IN THE COURT OF APPEALS OF IOWA

No. 9-184 / 08-0899
Filed April 8, 2009

IN RE THE MARRIAGE OF CARL K. GALLMEYER AND JUDY E. GALLMEYER

Upon the Petition of
CARL K. GALLMEYER,
Petitioner-Appellee,

And Concerning
JUDY E. GALLMEYER,
Respondent-Appellant.

Appeal from the Iowa District Court for Chickasaw County, Jon C. Fister, Judge.

Appeal from an economic provision of the parties' decree of dissolution of marriage. **AFFIRMED.**

David H. Skilton of Cronin, Skilton & Skilton, Charles City, for appellant.

Gerald B. Carney, Waverly, for appellee.

Considered by Sackett, C.J., and Potterfield and Mansfield, JJ.

SACKETT, C.J.

Judy E. Gallmeyer appeals, challenging an economic provision of the decree dissolving her short-term marriage to Carl K. Gallmeyer. We affirm.

SCOPE OF REVIEW. Our review of the economic provisions of a divorce decree is de novo. Iowa R. App. P. 6.4. We examine the entire record and adjudicate anew the issues properly presented on appeal. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(*g*); *In re Marriage of Grady-Woods*, 577 N.W.2d 851, 852 (Iowa Ct. App. 1998). We approach this issue from a gender-neutral position avoiding sexual stereotypes. *In re Marriage of Pratt*, 489 N.W.2d 56, 58 (Iowa Ct. App. 1992) (citing *In re Marriage of Bethke*, 484 N.W.2d 604, 608 (Iowa Ct. App. 1992)).

BACKGROUND. Carl, who was born in 1942, and Judy, who was born in 1934, were married on May 12, 2005. With the assistance of separate counsel they crafted an extensive pre-marital agreement which they executed on April 21, 2005. The agreement included an itemization of each party's respective property. Judy listed a little over $100,000 in assets and $9000 in debt. Carl listed a little over $400,000 in assets and no debt. The agreement provided, among other things, that each party made no claim (1) to the property then owned by the other, (2) to the appreciation in value of said property, and (3) to any property the other subsequently acquired. The agreement specifically

provided that in the event of a dissolution of their marriage each party would retain his or her own property.

On June 6, 2007, Carl filed for dissolution of the marriage. The matter came on for hearing on April 10, 2008. Neither party questioned the terms of the prenuptial agreement. The district court awarded Judy whatever remained of the property she listed in the pre-marital agreement as well as any substitution or additions to her property, and any property she acquired during the marriage. The court made an identical award of Carl's property to him. The court further found that Judy had taken cash in the amount of $29,000 from Carl's safe before the parties separated and that to carry out the terms of the pre-marital agreement, Carl was awarded a judgment against Judy for $29,000 plus interest from the date of the filing of the petition.

FASHIONING A MORAL BALANCE OF ASSETS. Judy contends the district court erred in what she terms "fashioning a moral balancing of marital assets contrary to the parties' prenuptial agreement and the greater weight of the credible evidence." She argues that Carl should not have been awarded a $29,000 judgment against her on what she terms a suspicion that she took money from his safe, particularly when he failed to list the total amount of cash in the safe in the pre-marital agreement.

Iowa is an equitable distribution state, which means the partners in a marriage that is to be dissolved are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Hitchcock*, 309 N.W.2d 432, 437 (Iowa 1981). The distribution of the property of the parties

should be what is equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(5) (2007). *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa Ct. App. 1983). Assets and liabilities are valued as of the date of dissolution. *In re Marriage of McLaughlin*, 526 N.W.2d 342, 344 (Iowa Ct. App. 1994); *see also Locke v. Locke*, 246 N.W.2d 246, 252 (Iowa 1976); *Schantz v. Schantz*, 163 N.W.2d 398, 405 (Iowa 1968). We value property for division purposes at its value at the time of the dissolution. *See Locke*, 246 N.W.2d at 252. It is the net worth of the parties at the time of trial that is relevant in adjusting property rights. *In re Marriage of Muelhaupt*, 439 N.W.2d 656, 661 (Iowa 1989); *In re Marriage of Moffatt*, 279 N.W.2d 15, 20 (Iowa 1979). We look to the economic provisions of the decree as a whole in assessing the equity of the property division. *See In re Marriage of Robison*, 542 N.W.2d 4, 5 (Iowa Ct. App. 1995).

We look at all factors in assessing whether it was equitable for the district court to make the division that it did. The district court correctly considered the prenuptial agreement. Prenuptial agreements are favored in the law. *In re Marriage of Gonzalez*, 561 N.W.2d 94, 96 (Iowa Ct. App. 1996). Yet the provisions of an antenuptial[1] agreement are just one of the thirteen factors the court is directed to consider in making a property division. Iowa Code § 598.21(5)(*l*). Judy contends that the pre-marital agreement was offered in evidence, there were no objections made to it, and it should be honored in total. She further argues that we should consider the fact she leaves the marriage with

---

[1] The terms pre-marital and prenuptial are also used to refer to an antenuptial agreement.

fewer assets than does Carl and that the $29,000 represents a substantial portion of her assets. She argues that the $29,000 should not be sheltered to Carl by the pre-marital agreement, for he did not disclose it in the agreement.

The district court found that when the pre-marital agreement was signed in April of 2005, Carl had $80,000 in cash that he had been accumulating for some time in a home safe, though he only listed $10,000 as cash in the agreement. The court found that Judy was aware of the cash Carl had before she signed the agreement because he told her in January of 2005 that he had as much as $100,000 in cash. The testimony, which the district court accepted, was that Carl was working on his will. Judy was not in his will and did not want to be in it so he gave her cash of $20,000. He also about the same time paid off $11,000 of Judy's credit card debt and paid $8000 for a prearranged funeral for her.

The court also found there was a preponderance of credible circumstantial evidence that Judy took the money from Carl's safe. Carl had inventoried the safe on July 1, 2006, finding he had $49,700 in cash. On July 15, 2006, Judy told him she was going to be moving out. Before October 16, 2006, Judy gave her daughter $14,000 in cash and told her that was the last she was getting. This made Judy's daughter angry and she told Carl to watch Judy because she was taking money from him. Carl testified he inventoried his safe on October 17 and found $29,000 missing. He kept the combination to the safe in an unlocked box in the bedroom he shared with Judy and he had told her that the combination was in the box. He testified that he had opened the safe in front of Judy on numerous occasions.

Judy admitted she had $20,000 in cash when she gave money to her daughter, but contended her friend Debbie Kleinschmidt loaned the cash to her. Kleinschmidt testified that she made the loan to Judy and Judy gave $15,000 to her daughter and then gave $5000 back to Kleinschmidt. When asked if she had that kind of cash laying around, Kleinschmidt said she did sometimes depending on how well she did at the casino. Both women's testimony was vague as to where the cash Judy was allegedly loaned came from and the terms of the alleged loan.

There was evidence from which the district court could and did find that (1) Carl had more money in the safe than he reported in the prenuptial agreement, (2) Judy knew there was more money in the safe than was reported[2] and she knew where the combination to the safe was kept, (3) some $29,000 disappeared from the safe between the time Judy announced she would leave Carl and did leave, and (4) Judy gave $15,000 cash to her daughter during the period the money would have been taken. Giving the required deference to the district court's credibility determinations, we affirm the findings that Judy dishonestly took Carl's assets, which the parties had agreed were and would remain his assets. The focal question is whether, considering all factors, the district court's decision did equity.

While Judy argues that she is leaving the marriage at a financial disadvantage, the record is insufficient for us to make this determination. The

---

[2] The courts have never required that a party have precise valuations of the other's assets; a general knowledge of the true nature and extent of the other's properties is sufficient. *In re Marriage of Shanks*, 758 N.W.2d 506, 519 (Iowa 2008).

property each party takes under the district court's decree is not valued, nor does the record reflect the income each party receives from retirement funds and possible employment. In the pre-marital agreement the parties agreed to keep their assets separate. Judy was not true to her agreement when she took cash from Carl's safe. Carl had the cash at the time of the marriage and there is no evidence that Judy did anything to help him preserve or enhance his assets. The district court reached an equitable result and is affirmed.

ATTORNEY FEES. Judy contends she should have had attorney fees in the district court and that she should have them here. An award of attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Miller*, 532 N.W.2d 160, 163 (Iowa Ct. App. 1995). The court should make an attorney fee award that is fair and reasonable in light of the parties' financial positions. *In re Marriage of Hunt*, 476 N.W.2d 99, 104 (Iowa Ct. App. 1991). To overturn an award, the complaining party must show the district court abused its discretion. *Gonzalez*, 561 N.W.2d at 99. The district court did not abuse its discretion in not granting Judy attorney fees. We award no appellate attorney fees. Costs on appeal are taxed to Judy.

AFFIRMED.