



In re Marriage of Parriott

2000 | Cited 0 times | Court of Appeals of Iowa | April 12, 2000

Appeal from the Iowa District Court for Dickinson County, Joseph J. Straub, Judge.

Sharon Parriott appeals the property and alimony provisions of the parties' dissolution decree. William Parriott cross-appeals the alimony award and grant of attorney fees.

AFFIRMED.

Sharon Parriott appeals the property and alimony provisions of the parties' dissolution decree. William Parriott cross-appeals the alimony award and grant of attorney fees. Sharon contends the district court acted inequitably (1) by failing to award her fifty percent of the marital property, and (2) by awarding her yearly, rather than monthly, alimony. Sharon also requests appellate attorney fees. William (Toby) argues (1) the district court's award of \$25,000 per year in alimony is unwarranted under the facts and law, and (2) the court abused its discretion by awarding Sharon \$3000 in attorney fees. We affirm.

Sharon and Toby married on December 28, 1961. During their marriage, they had four children. The divorce proceeding does not legally affect the children, as the youngest child was twenty-eight at the time of the dissolution.

Sharon and Toby are graduates of Drake University. Sharon completed a bachelor of arts degree in music, with a teaching certificate, and Toby obtained a pharmacy degree. In 1960, Sharon completed her education and moved to Colorado, where she taught school. One year later Sharon moved back to Iowa and married Toby while he was still in pharmacy school. Toby's parents paid his tuition and provided the couple with a monthly living stipend.

Shortly after the couple married, Sharon became pregnant. She quit working full-time and taught piano lessons while Toby was in school.

After graduating, Toby obtained employment with a pharmacy in Emmetsburg. Sharon taught music two days per week at a school in Rodman, and served as a substitute teacher in Emmetsburg. She also worked as an organist for three area churches. The couple lived in Emmetsburg for one year.

In 1964, Sharon and Toby moved to Spirit Lake. Toby purchased a pharmacy for \$88,000. He borrowed \$20,000 from a local bank for the down payment. Sharon did not sign the contract to purchase the drug store, rather Toby and his mother, Mary Jane Parriott, signed the contract. The



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purchase did not include the real estate. Later, Toby's mother purchased the real estate and gifted it to the parties' four children.

Throughout the marriage, Sharon worked as a substitute teacher, taught piano lessons, and played the organ at a local church. At times she also assisted in the drug store.

Sharon's father passed away in 1968. She inherited \$9500 and a remainder interest in his farmland subject to her mother's life estate. She invested the sum of her cash inheritance in a certificate of deposit.

In 1976, Toby purchased a nine-hole golf course for \$165,000, which he renamed Indian Hills Golf Course. The course is located near West Lake Okoboji, west of Spirit Lake. Toby closed the course for one year and made substantial improvements to it. Toby borrowed \$350,000 from the Small Business Administration (SBA) for the purchase price and improvements. In addition, he sold his pharmacy on contract, and received a down payment of \$40,000.

Both Sharon and Toby contributed to the course and clubhouse construction. Toby assisted in the building of the greens and tees. Sharon assisted in the design and decoration of the club house, while continuing to teach piano lessons, and serving as a church organist. After their youngest child started kindergarten, Sharon worked full-time as a teacher's aid.

Toby's mother died in 1979. He received \$66,469 from her estate, minus a deduction for an advance made to Toby to keep the golf course running and to support the family. Toby used the inheritance proceeds to support the golf course. That year, the couple had to sell the marital home on West Okoboji, and moved into a condominium.

Toby served as the manager of the golf course on a full-time basis until 1981. That year his brother opened a pharmacy in Spencer, and Toby went to work for him part-time. Toby proceeded to work at other pharmacies. Sharon also assisted with the golf course, by preparing and serving meals, and cleaning the clubhouse.

In the early 1980's Toby began experiencing severe financial difficulties. He could not make his monthly payments of \$3200 to the SBA. From 1980 through 1983, Sharon's mother, assisted Toby with annual gifts of \$3000. In 1982, the SBA initiated foreclosure procedures. Toby entered into an agreement with the SBA and was able to keep the golf course.

Toby paid off the SBA loan by borrowing \$192,500 from a bank in Estherville. Sharon did not cosign the bank loan. The bank holding the loan failed and Toby refinanced the loan. Toby continued to make payments to the new lender, but had to borrow against the contract on the sale of the drug store. Toby borrowed \$151,186 from the new lender, payable in monthly payments of \$835.68 for 260 months. Sharon did not cosign this loan either.



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In 1989, the couple's daughter, Elizabeth became involved in managing the golf course. Toby worked for several pharmacies until he obtained steady employment with Wal-Mart in 1991. Toby used his salary to support the family and to maintain and improve the golf course. At the time of trial, Elizabeth was the full-time manager of the golf course.

In 1991, the family moved into a new home built on a lot adjacent to the Indian Hills Golf Course. At the time of trial, they agree the value is \$210,000, with a mortgage of \$72,572.

In 1992, Sharon's mother passed away. The value of Sharon's share of the estate was \$439,465. Sharon kept her inherited assets separate from the marital assets. Toby never claimed an interest in Sharon's inherited assets, nor in the income generated from her investments.

Sharon filed a petition for dissolution on December 9, 1996. The parties reached a pretrial stipulation, leaving the following issues unresolved: property division, alimony, attorney fees, and courts costs. The district court heard the trial on February 4, 5, and March 16, 1998. At the time of trial, Sharon was fifty-nine, and Toby was fifty-eight. During the winter months, Toby lived in Las Vegas, and worked part-time as a pharmacist, with the exception of 1997, when he was hospitalized for angioplasty. In addition to her employment as a teacher's aid, piano teacher, and church organist, Sharon took a summer job at a hotel. Her gross income for 1997 equaled \$26,823.73.

The district court issued its opinion on April 28, 1998, awarding Sharon \$176,219 and Toby \$668,410 in marital assets. The district court awarded Sharon her separate inheritance, valued at \$475,000, and gave Toby a credit of \$125,000 for contributions made to the golf course from his inheritance. To make the distribution equitable, the district court awarded Sharon alimony, stating, "property division and alimony must be considered together in evaluating individual sufficiency." The district court granted Sharon \$25,000 per year for ten years.¹ In addition, the district court provided:

[i]f Sharon has not remarried during that ten-year period, and if she and Toby are still both alive, then beginning October 1, 2007, and on the first day each month thereafter, Toby shall pay alimony to Sharon at the rate of \$100 per month. Payments shall cease upon the happening of any of the following events: Sharon's remarriage, Toby's death or Sharon's death.

Both parties requested attorney fees. The court found: "neither party has much in the way of liquid assets, but Toby has more cash flow." As a result, the court ordered Toby to pay \$3000 of Sharon's attorney fees. Sharon appeals, and Toby cross-appeals.

I. Standard of Review.

We review dissolution decrees de novo. *In re Marriage of Knickerbocker*, 601 N.W.2d 48, 50 (Iowa 1999). We review the entire record and adjudicate rights anew on issues properly presented. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). While we give weight to the factual findings of



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the district court, especially with respect to credibility determination, they do not bind us. Knickerbocker, 601 N.W.2d 51.

II. Property Distribution.

Sharon contends the district court acted inequitably in awarding her only eighteen percent of the marital assets and by giving Toby a credit of \$125,000 for contributions made to the golf course from his inheritance. Assets and debts should be divided equitably, but not necessarily equally upon consideration of the criteria listed in Iowa Code section 598.21(1) (1997). In re Marriage of Bonnette, 584 N.W.2d 713, 714 (Iowa App. 1998). We consider an award of alimony in accordance with the property distribution. In re Marriage of Van Regenmorter, 587 N.W.2d 493, 495 (Iowa App. 1998).

The district court granted Sharon \$176,219 and Toby \$668,410 in marital assets. The district court awarded Sharon her separate inheritance, valued at \$475,000, and gave Toby a credit of \$125,000 for his inheritance contributions to the golf course. To make the distribution equitable, the district court ordered Toby to pay Sharon alimony of \$25,000 per year for ten years, totaling \$250,000, regardless of whether she remarried or Toby died before the end of the ten-year period. On our de novo review, we find the district court's property distribution equitable in light of the alimony award.

III. Alimony Award.

Sharon contends the district court acted inequitably in awarding her alimony of \$25,000 per year as opposed to monthly alimony. Toby cross-appeals, arguing the court's award of \$25,000 per year in alimony is unwarranted under the facts and law. Toby claims an award of \$400 per month would be equitable because Sharon overestimated her need at trial.

In determining whether an alimony award is appropriate, the court considers the factors listed in Iowa Code section 598.21(3). In re Marriage of Spiegel, 553 N.W.2d 309, 319 (Iowa 1996). There are three types of alimony: rehabilitative, reimbursement, and traditional. Smith, 573 N.W.2d at 926. Rehabilitative alimony supports a spouse for a limited period of education, with a goal of self-sufficiency. Id. Reimbursement alimony reimburses a spouse for economic sacrifices made during the marriage. Id. Traditional alimony supports a spouse for life, as long as the spouse is incapable of self-support. Id. The district court awarded Sharon a combination of reimbursement and traditional alimony. See id.

Sharon cites no authority to support her contention she should receive alimony in monthly as opposed to yearly installments. Failure to cite authority in support of an issue may be deemed a waiver of that issue. Iowa R. App. P. 14(a)(3); In re J.J.A., 580 N.W.2d 731, 740 (Iowa 1998); Hollingsworth v. Schminikey, 553 N.W.2d 591, 596 (Iowa 1996). After careful research, we find no support for this proposition, therefore, we deem the matter waived. In re J.J.A., 580 N.W.2d at 740.



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Toby argues Sharon should receive \$400 of monthly alimony, as opposed to \$25,000 of alimony for ten years. Given the district court's decision to distribute a larger share of the property to Toby, we find the district court acted equitably when it awarded Sharon \$25,000 of alimony per year for ten years.

IV. Trial Attorney Fees.

Toby claims the trial court abused its discretion in requiring him to pay \$3000 toward Sharon's attorney fees. A party does not have a right to an award of attorney fees, rather the district court uses its discretion to determine whether an award is appropriate. In re Marriage of Dieger, 584 N.W.2d 567, 570 (Iowa App. 1998). "Whether attorney fees should be awarded depends on the respective abilities of the parties to pay the fees and the fees must be fair and reasonable." In re Marriage of Applegate, 567 N.W.2d 671, 675 (Iowa App. 1997). After carefully reviewing the record, we conclude the district court did not abuse its discretion in awarding Sharon \$3000 in attorney fees.

V. Appellate Attorney Fees.

An attorney fee award is not a matter of right but rests within the appellate court's discretion. In re Marriage of Vieth, 591 N.W.2d 639, 641 (Iowa App. 1999). We examine "the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the district court's decision on appeal." In re Marriage of Williams, 589 N.W.2d 759, 762 (Iowa App. 1998). We decline to award attorney fees in this case. One-half of the costs on appeal are assessed to each party.

AFFIRMED.

1. The district court concluded Sharon is entitled to receive this money regardless of whether she remarries or Toby dies during the ten-year period, providing: "[S]he will have a claim against Toby's estate in an amount equal to \$250,000 minus the total of the alimony payments made by Toby prior to his death."

