

IN THE COURT OF APPEALS OF IOWA

No. 7-293 / 06-1761

Filed July 25, 2007

**IN RE THE MARRIAGE OF JOHN RUSSELL ARENDS AND ROCHELLE
MARIE ARENDS**

**Upon the Petition of
JOHN RUSSELL ARENDS,**
Petitioner-Appellee,

**And Concerning
ROCHELLE MARIE ARENDS,**
Respondent-Appellant.

Appeal from the Iowa District Court for Floyd County, Brian H. McKinley,
Judge.

Rochelle Marie Arends appeals from a marriage dissolution decree.

AFFIRMED.

Jacqueline R. Conway of Heiny, McNanigal, Duffy, Stambaugh &
Anderson, P.L.C., Mason City, for appellant.

Brian Miller and Andrea M. Miller of Miller & Miller, P.C., Hampton, for
appellee.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

EISENHAUER, J.

Rochelle Marie Arends appeals from a marriage dissolution decree. She argues the trial court erred in equally dividing the future payments from a wrongful death settlement resulting from the death of their son. We affirm.

Rochelle Arends and John Arends were married for twenty-two years. Their marriage was dissolved on August 24, 2006. They were both in their mid-forties at the time of dissolution and had no health problems. Rochelle was employed as a part-time intensive care nurse and making \$27.50 per hour. Her income in 2005 was \$23,250. John was a maintenance worker. His hourly rate of pay was \$19.50 per hour, and he made \$35,145 in 2005.

The parties' oldest son, Jordan Arends, was struck by a Rudde-Rockford-Marble Rock school bus in 1991. Rochelle witnessed the accident. Jordan died from the resulting injuries. Rudd-Rockford-Marble Rock school district and its insurer settled claims arising out of Jordan's death with Rochelle and John individually through a Release and Agreement. John was awarded \$234,953 in total. By the time of trial in the dissolution, John had received \$100,345. The remaining \$134,608 was to be paid in three payments. Rochelle was awarded a total of \$702,345.00.¹ She had received \$229,970 at the time of trial and would receive four future payments totalling \$197,100 plus monthly payments at \$660.14, guaranteed for thirty years certain and payable for her life. The payments received during the parties' marriage were commingled and represented in the assets held by the parties. They were divided in the decree and are not part of the appeal. The only issue on appeal is the division of the

¹ The total amount was calculated based on Rochelle's life expectancy.

future settlement payments. The district court ordered the future payments made to either party to be divided equally commencing September 1, 2006. Rochelle challenges this decision.

Our standard of review is de novo. Iowa R. App. P. 6.4. The proceeds of a personal injury settlement are marital assets and do not automatically belong to either party. *In re Marriage of McNerney*, 417 N.W.2d 205, 208 (Iowa 1987). The district court has discretion to divide them equitably on a case by case basis. *Id.* at 206. In making such determination, the court may consider parties' age, health, earning capacity, economic circumstances and other relevant factors. See Iowa Code § 598.21(5) (Supp. 2005).

Rochelle argues the district court abused its discretion by dividing the future payments equally. She cites *In re Marriage of Schriener*, 695 N.W.2d 493, 498 (Iowa 2005), in which our supreme court held workers' compensation benefits received after the divorce constituted separate property of the injured spouse. She argues this case deserves a similar outcome. We disagree. Workers' compensation payments are separate property because they compensate for future wages of the injured party, rather than assets earned during the marriage. *Id.* In contrast, awards for personal injury are marital assets subject to distribution. *McNerney*, 417 N.W.2d at 206. *Schriener* is not applicable in the present case.

Rochelle further argues the Release and Agreement constitutes a written agreement made by the parties concerning property distribution, and the district court erred in failing to consider this agreement as required by Iowa Code section 598.21(5). She contends the difference between her and John's awards

represents the compensation for the emotional distress she suffered from witnessing the accident, and she is entitled to all the future payments made to her.

Section 598.21(5) provides a list of factors, including agreements made by the parties concerning property distribution, the court shall consider in property division. None of the factors is decisive. The court determines what constitutes equitable division after evaluating every aspect of the circumstances. In this case, the district court clearly considered the agreements the parties entered with the school district. The district court acknowledged the validity of Rochelle's claim for emotional distress. It nevertheless refused to rely on the settlement payment structure. The district court reasoned that

While noting that a viable claim of emotional distress occurs when a parent observes an accident causing the death of his or her son, the Court is unable to determine the exact amount for emotional distress from the settlement, nor can the Court accept the individual payments as an allocation for specific damages since the settlement payments are so grossly disproportional between both parents.

We agree with the district court's analysis. The Release and Agreement awarded Rochelle approximately three times the amount that John was awarded. It did not specify how much each party received for their various claims. Nor did it make any reference as to how much of the settlement money was intended to compensate Rochelle for her emotional distress. The record shows Rochelle and John shared many claims of damages when negotiating the settlement. These common claims were for loss of consortium, lost earnings by Jordan during his natural lifetime, medical and burial expenses, and interest on the medical and burial expenses. The only unshared claim was Rochelle's claim for

emotional distress arising from observing the accident. We are not convinced that Rochelle was awarded \$467,392 more than John because of this single unshared claim. The Release and Agreement was not written in contemplation of property distribution. Instead, the moneys received were perceived as a mutual benefit. In fact, the settlement structure might have been very different if the parties had foreseen a divorce fifteen years later. The district court did not err in not relying on it.

The district court found: “[b]oth parents had expressed a profound sense of loss of society and companionship. While noting that Rochelle had a claim of emotional distress, the Court does not find her continued emotional distress to be any greater than her spouse, John”. We agree with this finding. In addition, the record shows the parties’ age, health, earning capacity and economic environment are comparable. We therefore affirm the district court’s decision in dividing the future settlement payments equally.

AFFIRMED.