

IN THE COURT OF APPEALS OF IOWA

No. 8-287 / 07-1592
Filed June 11, 2008

**IN RE THE MARRIAGE OF JESSICA SLINGER
AND CURT SLINGER**

**Upon the Petition of
JESSICA SLINGER,**
Petitioner-Appellant/Cross-Appellee,

**And Concerning
CURT SLINGER,**
Respondent-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge.

Jessica Slinger appeals from the property division provisions of the district court's decree dissolving her marriage to Curt Slinger. **AFFIRMED AS MODIFIED.**

Michael Oliver, Des Moines, for appellant/cross-appellee.

Susan L. Ekstrom, Des Moines, for appellee/cross-appellant.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

HUITINK, J.

Jessica Slinger appeals from the property division provisions of the district court's decree dissolving her marriage to Curt Slinger. Curt cross-appeals, also challenging the court's property division.

I. Background Facts and Prior Proceedings

Jessica and Curt were married in September 1997 and had two children during the marriage. Both parties brought assets to the marriage. Jessica brought a sizeable amount of cash¹ and Curt brought five rental properties and a small retirement account from a previous employer.²

Curt began to attend college shortly after the parties were married. Curt attended college on a full-time basis for a year and one-half. Curt continued to manage and maintain his rental properties while he attended school.³ He also received income from his position in the military reserves and an internship. After he graduated from college, Curt began working full-time.

In 2002 the couple sold two of the rental properties on contract for deed. The monthly proceeds from this contract went into their joint checking account. That same year, they purchased an eighty-two acre tract of farmland. Curt's parents gave the family \$20,000 to use as a down payment on the farmland. The couple also used approximately \$15,000 of their own savings and financed the balance of the \$147,600 purchase price through two separate loans. In 2003

¹ When Jessica's previous marriage was finalized, she received a check for approximately \$42,000. She used an unknown portion of these funds to pay her attorney fees and then placed the balance in a joint checking account with Curt.

² There was no evidence at trial describing the premarital value of this asset.

³ Each of the rental properties was secured by a mortgage. For the most part, the monthly income from the properties paid the monthly mortgage payments and corresponding property taxes. Any extra money from the rental payments was placed in the parties' joint checking account.

Curt and Jessica sold the remaining three rental properties. They used some of the proceeds to pay off existing debts and eventually deposited the rest in an investment account.

Curt was deployed to Iraq in 2003. When he returned, the relationship soured. In April 2005 Jessica and the two children moved out. Jessica withdrew \$7000 from the investment account to purchase a house. In May 2005 Curt withdrew the remaining \$64,229 from the investment account. Jessica had difficulties paying her bills and furnishing the home, so she accumulated approximately \$12,000 in credit card debt.

Jessica filed a petition to dissolve the marriage in April 2006. Jessica made a motion for accounting to determine what had happened to the \$64,229 withdrawn from the investment account. Curt revealed that he held \$57,000 in cash at his house. The court ordered Curt to place this money in his lawyer's trust account until trial. In the meantime, the contract for deed for the two rental properties was fulfilled, and Curt received a lump sum payment of approximately \$54,000. This lump sum payment was deposited in the same lawyer's trust account.

At the dissolution proceeding, Jessica testified that she worked for the State of Iowa with an annual income of approximately \$44,000. Curt was not employed at the time of the proceeding, but he agreed that his income capacity was approximately \$60,000 per year. When Curt tried to testify as to the amount of equity he had in the rental properties at the time of the marriage, Jessica's trial counsel objected, claiming he could not testify about the value of his premarital assets because he had never revealed these amounts during discovery. The

district court sustained the objection and refused to allow Curt to testify on this subject. However, the court later allowed Curt to describe his premarital equity in the rental properties via an offer of proof where he stated that his premarital equity in the properties was approximately \$160,000.

The district court entered a decree awarding both parties joint legal custody of the children. Jessica was awarded primary physical care, and Curt was ordered to pay monthly child support.⁴ The district court also distributed the parties' assets in the following manner: Jessica was awarded the family van (valued at \$8200), the equity in the Des Moines home (valued at \$10,199), \$3000 worth of personal property, the full value of her \$10,054 IPERS account, \$11,187 of Curt's 401(k) plan, and \$47,217.40 from the lawyer's trust account. Curt was awarded the family truck (valued at \$6125), the equity in the farmland (valued at \$96,082), various pieces of personal property, an individual retirement account valued at approximately \$5000,⁵ the remaining \$21,241 in his 401(k) plan, and the remaining \$64,638.60 held in the lawyer's trust account. The court also ordered that numerous pieces of machinery in varying states of repair be sold at auction with the proceeds divided equally between the parties. Finally, the court ordered Curt to pay \$3000 of the outstanding credit card debt and \$3000 of Jessica's attorney fees.

Jessica now appeals, claiming the district court did not equitably divide the parties' marital assets because it awarded Curt credit for his premarital equity in

⁴ The parties do not challenge the custody, physical care, or child-support provisions of the dissolution decree.

⁵ The record reveals that this account was actually valued at \$5354 at the time of the dissolution hearing.

the rental property even though he did not reveal the amount of that equity prior to trial. She also claims the court improperly credited Curt with a \$20,000 “gift” that was actually intended for the family and requests that we award her reasonable appellate attorney fees. Curt cross-appeals, arguing the court failed to fully consider his premarital assets and improperly ordered him to pay a portion of Jessica’s credit card bill.

II. Standard of Review

Our scope of review in this equitable action is de novo. Iowa R. App. 6.4. Because the district court has a firsthand opportunity to hear the evidence and view the witnesses, we give weight to its findings of fact, but we are not bound by them. *In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992). We accord the trial court considerable latitude in resolving economic provisions of a dissolution decree and will disturb a ruling only when there has been a failure to do equity. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998).

III. Merits

“Gift” Award. Jessica contends the trial court should not have given Curt credit for the \$20,000 “gift” the parties received from Curt’s parents during the marriage.

The dissolution decree does not indicate there was a monetary gift which was excluded from the parties’ marital assets or state that Curt was given a credit for any gift received during the marriage. However, Jessica claims the district court impliedly credited Curt with the value of a \$20,000 gift by lowering the total net equity assigned to the parties’ farmland. We disagree.

Evidence at trial revealed that the parties purchased the eighty-two acre tract of farmland in 2002 for \$147,600. Although the parties purchased the land with the intention of building a home, they did nothing to improve the land. At trial, Jessica presented a report from her appraiser valuing the land at \$200,400. Curt disputed this appraisal, noting the appraisal had inappropriately valued the entire property as “crop land,” while most of the property was only suitable to be a pasture. Curt pointed out that deep ravines in the property made much of the property unsuitable for crops. He also noted they had always rented the land for crops and pasture and only generated a maximum of \$2200 a year in rental income. Curt stated that he thought the 2002 appraisal of the property which had valued the land at \$165,000 was the best estimate of its worth.

The district court determined that the value of the farmland was approximately \$185,000.⁶ After carefully reviewing the evidence presented at trial, we conclude the district court’s valuation of the farmland was within the permissible range of the evidence. *See In re Marriage of Vieth*, 591 N.W.2d 639, 640 (Iowa Ct. App. 1999). Accordingly, we find no reason to conclude the district court impliedly gave Curt credit for a \$20,000 “gift” from his parents. Therefore, we need not address Jessica’s arguments as to why the court should not have credited Curt with the value of this alleged gift.

General Distribution of Premarital Assets. Both parties generally dispute the court’s distribution plan in light of the premarital assets each party brought to the marriage.

⁶ The district court stated the “net equity value” of the property was \$96,082. The evidence at trial revealed that the encumbrance on the property was \$89,000.

Iowa Code section 598.21(5) (Supp. 2005) states that “all property, except inherited property or gifts received by one party,” is to be equitably divided between the parties. This 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 Fennelly*, 737 N.W.2d 97, 102 (Iowa 2007). The district court may not separate a premarital asset from the divisible estate and automatically award it to the spouse that owned the property prior to the marriage. *Id.* Instead, the property brought to the marriage by each party is merely one factor among many to be considered under section 598.21(5). *Id.* Other factors include the length of the marriage, contributions of each party to the marriage, the age and health of the parties, the contribution by one party to the education or increased earning power of the other, each party’s earning capacity, and any other factor the court may determine to be relevant to any given case. Iowa Code § 598.21(5). Iowa courts do not require an equal division or percentage distribution. *In re Marriage of Campbell*, 623 N.W.2d 585, 586 (Iowa Ct. App. 2001). The determining factor is what is fair and equitable in each particular circumstance. *Id.*

The distribution plan set forth by the district court places a strong emphasis on the couple’s premarital assets. At the time of the dissolution proceeding, the parties had roughly \$283,000 in combined net assets and \$12,000 in credit card debt. The district court awarded Curt approximately \$193,000 of the assets and assigned him \$3000 of the credit card debt. The court awarded Jessica approximately \$90,000 of the assets and assigned her \$9000 of the credit card debt.

Upon our de novo review of the record, we find the equities in this case require far less emphasis on the couple's premarital assets. Curt and Jessica have been married for approximately ten years. Jessica worked consistently throughout the marriage, while Curt took time off from work to pursue a college degree. For the first eight years of the marriage they commingled their assets and made no attempt to keep their finances separate. When they made major financial decisions concerning how to manage their premarital debts, they based their decisions on what choice would be best for the family. For example, shortly after they were married, the couple decided to use the proceeds from Jessica's prior divorce settlement to pay down the couple's pre-existing debt. Rather than pay off Jessica's student loan, they decided to first pay off a mortgage on one of the rental properties because that mortgage had a higher interest rate than Jessica's student loan. When the rental properties were sold, they both made the decision to invest the money in a specific investment account. Up until the date of their separation, there is simply nothing in the record to suggest that there had been any attempt to make any distinction between marital and premarital assets. We find little reason to make such a distinction now.⁷

After considering the length of the marriage, the parties' commingling of assets, and Curt's pursuit of additional schooling during the marriage, we find the following distribution to be an equitable division of the parties' assets: Jessica will be awarded the family van (valued at \$8200), the equity in the Des Moines

⁷ Accordingly, we need not address Jessica's claim that the district court should have awarded her a larger portion of the proceeds from the sale of the rental properties because Curt did not fully participate in pre-trial discovery and did not reveal the amount of his premarital equity in the rental properties until the day of trial.

home (valued at \$10,199), the personal property previously ordered by the district court (valued at \$3000), the full value of her \$10,054 IPERS account, and \$11,187 of Curt's 401(k) plan. Jessica will also be awarded \$100,500 from the lawyer's trust account. Curt will be awarded the family truck (valued at \$6125), the equity in the farmland (valued at \$96,082), various pieces of personal property, his individual retirement account from a previous employer (valued at approximately \$5354), the remaining \$21,241 in his 401(k) plan, and the remaining \$11,356 held in the lawyer's trust account.

We do not disturb the court's decision ordering Curt to pay \$3000 of the \$12,000 in outstanding credit card debt and \$3000 of Jessica's attorney fees. We also affirm the court's decision ordering that numerous pieces of machinery be sold at auction with the proceeds divided equally between the parties.

Appellate Attorney Fees. Jessica also requests reasonable attorney fees for her pursuit of this appeal. Appellate attorney fees are not a matter of right, but rather rest in the court's discretion. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). We consider the needs of the party making the request, the ability of the other party to pay, and the relative merits of the appeal. *Id.* After considering these factors, we decline to award Jessica appellate attorney fees. Costs on appeal are taxed one-half to each party.

IV. Conclusion

We modify the property division in the dissolution decree to provide that \$100,500 of the funds held in the lawyer's trust account be awarded to Jessica. The remaining \$11,356 in the account is awarded to Curt.

AFFIRMED AS MODIFIED.