IN THE COURT OF APPEALS OF IOWA

No. 7-437 / 06-1952
Filed October 12, 2007

IN RE THE MARRIAGE OF JANN RACHEL STANLEY AND GENE D. STANLEY

Upon the Petition of
JANN RACHEL STANLEY,
Petitioner-Appellee,

And Concerning
GENE D. STANLEY,
Respondent-Appellant.

Appeal from the Iowa District Court for Hamilton County, Michael J. Moon, Judge.

Gene Stanley appeals the economic provisions of his decree of dissolution of marriage. **AFFIRMED.**

Matthew Boles of Parrish, Kruidenier, Dunn, Boles, Gribble, Cook, Parrish, Gentry & Fisher, L.L.P., Des Moines, for appellant.

R. Thomas Price of R. Thomas Price Law Office, Fort Dodge, for appellee.

Heard by Huitink, P.J., and Vogel and Baker, JJ.

BAKER, J.

Gene Stanley appeals the property distribution and alimony provisions of his decree of dissolution of marriage. We affirm.

I. Background and Facts

Jann and Gene Stanley were united in marriage on June 19, 1993. No children were born to the marriage.[1] The marriage was dissolved by decree on November 1, 2006.

Jann and Gene both worked throughout the marriage. At the time of trial Jann was employed as a secretary at North Central Turf in Webster City, Iowa. Gene was initially employed as a truck driver and later began farming with Jann's parents, Grant and Maxine Anderson. He farmed their property until the summer of 2006, when he was prevented from continuing to farm that property due to the district court's issuance of a no-contact order.[2] Gene was also employed as a bus driver by Webster City Community Schools, but at the time of trial he no longer worked for the school district. Gene testified that he had not secured other employment because he was "waiting to farm [his] ground."

In addition to her employment income, Jann derives income from farm property. In 1978, Jann purchased 138 acres of property in Stanhope with her father's help. The property is currently valued at $486,150. Her parents have gifted to Jann approximately forty-seven percent of the shares of Anderson Seed Company, which owns a 240-acre farm known as the "Airport" farm.

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[1] Both Jann and Gene have adult children from prior marriages.

[2] Pursuant to the order, Gene and Jann were prohibited from having any contact with each other, Jann was allowed exclusive possession of their home, and Gene was ordered to give the Hamilton County Sheriff possession of two guns.

Jann's parents owned a 300-acre farm, known as the "Highview" farm, and approximately fifty-three percent of Anderson Seed. Her father, Grant, died in 1998. Upon his death, his one-half of the interest in these farms passed to Maxine in a life estate. Upon Maxine's death, Jann will inherit a life estate in the one-half of these interests which passed from Grant to Maxine, which will then pass to Jann's children upon her death. The other half of the Highview farm and interest in Anderson Seed is owned by Maxine.

When Jann and Gene first began cohabitating in 1988, they lived in a house in Webster City. Gene assisted with the payment of utilities and taxes and made significant improvements to the home. In September 1995, Grant and Maxine executed a warranty deed, conveying the house to Jann and Gene for $24,000. In 2002, Gene and Jann spent approximately $525,000[3] to build a home on the Highview farm.[4] To finance construction, they sold the house in Webster City; Gene withdrew approximately $150,000 from his individual retirement account (IRA); they took out a mortgage, using Jann's Stanhope property as collateral; and they obtained a $65,000 loan from Maxine.

The district court awarded Jann total assets of $701,103, and total liabilities of $338,789. The court awarded Gene total assets of $113,104, and total liabilities of $26,795. The court ordered Jann to pay Gene an additional property settlement of $120,000 in twelve equal annual installments without

[3] The parties stipulated the approximate value of the home is $375,000.

[4] Maxine signed a quitclaim deed, apparently attempting to convey a piece of her Highview property to Jann and Gene. The quitclaim deed was never recorded.

interest. The result is a disparity of approximately $36,000. The district court awarded alimony to neither party. Gene appeals.

II. Merits

Gene contends the district court erred in its property distribution determination and in failing to award alimony. We conduct a de novo review of divorce proceedings. Iowa R. App. P. 6.4; *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). We accord the district court considerable latitude and will disturb the court's alimony and property distribution determinations only when there has been a failure to do equity. *In re Marriage of Schriner*, 695 N.W.2d 493, 496 (Iowa 2005); *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005).

> This deference to the trial court's determination is decidedly in the public interest. When appellate courts unduly refine these important, but often conjectural, judgment calls, they thereby foster appeals in hosts of cases, at staggering expense to the parties wholly disproportionate to any benefit they might hope to realize.

In re Marriage of Benson, 545 N.W.2d 252, 257 (Iowa 1996).

A. Property Distribution

Gene contends the district court erred in its property distribution determination because it (1) failed to consider Jann's Stanhope property, (2) failed to place any value on the land upon which their home was built, (3) awarded the home to Jann, and (4) failed to consider Jann's additional present and future interests in the farm properties and Maxine's other assets.

Iowa is an "equitable distribution" state for purposes of dividing property in a marriage dissolution. *Schriner*, 695 N.W.2d at 496. "A justified property division is one that is equitable under the circumstances." *In re Marriage of*

Earsa, 480 N.W.2d 84, 85 (Iowa Ct. App. 1991). Factors the court may consider in dividing the property include the length of the marriage; the property brought to the marriage by each party; the contribution of each party to the marriage; the age and health of the parties; the earning capacity of each party, including education, training, skills, and work experience; and other economic circumstances of each party, including pension benefits. Iowa Code § 598.21(5) (Supp. 2005). Although "it is generally recognized that equality is often most equitable," an equitable distribution does not necessarily mean an equal division of marital property. *In re Marriage of Rhinehart*, 704 N.W.2d 677, 683 (Iowa 2005). "The determining factor is what is fair and equitable in each circumstance." *In re Marriage of Hass*, 538 N.W.2d 889, 892 (Iowa Ct. App. 1995). We "look to the economic provisions of the decree as a whole in assessing the equity of the property division." *In re Marriage of Dean*, 642 N.W.2d 321, 325 (Iowa Ct. App. 2002).

i. Premarital Property

Gene contends the district court erred in failing to include the Stanhope property in its division of assets and in failing to consider Jann's continuing income from her ownership of the property. A premarital asset is not automatically set aside. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). "Instead, 'property brought to the marriage by each party' is merely one factor among many to be considered." *In re Marriage of Fennelly*, 737 N.W.2d 97, 102 (Iowa 2007) (quoting Iowa Code § 598.21(1) (2005)). Considering the property division as a whole, we find Jann's continued ownership of a property, which she purchased with her father's assistance many years prior to the

marriage and with which Gene had no involvement, does not require us to disturb the district court's decree. *See In re Marriage of Johnson*, 499 N.W.2d 326, 328 (Iowa Ct. App. 1993) ("Property brought into a marriage by one party need not necessarily be divided."); *In re Marriage of Wallace*, 315 N.W.2d 827, 831 (Iowa Ct. App. 1981) ("[I]t cannot be said that the partner who has benefited from the other's inheritance or other property necessarily has a claim to half of all that property.").

ii. Homestead Land

Gene contends the 2.2 acres upon which their home was built, which he claims is valued at $94,000, should have been included in the divisible estate. While he admits the quitclaim deed conveying the land was never recorded, he argues the land was held by Jann and Gene and should therefore have been included. Jann's response to this issue is limited to

> The parties' home as is obvious from the record, cost much more to build than its value. This is now a cost that both parties must bear. It sits on land owned by the Grant Anderson Trust and Maxine Anderson and has no access other than over Maxine Anderson's land.
>
> I don't believe the record reflects a discussion as to the value of the land the house sits on.

Notwithstanding the failure of both parties to cite any authority to support their argument on this issue, we have reviewed the record and find there has been no failure to do equity. *See* Iowa R. App. P. 6.14(1)(*c*) ("Failure in the brief to . . . cite authority in support of an issue may be deemed waiver of that issue."); Iowa R. App. P. 6.14(2) ("The brief of appellee shall conform to the requirements of rule 6.14(1)."); *Lausen v. Bd. of Supervisors*, 204 Iowa 30, 32, 214 N.W. 682,

684 (1927) (describing appellant's failure to cite authorities to support his contentions as "wholly inexcusable").

iii. Residence

Gene next contends the district court erred in awarding Jann the Highview home because "the homestead amounts to so much more than simply a 'house' to Gene." He quotes *Wallace*, 315 N.W.2d at 832, to support his contention that

> Iowa adjudicatory law recognizes that "[a]ny item that is reasonably likely to possess far greater sentimental value to one party than to the other . . . should remain, as far as is reasonably possible, in the possession of the party to whom the sentimental value is the greatest."

The portion of the *Wallace* quote omitted in Gene's brief to this court specifically refers to items "such as jewelry, heirlooms, the fruits of hobbies (such as stamp or coin collections), and the products of artistic efforts by one of the parties." *Wallace*, 315 N.W.2d at 832. We therefore find his reliance on *Wallace* to support his argument is misplaced.

The Highview home sits on real property that has been in Jann's family. In *Wallace*, we stated such real property "ought, as far as possible, to be permitted to remain in the possession" of the party whose family owned it and should be subject to "a reasonable division of the couple's property and to provide for the proper maintenance of the other party . . . *only as a last resort*." *Id.* (emphasis added).

Additionally, Jann's testimony that she "could live without the house" does not definitively demonstrate she places less sentimental value on the home than Gene. The facts suggest the opposite: the home is built on property owned by Maxine, the only access to the home is via Maxine's driveway, it is built in close

proximity to Maxine's own home, the $65,825 Maxine loaned the parties to build the home has not been repaid, and Jann's Stanhope property serves as the collateral for the $192,668 mortgage on the home. Gene's claimed strong feelings toward his "dream house" are insufficient to compel us to disturb the district court's decree as to the Highview home.

iv. Future Interests

Finally, we consider Gene's contention that the district court erred in failing to appropriately consider Jann's additional present and future interests in the Highview and Airport farm properties and Maxine's other assets in dividing the estate. He does not contend these assets should be considered as part of the divisible estate.[5] Rather he contends "the district court should have considered the assets in determining the equitable distribution of the parties' property." He argues that, pursuant to section 598.21(1)(i), the court should consider other economic circumstances, including pension benefits and future interests. Because "Jann will enjoy a far more secure retirement due to her future interests" while "Gene spent virtually his entire retirement savings towards the construction of the homestead," he requests this court more equitably divide the property.

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[5] We agree that these inherited assets should not be considered part of the divisible estate. Marital property is to be distributed equitably, "except inherited property or gifts received or expected by one party." Iowa Code § 598.21(1). Property received by one party by inheritance or gift is not automatically subject to the factors contained in section 598.21(1). *In re Marriage of Liebich*, 547 N.W.2d 844, 850 (Iowa Ct. App. 1996).

> In determining whether inherited property is divisible as marital property, the controlling factors are the intent of the donor and the circumstances surrounding the inheritance or gift. Placing inherited property into joint ownership does not, in and of itself, destroy the separate character of the property.

Id. (citations omitted).

A spouse's nonmarital assets that are available for future support may be considered in determining whether there has been an equitable division of property. *Rhinehart*, 704 N.W.2d at 683-84. "[I]t is appropriate to adjust the division of marital property 'on the basis that one party, far more than the other, can reasonably expect to enjoy a secure retirement.'" *Id.* at 684 (quoting *Boyer*, 538 N.W.2d at 296).

We find, however, no reason to disturb the district court's decree as to the property division. There is little doubt that Jann's retirement income will be significantly increased by her present and future interests in the farm properties. We believe, however, that the property distribution is within the district court's "considerable latitude" in this matter. *Schriner*, 695 N.W.2d at 496. While Jann's retirement income will be supplemented by this property, she has been ordered to pay $120,000 in additional property settlement. Gene may choose to use these funds to replenish the retirement account he depleted to build the Highview home.

B. Alimony

Gene also contends alimony should be awarded because (1) Jann has refused to allow him to continue his source of employment, farming; (2) while "Jann possesses extensive retirement assets at her disposal," Gene expended virtually all of his retirement savings on the Highview home "with the assurance he could continue the farming operation"; (3) Jann possesses a bachelor's degree compared to Gene's high school diploma, and over the past several years his non-farming income has been lower than Jann's income; and (4) the

property distribution resulted in Jann receiving "a substantially greater amount of marital assets than Gene."

Alimony is not an absolute right, and an award thereof depends upon the facts of each case. *Anliker*, 694 N.W.2d at 540; *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976). "Precedent is of little value, and each case must be decided on its own peculiar circumstances." *Fleener*, 247 N.W.2d at 220. "An alimony award is justified when the distribution of the assets of the marriage does not equalize the inequities and economic disadvantages suffered in marriage by the party seeking the alimony who also has a need for support." *In re Marriage of Sychra*, 552 N.W.2d 907, 908 (Iowa Ct. App. 1996).

"Although alimony on one hand and allocation of property rights on the other are distinguishable and have different purposes in marriage dissolution proceedings, they are still closely related in the matter of determining the amount to be allowed." *In re Marriage of Cooper*, 225 N.W.2d 915, 919 (Iowa 1975) (citations omitted). "We consider the property division and alimony together in evaluating their individual sufficiency; they are neither made nor subject to evaluation in isolation from one another." *Earsa*, 480 N.W.2d at 85.

We have reviewed the record before us and agree with the district court's conclusion that Gene is not entitled to alimony. Notwithstanding Gene's failure to secure other employment, he has experience driving truck and farming, and could probably find other employment. Additionally, the court awarded Gene net assets totalling $86,309, and Jann will pay him $10,000 per year over the next twelve years. "[T]he question boils down to whether the property division and alimony taken together are equitable." *Cooper*, 225 N.W.2d at 919.

Notwithstanding Jann's failure to cite a single authority to support her argument that the district court "quite appropriately did not award alimony," we find nothing in the record to justify disturbing the district court's decree. *See* Iowa R. App. P. 6.14(1)(*c*) and (2); *cf. Lausen*, 204 Iowa at 32, 214 N.W. at 684.

III. Conclusion

We have considered all issues raised on appeal. We find the district court's division of property to be fair and equitable and affirm the property distribution as set forth by the district court. We also affirm the district court's denial of alimony. Costs of this appeal are assessed to Gene. Each party shall pay their own appellate attorney fees.

AFFIRMED.