IN THE COURT OF APPEALS OF IOWA

No. 9-949 / 09-0910
Filed December 30, 2009

IN RE THE MARRIAGE OF JEFFREY LEE ARMSTRONG AND CHRISTINA ELIZABETH ADAMS

Upon the Petition of

JEFFREY LEE ARMSTRONG,
Petitioner-Appellee,

And Concerning

CHRISTINA ELIZABETH ADAMS,
Respondent-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Jon Fister, Judge.

Wife appeals economic provisions of dissolution decree. **AFFIRMED AS MODIFIED.**

Gary J. Boveia and Beau D. Buchholz of Boveia Law Firm, Waverly, for appellant.

John J. Rausch of Rausch Law Firm, Waterloo, for appellee.

Considered by Eisenhauer, P.J., Potterfield, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

EISENHAUER, P.J.

Christina Adams appeals several economic provisions in the April 2009 decree dissolving her marriage to Jeffrey Armstrong. Christina objects to the trial court's allocation of debt and appreciation on two houses. Christina also appeals the decree's pension plans award. We modify the debt allocation and affirm.

As an equitable action, we review dissolution proceedings de novo. Iowa R. App. P. 6.907 (2009). We examine the entire record and decide anew the legal and factual issues properly presented and preserved for our review. *In re Marriage of Reinhart*, 704 N.W.2d 677, 680 (Iowa 2005). We accordingly need not separately consider assignments of error in the trial court's findings of fact and conclusions of law but make such findings and conclusions from our de novo review as we deem appropriate. *Lessenger v. Lessenger*, 261 Iowa 1076, 1078, 156 N.W.2d 845, 846 (1968). We, however, give weight to the trial court's findings of fact, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 6.904(3)(*g*).

Jeffrey Armstrong and Christina Adams were married in August 2000. While no children were born of the marriage, Christina's children from a previous marriage were nineteen, sixteen, fourteen and twelve when Jeffrey became their stepfather. The children's father died in 1995. Prior to the marriage, Christina owned a house on Larrabee Street in Denver, Iowa. The parties resided in the Larrabee house during the marriage.

In 2002, the children's paternal grandmother died. She left her estate to the four Adams children. The estate included real estate in Oran, Iowa, subject

to a Title XIX medical assistance lien. Christina obtained a home equity loan on the Larrabee property to pay the lien and keep the Oran home in the family. The original loan to pay the lien was for $16,000. In 2003, the loan was expanded to $41,100 to pay for the children's college expenses.

The trial court determined appreciation during the marriage was $44,190 for the Larrabee residence and $5810 for the Oran house. Finding both parties made tangible contributions to the marital relationship; the court ruled the appreciation should be divided as a marital asset. The court ruled one-third of the appreciation is attributable to "inflation in housing prices during the term of the parties' marriage" and awarded this appreciation to Christina. The court determined two-thirds of the appreciation was attributable to the joint efforts of the parties and awarded one-third to Jeffrey and one-third to Christina. Christina asks us to award all appreciation to her. However, we agree with the trial court's findings regarding appreciation and relative contributions to the increase in value of the homes. Based on our de novo review of the record, we find this division of appreciation equitable.

We disagree, however, with the trial court's treatment of the debt owed on the Larabee residence. The court stated:

> The $44,190 appreciation in the Larrabee Avenue residence should be reduced by the $6505 GMAC mortgage and $4921 of the $29,921 Veridian home equity loan, because $25,000 of that loan was nonmarital debt used by [Christina] to defray college education expenses for her adult children. These adjustments reduce the net appreciation to $32,764.

Christina argues the Larrabee appreciation should be reduced by the total debt owed. We agree. Rather than simply charging a debt to the party incurring

the obligation, a court should look to see whether "payment of the obligation was a reasonable and expected aspect of the particular marriage." *In re Marriage of Burgess*, 568 N.W.2d 827, 829 (Iowa Ct. App. 1997). Where a spouse knows payment of the obligation will be a part of the marriage and acquiesces to the payments during the marriage, a specific setoff for that debt as part of the property distribution is inappropriate. *See id.*

While Christina alone signed the September 2003 note, Jeffrey signed the September 2003 mortgage thereby acquiescing in mortgaging their homestead to finance the college education of his stepchildren. During the marriage the home equity loan balance was reduced from $41,100 to $29,921, making the loan payments "a reasonable and expected aspect" of the marriage. There is no evidence Jeffrey ever objected to this encumbrance of the Larrabee equity.

Consequently, the $44,190 appreciation of Larrabee should be reduced by both the $6505 GMAC mortgage and the $29,921 home equity loan. These adjustments reduce the net appreciation to $7764. Two-thirds of $7764 is attributable to the joint efforts of the parties ($5176) and Jeffrey is awarded $2588.

Finally, upon our de novo review of the record, we find no inequities in the court's treatment of the pension plans.

We affirm the decree as modified. As provided in the original decree, Christina shall pay Jeffrey $12,690 to balance the division of the property and $1940 for the Oran house appreciation. We modify the decree to have Christina pay Jeffrey $2588 for the Larrabee residence appreciation. The result is to

reduce the judgment against Christina from $25,530 to $17,218. All other provisions of the decree are affirmed. Each party will pay his or her own appellate attorney fees. Costs are taxed to Jeffrey.

AFFIRMED AS MODIFIED.