

IN THE COURT OF APPEALS OF IOWA

No. 4-556 / 03-2110
Filed September 29, 2004

IN RE THE MARRIAGE OF TAMMY LOU HOAKISON and MARK ALAN HOAKISON

**Upon the Petition of
TAMMY LOU HOAKISON,**
Appellant,

**And Concerning
MARK ALAN HOAKISON,**
Appellee.

Appeal from the Iowa District Court for Union County, Dale B. Hagen,
Judge.

Appellant appeals the value and distribution of assets in the parties' dissolution decree and additionally the denial of her request for attorney fees.

AFFIRMED AS MODIFIED.

Andrew Howie of Hudson, Mallaney & Shindler, P.C., West Des Moines
and Jeffrey Milhollin, Corning, for appellant.

Martin Fisher of Fisher, Fisher & Fisher, P.C., Adair, for appellee.

Considered by Mahan, P.J., Miller, J., and Hendrickson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2003).

HENDRICKSON, S.J.

Tammy Lou Hoakison appeals the value and distribution of assets in the parties' dissolution decree and additionally the denial of her request for attorney fees. We affirm as modified.

Background Facts. Tammy and Mark Hoakison's twenty-two-year marriage was dissolved by a decree filed on November 20, 2003. At the time of trial, Tammy was forty years old and in good health. Mark was forty-two years old and also in good health. At the conclusion of the trial held on October 23, 2003, the trial court dictated its factual findings and legal conclusions in the record and Mark's attorney drafted a written decree. Tammy timely moved for a new trial claiming that the court failed to fix a value on the two largest assets, namely the house and a camper, but nevertheless divided the assets resulting in a distribution that was not equitable to her. The motion was overruled.

Scope of Review. Our review is de novo. Iowa R. App. P. 6.4; *In re Marriage of Duggan*, 659 N.W.2d 556, 559 (Iowa 2003). We give weight to the fact findings of the trial court, especially when considering the credibility of the witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(g); *Duggan*, 659 N.W.2d at 559.

Specifically, Tammy asserts that the trial court erred in failing to determine: (1) the value of the marital home; (2) the value of a camper-trailer; and (3) the division of Mark's retirement savings.

I. Property Division. Iowa law requires assets of the parties in a dissolution of marriage proceeding be divided equitably between them. See Iowa

Code § 598.21(1) (2003) (listing factors to consider); *In re Marriage of Bonnette*, 584 N.W.2d 713, 714 (Iowa Ct. App. 1998). However, equitable distribution does not necessarily mean an equal division of property nor does it mean a percentage division of property. *In re Marriage of Hoak*, 364 N.W.2d 185, 194 (Iowa 1985).

The trial court in its findings stated:

The Court is unable to make a determination as to the value of the home and determination of the value of the camper. Those are the two items that are most in dispute as to values. But the Court finds that the following would be an equitable distribution of the properties: from petitioner's Exhibit 1 the Court will award the properties and the debts as set forth to each party in Exhibit 1.

However, the trial court made an exception to Exhibit 1 by awarding the camper to Mark although the exhibit proposed that the camper be awarded to Tammy.

There is conflicting evidence concerning the net values of the home awarded to Tammy and the camper awarded to Mark. Since the trial court did not make a finding as to values, the net property distribution is unclear from the court's ruling. This court said in *Bonnette*, 584 N.W.2d at 714:

The reason we underscore the importance of assigning values and setting forth the net property distribution is two-fold: (1) to enable the reviewing court to assess whether an equitable division of property was affected; and (2) to aid the parties in better understanding their respective property awards, which would, in some cases, dispense with the need for an appeal.

Our de novo review of the evidence leads us to conclude the value of the house is \$90,000 and the debt against the house is \$80,000. Likewise, we fix the value of the camper at \$25,840 and the debt against the camper at \$14,055. We find, however, that the award of the trial court with the foregoing values assigned

to the two properties in question results in Tammy being awarded a net debt of \$17,593 and Mark being awarded net assets of \$8,449.25, or a difference of \$26,042.25. We find this disparity to be inequitable.

In addition, Mark changed jobs shortly before the marriage and, without consulting Tammy, cashed out his tax-deferred retirement savings plan worth \$25,288.56. At the time of the dissolution hearing, the sum of \$3,393.00 remained after paying taxes and certain debts of the parties. The decree did not mention this asset and therefore it went to Mark. In order to achieve a more balanced property division, we conclude the dissolution decree should be modified by awarding the balance of the retirement plan in the sum of \$3,393.00 to Tammy. *Duggan*, 659 N.W.2d at 559. In addition, we order Mark to pay Tammy the sum of \$9,000 within one year from the date of the procedendo.

II. Attorney Fees. An award of attorney fees depends on the respective abilities of the parties to pay the fees. *In re Marriage of Applegate*, 567 N.W.2d 671, 675 (Iowa Ct. App. 1997). It is in the discretion of the court to determine if an award is appropriate. *In re Marriage of Dieger*, 584 N.W.2d 567, 570 (Iowa Ct. App. 1998). Unless there has been an abuse of discretion, the decision of the trial court will not be disturbed. *In re Marriage of Romanelli*, 570 N.W.2d 761, 765 (Iowa 1997).

In view of the incomes of the parties and the debts assumed and the division of the assets as modified, we conclude the decision of the trial court in denying Tammy's request for attorney fees is not an abuse of discretion and is affirmed.

Additionally, for the same reasons we deny each party's request for appellate attorney fees.

Having considered all arguments properly before us on appeal, we affirm as modified.

Costs on appeal are assessed to Mark.

AFFIRMED AS MODIFIED.