IN THE COURT OF APPEALS OF IOWA

No. 3-370 / 12-1375
Filed May 30, 2013

IN RE THE MARRIAGE OF TONY E. REINEKE
AND DEBRA J. REINEKE

Upon the Petition of
TONY E. REINEKE,
Petitioner-Appellant,

And Concerning
DEBRA J. REINEKE,
Respondent-Appellee.

Appeal from the Iowa District Court for Hancock County, DeDra L. Schroeder, Judge.

A husband appeals the district court order dissolving his marriage. **AFFIRMED.**

Charles J. Biebesheimer of Stillman Law Firm, Clear Lake, for appellant.

John G. Sorensen of Sorensen Law Office, Clear Lake, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

VOGEL, P.J.

Tony Reineke appeals certain portions of the district court order dissolving his marriage to Debra Reineke. He argues the district court erred in valuing the parties' retirement accounts, including the cash value of Tony's life insurance policies, and in valuing the real estate. Because the district court's property distribution is equitable, we affirm.

I. Background Facts and Proceedings

Tony and Debra began cohabitating in 1992 and were married thirteen years later, on July 2, 2005. They separated in August 2011 and this matter came on for trial in May 2012. Much of the challenge before the district court was how to equitably resolve the parties' financial entanglements with the backdrop of a lengthy premarital cohabitation and comingling of assets, followed by seven years of marriage. The essential facts were not in dispute.

Tony has worked at Uni-Cover for nearly twenty-five years and earns approximately $64,000 per year. Since 1992 Debra has also been steadily employed working for Winnebago Industries, most recently earning between $32,000 and $34,000 per year. Neither party began contributing to their retirement accounts until their cohabitation; Debra in 1992 when she started with Winnebago, and Tony in 1994.

In 1986 Tony purchased 2.6 acres of real estate with money borrowed from his parents. This loan was paid off in 1991. Many improvements have been made to the property since the purchase. In 1989 Tony borrowed $9000 to add a garage, and the note was paid off in 1999. Sometime after 1992 a machine shed was built, an old barn was restored, and a corn crib was improved

to make it useful as a heated shop. Although Tony claims to have paid for the majority of these improvements, Debra contributed by using her income for daily household expenses. In 2004 a major remodeling project was done to the house, with a $55,000 note and mortgage, in Tony's name, to fund the project.

A dissolution trial was held on May 16, 2012. The district court valued Tony's assets minus liabilities at $285,126 and Debra's at $66,953. The court found an even fifty-fifty split was appropriate and ordered Tony to pay Debra $35,000 within one-hundred-twenty days and the remaining $74,000 pursuant to a Qualified Domestic Relations Order (QDRO). The district court also ordered Tony to pay $2000 towards Debra's attorney's fees. Tony appeals.

II. Standard of Review

We review dissolution cases de novo. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). "Although we decide the issues raised on appeal anew, we give weight to the trial court's factual findings, especially with respect to the credibility of the witnesses." *Id.* "Precedent is of little value as our determination must depend on the facts of the particular case." *In re Marriage of Brown*, 776 N.W.2d 644, 647 (Iowa 2009). The district court is afforded wide latitude, and we will disturb the property distribution only when there has been a failure to do equity. *In re Marriage of Schriner*, 695 N.W.2d 493, 496 (Iowa 2005).

III. Retirement

Iowa is an equitable distribution state meaning "courts divide the property of the parties at the time of 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." *Sullins*, 715 N.W.2d at 247. All property of the marriage that exists at the time of the divorce, other than gifts and inheritances to one spouse, is divisible property. *Id.* Importantly, "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." *Id.* Moreover, "[p]roperty 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." *Id.* We can divide property from commingling of earnings during a cohabitation period preceding marriage as long as it is equitable. *In re Marriage of Miller*, 452 N.W.2d 622, 624 (Iowa Ct. App. 1989).

Tony argues the court should have looked to the value of the parties' retirement accounts since the date of their marriage rather than the total amounts, which includes the thirteen years of cohabitation before marriage. Debra argues the district court was correct in using the full amounts because the accounts were created during the couple's entire twenty years of being together. Because pensions are divisible marital property regardless of whether they existed before the marriage, we reject Tony's suggestion and turn to how the pensions should be divided. *See Sullins*, 715 N.W.2d at 249 (rejecting a party's suggestion he should be given a credit for retirement savings he owned before the marriage because pensions are divisible marital property).

Here, the district court makes no mention of the general ways to divide pensions under *In re Marriage of Benson*, 545 N.W.2d 252, 255 (Iowa 1996), nor do the parties on appeal cite to *Benson* for the formulas. The district court,

however, was clear as to its reasoning to include the accounts in the fifty-fifty split:

> Each of the parties contributed to his or her retirement accounts in a significant fashion during the time the parties resided together in contemplation of their marriage and long-term commitment to each other. By their contributions to their respective retirement accounts, those were moneys that were not available to pay household expenses. In addition, there was testimony that significant money was put aside for retirement so that the parties could enjoy their retirement together. Therefore, the accumulation in each of the retirement accounts during the period of time the parties lived together, in contemplation of marriage, was an asset that appreciated, not simply by an employer putting money into the retirement account, but by the efforts of the parties.

While Iowa Code section 598.21(5)(b) (2011) provides a court should consider "the property brought to the marriage by each party" in making the property division, the purpose of this section "in many instances, is to prevent a spouse from being given an interest in property for which he or she made no contribution to acquiring." *Miller*, 452 N.W.2d at 624.

The parties did not contribute to their retirement accounts until they began cohabitating. Here, the district court was not prohibited from including Tony's premarital contributions to his pension because in this case those contributions were attributable to the parties' joint efforts. *See Benson*, 545 N.W.2d at 255. We therefore find, under the unique facts presented by this case, the district court was correct in considering the entire accumulated amounts of the pensions and dividing them equally.

IV. Life Insurance and Property Value

Tony next argues the district court erred in including the cash value of life insurance policies as divisible property either because they should have been

excluded under Iowa Code section 598.21(2) or it was inequitable to divide the property. Two of the life insurance policies in question were purchased long before the couple cohabitated, but Tony paid the annual premiums on the policies during the cohabitation and marriage. The district court found

> While the court understands that these policies may have been in existence prior to the parties' relationship, the continued contribution of the premium payments made it possible for these assets to continue to exist throughout the relationship and the marriage of the parties and caused an appreciation in value. If no premiums had been paid during the relationship and marriage of the parties, it would be clear to this court that these assets should be set aside and exempt from division inasmuch as they were a gift prior to marriage.

We agree with the district court. Moreover, we are not persuaded by Tony's argument that because Debra is not the named beneficiary the cash value should be excluded. As with the retirement contributions, the payment of the premiums is a product of the "joint efforts" of the parties because the payment of premiums was money that was not available to pay household expenses. Debra did, therefore, have an interest in the cash value even though she was not the named beneficiary.

Next, Tony argues the district court erred in determining the pre-relationship value of the homestead claiming the determination was too low. Tony does not argue the value at the time of the marriage should be used. The district court valued the pre-cohabitation equity of the homestead at $25,000—the 1993 assessment value of $34,000 minus the $9000 encumbrance for the garage. Tony testified he agreed with these figures. Now, Tony claims he should get credit for "at least three years of payments on the note [he] took out for the garage before Deb ever moved in." Whether, or how much, he paid on

the note for those three previous years is not in the record. Based on the record before us, we find the district court's determination of the value of the homestead within the permissible range of the evidence and reasonable. The district court's division of property equally because of the parties' joint efforts in contributing to the improvements and maintenance of property is equitable and we therefore affirm the district court.

Lastly, Tony argues the district court erred by undervaluing Debra's post-separation residence. Debra purchased the home for $30,600 plus $3490 in closing costs. The district court valued the home as a $30,600 asset for Debra. Tony argues the 2012 assessed value of $38,540 should be used instead. Especially factoring in that Debra was required to pay closing costs and that Tony provides us with no reasoning why the assessed value is a better reflection of value than the purchase amount, we will not disrupt the district court's valuation of the property. There is not a failure to do equity.

V. Appellate attorney fees

Debra requests appellate attorney fees. Based on the financial circumstances of both parties, their abilities to pay, and the merits of the claim, we choose to exercise our discretion and award Debra $3000 attorney fees. *See In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005).

AFFIRMED.