IN THE COURT OF APPEALS OF IOWA

No. 2-237 / 11-1374
Filed May 23, 2012

IN RE THE MARRIAGE OF ROGER STEPHEN DUFFIELD AND SHERI LYNN PETTIT

Upon the Petition of
ROGER STEPHEN DUFFIELD,
Petitioner-Appellant,

And Concerning
SHERI LYNN PETTIT,
Respondent-Appellee.

Appeal from the Iowa District Court for Davis County, Annette J. Scieszinski, Judge.

Roger Stephen Duffield appeals from the economic provisions of the decree dissolving his marriage to Sheri Pettit. **AFFIRMED.**

Shannon J. Woods of The Law Office of Shannon J. Woods, Bloomfield, for appellant.

Alan C. Orsborn of Orsborn, Milani, Mitchell & Goedken, L.L.P., Ottumwa, for appellee.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ. Mullins, J., takes no part.

DOYLE, J.

The uncommon question we must answer in this dissolution appeal is whether Sheri Pettit is entitled to a one-half interest in property Roger Stephen Duffield (Steve) transferred into joint tenancy with her before their short-lived marriage. We conclude the district court was correct in finding the "nuptial failure should not operate to rescind the transfers that were made between the parties in good faith" and affirm its division of the parties' property.

I. Background Facts and Proceedings.

Steve and Sheri met later in life after several failed marriages for both. They dated for six years before marrying in November 2008. After only four weeks of marriage, the couple separated. Steve filed a petition to dissolve the marriage in September 2010, which came before the district court for trial in May 2011. The parties agreed as to the distribution of their property but disagreed as to the effect of premarital property transfers made by Steve to Sheri.

Steve was sixty-three years old at the time of the trial. He retired from the railroad in 1992. He received $2360 gross per month from the railroad and $770 from the Veterans' Administration in disability payments. Steve has amassed a sizeable amount of property since his retirement, including a residence on Columbia Street in Bloomfield, Iowa, most recently assessed at $139,340, a mobile home assessed at $78,170, a truck valued at $1000, and a travel trailer valued at $45,000. Steve lives in the Columbia Street residence from mid-April through the end of September. He then makes a yearly sojourn to Texas for the winter to help ease his degenerative arthritis. Steve's mother lives in his mobile home with his two grandsons, whose guardianship they share.

Sheri was sixty years old at the time of the trial. She has been employed with the same insurance agency for almost twenty-one years and earns $31,000 gross per year from that employment. Before her marriage to Steve, Sheri rented a duplex for $450 per month. Her rent included utilities and cable. Sheri testified she "had planned on staying in that duplex until [she] couldn't live there anymore for health reasons or whatever." Steve convinced her otherwise in the spring of 2008 when he returned from his winter in Texas.

Sheri testified that when Steve

> came home [that] spring . . . things were just a little more stressed I think at that time. That was the fourth winter that he'd been gone, and . . . we were still dating, but I was beginning to feel like through all the holidays and in the wintertime and through the dreary winter, I was the one sitting here in Iowa waiting for him to come back. And I decided that I thought it would be in both of our best interests if we just parted as friends.

Steve did not take the news well. He "became very emotional," according to Sheri, and asked her to marry him.

Sheri told Steve if she was going to marry him and leave the duplex she had lived in for twelve years, she "wanted some security." Steve accordingly took out a $19,000 home equity loan against the previously unencumbered Columbia Street house. He gave the money to Sheri to pay a $13,000 credit card bill in her name. The remainder was used to pay for the cost of the couple's wedding in Missouri and other incidentals. Steve then had an attorney transfer the Columbia Street house, mobile home, truck, and trailer into joint tenancy with Sheri. At the same time, he executed a will naming Sheri as his primary beneficiary and trustee for his grandchildren.

Steve testified he took these steps so that if something happened to him or his mother,

> my property would be dissolved . . . so that [my grandsons] could go on to college and use that money. And the home that I live in now, I mean, [Sheri] would be able to stay there until . . . she was no longer able . . . and then the home would be sold for the kids' college fund.

On cross-examination, however, Steve admitted he transferred the property into joint tenancy with Sheri at her insistence "so that she wouldn't be throw[n] out of the home . . . if something happened" to him.

Sheri terminated her duplex lease and moved into the Columbia Street home with Steve about one month before their marriage. Things quickly soured. Steve testified

> it was shortly after we got married, she let it be known that, you know, my grandsons weren't her top priority by any means and that if something happened to me, you know, she was going to take care of her kids and herself, you know, they were the main priority then.

Steve left for Texas in December 2008. Sheri stayed in the Columbia Street house until March 2010 when Steve asked her to leave.

After hearing this evidence, the district court entered a ruling finding as follows:

> The property transfers Steve accomplished before the November 1, 2008 marriage were in consideration of Sheri's promise to enter into the marriage contract. She fulfilled her end of the bargain by becoming Steve's wife. Given the brief duration of the union, each party should leave with the assets he or she brought into the marriage. For Sheri, that includes the pre-marital title interests she accepted from Steve. It is fair for her to keep these property interests. The nuptial failure should not operate to rescind the transfers that were made between the parties in good faith.

> Sheri's refinanced debt, however, was treated throughout the marriage as hers. . . . Thus, the home-equity loan obligation should retain the character the parties preserved for it: Sheri's debt.

The court ordered the parties to obtain appraisals on the Columbia Street residence and mobile home, with Steve to pay Sheri one-half of the appraised value of those properties, less the $11,632 debt against the Columbia Street residence. The court further ordered Steve to pay Sheri $500 for her one-half interest in the truck and $22,500 for her one-half interest in the travel trailer. Sheri was ordered to transfer her interest in the real estate and items of property to Steve. This appeal followed.

II. Scope and Standards of Review.

Our scope of review is de novo. Iowa R. App. P. 6.907; *In re Marriage of Fennelly*, 737 N.W.2d 97, 100 (Iowa 2007). Although not bound by the district court's factual findings, we give them weight, especially when assessing the credibility of witnesses. Iowa R. App. P. 6.904(3)(g); *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006).

III. Discussion.

We begin our discussion with the principles familiar to all dissolution appeals involving the distribution of property. Iowa is an equitable distribution state. *Sullins*, 715 N.W.2d at 247. Courts accordingly divide the property of the parties at the time of the divorce, except any property excluded from the divisible estate as separate property, in an equitable manner in light of the particular circumstances of the parties. *Id.*

The first task in dividing property under our statutory distribution scheme is to determine the property subject to division. *In re Marriage of Schriner*, 695

N.W.2d 493, 496 (Iowa 2005). The second task is to divide this property in an equitable manner according to the factors set forth in Iowa Code section 598.21(5) (2009), as well as all other relevant factors determined by the court in a particular case. *Id.*

All property that exists at the time of the divorce, other than gifts and inheritances to one spouse, is divisible property. *Id.*; *see also* Iowa Code § 598.21(5). This includes property owned prior to the marriage by a party. *Sullins*, 715 N.W.2d at 247; *see also* Iowa Code § 598.21(5)(b); *Schriner*, 695 N.W.2d at 496 ("Property not excluded is included in the divisible estate."). "'Property brought into the marriage by a party is merely a factor to consider by the court, together with all other factors, in exercising its role as an architect of an equitable distribution of property at the end of the marriage.'" *Sullins*, 715 N.W.2d at 247 (citation omitted). Section 598.21(5) "makes no effort to include or exclude property from the divisible estate by such factors as the nature of the property of the parties, the method of acquisition, or the owner." *Schriner*, 695 N.W.2d at 496.

It is clear from the foregoing that the premarital property owned by the parties in joint tenancy is included in the divisible estate. The rub comes with application of the second task—equitably dividing this property. Steve argues awarding Sheri an equal share of this property is not equitable because she "did not contribute to the assets in any way prior to or during their short marriage" and ordering him "to pay Sheri what amounts to a property settlement of $81,618 on a limited income . . . would create a substantial hardship for him." We would agree were it not for the parties' oral agreement regarding the transfer of the

property before their marriage.[1] *See In re Marriage of Lattig*, 318 N.W.2d 811, 815 (Iowa Ct. App. 1982) ("Where the accumulated property is not the product of the joint efforts of both parties or where . . . one party brings property into the marriage, there need not necessarily be a division. This is especially true where the marriage was of short duration.").

Undergirding our equitable principles of distribution is the contractual nature of marriage. *See* Iowa Code § 595.1A (Marriage is a civil contract, requiring the consent of the parties capable of entering into other contracts. . . ."). As one court has observed:

> In ancient times people were not much inclined to consider marriage or marriage contracts as a business or commercial transaction, but rather a sacred status. But the modern trend is to the contrary. The laws of all jurisdictions provide for and recognize both nuptial and prenuptial contracts relating to the property and business rights of the parties. . . . It is common knowledge, moreover, that in this modern age marriage is considered from a business point of view as much so as a status or companionship. A marriage contract may be supported by the mutual promise of the

[1] We recognize the parties' agreement could possibly be construed as a premarital agreement within the scope of the Iowa Uniform Premarital Agreement Act (IUPAA), codified in Iowa Code chapter 596. *See* Iowa Code § 596.1(1) ("'Premarital agreement' means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage."). The IUPAA requires such an agreement to "be in writing and signed by both prospective spouses." *See id.* § 596.4. This requirement, which is modeled after § 2 of the Uniform Premarital Agreement Act (UPAA), has been described by at least one court as a "statute of frauds law." *Hall v. Hall*, 271 Cal. Rptr. 773, 777 (Cal. App. 4 Dist. 1990); *see also* Iowa Code § 622.32(1) (providing under Iowa's Statute of Frauds that, in general, no evidence of contracts made in consideration of marriage is competent unless in writing and signed by the party charged). The statute of frauds does not render oral promises falling within its purview invalid. *See Harriott v. Tronvold*, 671 N.W.2d 417, 422 (Iowa 2003). "Rather, the statute merely renders incompetent oral proof of such promises. For this reason, the statute is a rule of evidence and not of substantive law. The statute provides a defense, and the party asserting it must therefore raise it by answer or by objection to evidence at trial." *Id.*; *see also In re Marriage of Webb*, 426 N.W.2d 402, 403 (Iowa 1988) ("Clearly, however, [Iowa Code section 622.32] relates to the allowable manner of proving oral contracts."). Steve did not raise the applicability of chapter 596 or section 622.32(1) in the district court proceedings, or on appeal. We accordingly decline to discuss the issue further.

> parties—the promise of one to marry the other. But if the contracting parties choose to pay or promise an additional consideration, they will be bound thereby just the same as in commercial transactions. Such additional consideration might be likened unto purchase money, or, in commercial terms, "earnest" money, to bind the contract, and, in such cases if the contract fails or is not carried into effect through the purchaser's fault, he cannot recover the "earnest" money so paid.

Schultz v. Duitz, 69 S.W.2d 27, 30 (Ky. Ct. App. 1934) (refusing to return ring to fiancé who called off engagement).

Our supreme court subscribed to the foregoing "modern" view of marriage long before the Kentucky Court of Appeals in the case of *Wright v. Wright*, 87 N.W. 709 (Iowa 1901), which involved a premarital contract between a father and his daughter-in-law. The father in *Wright* agreed to provide for his daughter-in-law and her child (his grandson) if her marriage to his son failed. 87 N.W. at 709. The marriage failed, and the father did not provide for the daughter-in-law and child as promised. *Id.* She sued the father, and the court upheld the contract, finding: "'Marriage is a consideration of the highest value, and any contract or promise which brings about or helps to bring about a marriage is binding when the marriage has taken place.'" *Id.* at 710 (citation omitted). A similar result was reached in the later case of *Benson v. Burgess*, 243 N.W. 188 (Iowa 1932).

The plaintiffs in *Benson* filed an action against a wife, seeking to set aside a conveyance of property her husband made to her before their marriage. 243 N.W. at 189. In finding the conveyance was not a fraudulent attempt to avoid the plaintiffs' judgment against the husband, the court quoted *Wright* with approval and said: "Here [the husband] agreed to and did convey the property in question

to the [wife] in consideration of marriage. That consideration is a legal one and will support the conveyance. . . ." *Id.* at 191.

Like the bridegroom in *Benson*, Steve agreed to transfer his real estate and other property into joint tenancy with Sheri in order to secure her promise to marry him. Though he tried to advance a different reason for the transfers after the marriage failed, we defer to the district court's implicit credibility finding against him. *See In re Marriage of Vrban*, 359 N.W.2d 420, 423 (Iowa 1984). This is supported by Steve's admission on cross-examination that he transferred the property to Sheri at her insistence:

> Q. Well, some time between the spring of '08 when you came back and she indicated that she did not want . . . the relationship to continue as it was, and November, the two of you got married? A. Yes.
>
> Q. What happened in between there? There must have been some discussion about it? A. Oh, I'm sure we discussed it, but not very much. I mean, she—what the discussion was mainly was the insisting that yes, she be put on—her name put on everything.
>
> Q. Okay. Everything being the Columbia property, the London Aire trailer—A. Exactly.
>
> Q. —the Lilac mobile home and that one truck? A. Yes.
>
> Q. So she was insisting that in order for her to get married to you that she wanted her name on those assets? A. It had to be done before we got married.
>
> Q. And did you agree to do that? A. I did at the time, yes.
>
> Q. And did she then marry you? A. Yes, she did.

Because Sheri fulfilled her end of the bargain by marrying Steve, we believe he should fulfill his end as well. The district court's order requiring an equal division of the premarital assets held in joint tenancy by the parties accomplishes that aim. A contrary result would defeat the parties' valid contract and result in inequity to Sheri, who entered into the marriage only after being assured of financial security for her future. *See Schultz*, 69 S.W.2d at 30 ("But if

the contracting parties [to a marriage] choose to pay or promise an additional consideration, they will be bound thereby just the same as in commercial transactions."); *Allen v. Mayo*, 279 N.W.2d 617, 620 (Neb. 1979) ("A promise to convey or devise property made in consideration of marriage is valid and enforceable."); *Jangraw v. Perkins*, 60 A. 385, 386 (Vt. 1905) ("All settlements and contracts entered into in contemplation of such marriages, which have been fairly made, and would, under other circumstances, be upheld, cannot be defeated.").

Relying on a conditional gift theory typically employed in cases seeking the return of engagement rings, Steve alternately argues Sheri failed to prove the assets were transferred to her in contemplation of marriage or that the marital condition was fulfilled. This argument misses the mark, as the district court relied on a contractual theory in dividing the transferred property equally between the parties. The court did not discuss a conditional gift theory, nor did Steve file a post-trial motion requesting the court to do so. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised *and decided* by the district court before we will decide them on appeal." (emphasis added)).

Even if error had been preserved on this theory, we would find Steve's argument to be without merit. As discussed above, Sheri established Steve transferred the property to her in consideration of her promise to marry him. *See Fierro v. Hoel*, 465 N.W.2d 669, 671 (Iowa Ct. App. 1990) ("If an unqualified transfer to the donee is proved, one asserting the delivery was made on some condition or trust has the burden of establishing such condition or trust."). She

fulfilled that condition by marrying Steve. *See id.* ("[M]arriage is an implied condition of the transfer of title and that the gift does not become absolute until the marriage occurs"). The gifts of property to Sheri were consequently absolute. *Cf. id.* at 672 ("[A]n engagement ring given in contemplation of marriage is an impliedly conditional gift; it is a completed gift only upon marriage."); *see also* Iowa Code § 598.21(5), (6) (excluding gifts received by one party from divisible estate, except upon a finding that refusal to divide would be inequitable to the other party).

For the foregoing reasons, we affirm the district court's division of the disputed items of property in its decree dissolving the parties' marriage.

AFFIRMED.