands derived from Kenneth's parents or their estates or trust. Some of the land came with a price tag, namely the loan necessary to complete the transaction pursuant to the family settlement agreement. The court recognized Kenneth's inheritance by setting aside to him one-half of the value of the property obtained in the family settlement agreement.

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[1] The loan of $218,000 was comprised of the sum owed to Mary and other miscellaneous debts owed by Kenneth.

See Rhinehart, 704 N.W.2d at 682 (noting that generally, property inherited by one party during a marriage is not subject to division in a dissolution decree, but is set aside to that party, unless this would be inequitable).

Our comparison of the district court's distribution using a different analysis has provided similar results. In light of Sue's contributions, needs, and the length of this marriage, the district court could have concluded Sue was entitled to a nearly equal division of (1) all marital property, (2) the appreciation arising during the marriage to all premarital property, and (3) the appreciation arising during the marriage to all inherited and gifted property. In *Fennelly*, 737 N.W.2d at 102, the supreme court determined that the parties' premarital assets as well as the appreciation of such assets were subject to equal division upon dissolution of a nearly fifteen-year marriage, irrespective of parties' relative financial contributions to the marital standard of living, where "the parties' respective contributions to the marriage" did not justify "treating the parties differently."

We agree with Kenneth that Sue had no special relationship with his parents. We also agree that Sue has a good job and has no special needs. The parties have not been married "nearly fifteen years" as in *Fennelly*, but they were married for thirteen years, not a significantly different period of time. Moreover, although Ken did the vast majority of the farm work, both parties contributed to the marriage. Sue handled the family finances; paid the household bills; contributed her paycheck to the joint checking account; did household chores such as laundry, dishes, and fixed meals; mowed the lawn; and helped with landscaping and enlarging their deck. Occasionally, Sue would also help with

the livestock or farming but she acknowledges that she did not contribute significantly to these duties.

As observed by our supreme court:

> [M]arriage does not come with a ledger. Spouses agree to accept one another "for better or worse." Each person's total contributions to the marriage cannot be reduced to a dollar amount. Many contributions are incapable of calculation, such as love, support, and companionship. Financial matters must not be emphasized over the other contributions made to a marriage in determining an equitable distribution.

Fennelly, 737 N.W.2d at 103 (internal citations omitted).

Kenneth also raises two other factors that he believes shows the equalization payment should be reduced. First, he contends he was not afforded sufficient credit for his premarital property. Second, the fact that Sue's parents lived rent free since about 2002 in another residence upon one of the farms and over $70,000 in improvements were expended on the house.

In determining the equalization payment, the district court concluded that Kenneth had a net estate of $237,720 at the time of the marriage. In reaching this conclusion, the court considered, in part, that Kenneth's bank financial statement dated February 24, 1998, prepared just a few months before the marriage, showed that Kenneth had a net worth of $458,830. However, the court also noted that the bank statement failed to take into consideration Kenneth's contractual obligation for some of the land in the amount of $228,000, leaving a net worth of about $230,000. Kenneth's latest bank financial statement prepared a few months before the trial, on April 21, 2011, reflects a net worth of $1,337,883. However, Kenneth's financial affidavit filed in the dissolution

proceeding on August 18, 2011, a few weeks before the trial, reported a net worth of $2,102,821. The farmland alone was appraised by Kenneth's appraiser at a value $2,200,050. Even if we disregard the substantial error in the 1998 bank statement and conclude that Kenneth had a net worth of $458,830 at the time of the marriage, and subsequently received an inheritance of $515,466.13, as provided by the family settlement agreement, there remains either appreciation or an increase in Kenneth's net worth of over $1,000,000 over the course of the marriage. ($2,102,821 less $974,296.13 ($458,830 plus $515,466.13)). One-half of the appreciation or increase in net worth, $500,000, is in excess of the district court's equalization payment of $448,107. Considering these facts, we believe the equalization payment of $448,107 to Sue was equitable. We reach this conclusion after consideration of all of Kenneth's contentions.

In sum, we determine the district court properly concluded Sue was entitled to share in the appreciation in the value of the property that was purchased at the time of the family settlement agreement, and that the equalization payment awarded to Sue was equitable.

We affirm the property division as set forth in the parties' dissolution decree.

IV. Attorney Fees

Sue requests attorney fees for this appeal. Appellate attorney fees are not a matter of right, but rest in the court's discretion. *Sullins*, 715 N.W.2d at 255. We consider the needs of the party seeking the award, the ability of the other

party to pay, and the relative merits of the appeal. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). Here, each party has the ability to pay his or her own appellate attorney fees, and we do not award appellate attorney fees to Sue.

We affirm the decision of the district court. Costs of this appeal are assessed to Kenneth.

AFFIRMED.