

# In the United States Bankruptcy Court

## for the Northern District of Iowa

### Western Division

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SABINE BARBARA DAVIS  
*Debtor(s).*

Bankruptcy No. X89-00213S  
Chapter 7

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### FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER RE: DEBTOR'S MOTION TO AVOID LIEN

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The matter before the court is debtor's motion to avoid liens and the resistance thereto filed by Glen S. Davis.

Hearing was held on August 29, 1989 in Sioux City, Iowa. The court now issues its findings of fact and conclusions of law as required by Bankr. R. 7052. This is a core proceeding under 28 U.S.C. § 157(b)(2)(0).

#### FINDINGS OF FACT

The marriage between Sabine B. Davis and Glen S. Davis was dissolved by the Iowa District Court for O'Brien County, Iowa on November 16, 1988. The dissolution proceeding was apparently a contentious one. Of concern to this court is the parties' dispute regarding the division of their property.

Each party introduced into evidence a copy of the state court pre-trial stipulation of assets executed by the parties (exhibits 10 and A). These exhibits vary as to ownership and acquisition on a substantial number of items of property. The court finds that exhibit A is a copy of the official state court document. It lists most of the property as being owned jointly. Sabine Davis' photocopy (Exhibit 10), on the other hand, includes handwritten notations as to ownership made apparently after she signed the document which was presented to the state court. The revised stipulation indicates that nearly all items of property were owned either jointly or by her.

In the decree of dissolution, the district court judge stated that because of the inability of the parties to agree on any distribution of their property, most of the property would be sold at public sale and the proceeds would be divided equally between the parties. (Plaintiff's exhibit no. 9 at 6.) The sale of the parties' assets was to include their residence and all the items listed in the pre-trial stipulation except that each party would retain one motor vehicle and their respective bank accounts; Glen Davis would be entitled to retain his UtiliCorp stock, savings accounts and an heirloom cradle and Sabine Davis would be entitled to retain her jewelry, daughter Jennifer's furniture, and son Michael's furniture. (Plaintiff's exhibit no. 9 at 6-7.) All other property was to be sold prior to March 20, 1989. (Plaintiff's exhibit no. 9 at 7.)

Before the sale of assets took place, Sabine Davis filed a voluntary chapter 7 bankruptcy petition. on her schedule B-2, she listed a number of the disputed marital assets as household goods in which she claimed sole ownership. These household goods were claimed as exempt. After the creditors' meeting, she filed a motion seeking to avoid any liens on the exempt property that Glen might claim as a result of the decree.

Glen Davis resisted the debtor's motion, arguing that Sabine Davis had, at best, an undivided one-half interest in all of the real and personal property, including household goods. Additionally, he objected to the listed values of the personal property on Sabine Davis' B-2 and B-4 schedules, stating that these values were substantially understated.

Both parties agree that there is no dispute as to each party's ownership of an undivided one-half interest in the homestead. There is no resistance to Sabine Davis' motion to avoid any lien Glen may have in her one-half interest in the homestead.

### DISCUSSION

The debtor maintains that the divorce decree in no way settled issues of ownership of property between Sabine and Glen Davis. Instead, she argues, the court simply ordered that nearly all personal property be sold at public sale and that proceeds be equally divided. The debtor interprets this as merely the establishment of a judicial lien on her property which may be avoided under S 522(f)(1) of the Bankruptcy Code.

Upon every judgment of dissolution, an Iowa district court "shall divide the property of the parties and transfer the title of the property accordingly." Iowa Code Ann. 5 598.21(i). A court must divide equitably all property, except inherited property or gifts received by one spouse. Iowa Code § 598.21 (l). Gifts or inherited property received by either spouse prior to or during the course of their marriage is the sole property of that spouse and is not generally subject to a property division in divorce proceedings. Iowa Code § 598.21(2). However, such property may still be divided upon a finding that a failure to do so would be inequitable to the other party or to the children of the marriage. *Id.* See also In re Marriage of Thomas, 319 N.W.2d 209, 211 (Iowa 1982) (Iowa Supreme Court lists factors that bear on a claim that gifted or inherited property should be included in the property division.)

Property division must be fair and equitable to the marital partners based on their share of the property accumulated during the marriage. In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981). The resulting dissolution decree ordinarily settles all property rights and interests of the parties. Prochelo v. Prochelo, 346 N.W.2d 527, 529 (Iowa 1984). All property rights that have not been otherwise settled must, of necessity, be settled by the divorce decree, and it can make no difference where the title rests. *Id.* at 529.

"If the title is left undisturbed, it is, in effect, adjudged in the party who holds it. In other words, property rights are settled and adjudged in a divorce decree whenever the parties own property."

Prochelo v. Prochelo, 346 N.W. at 529 quoting Roberts v. Playlg, 150 Iowa 279, 280, 129 N.W. 945, 946 (1911).

Consequently, the dissolution decree between Sabine and Glen Davis necessarily settled the ownership interest of each piece of their property. The O'Brien County District Court specifically determined title over some of the property; it awarded Sabine Davis her individual bank account, her

jewelry, and her children's furniture, while awarding Glen Davis the family cradle and stocks and accounts held individually by him. Each spouse was also awarded the car in his or her possession. Because the spouses claimed interests in the majority of the remaining property, and because it was clear to the court that neither party was capable of agreeing to the distribution of any individual piece of property, the court chose to require liquidation of all remaining property and to divide the proceeds equally.

Implicit in the state court's decision, however, is the determination that the property to be sold was marital property and not Sabine's individual property. Sabine now claims and attempts to prove that certain items of personal property ordered sold by the state court are hers alone. Much of what is listed on her schedule B-2 includes such property.

The distinction the debtor attempts to draw between the dissolution decree and the conflicting pre-trial property settlements are irrelevant. A pre-trial stipulation as to the ownership of the parties' property is superseded by the divorce decree. Prochelo v. Prochelo, 346 N.W.2d at 530. Thus, all rights and obligations with regard to this property are imposed by the decree, not the stipulation. *Id.* at 530. To the extent the pre-trial stipulation was used by the district court judge in formulating the property division, the stipulation is merged into the dissolution decree; it is interpreted and enforced as a final judgment of the court, and not as a separate contract between the parties. *Id.* at 530. See also, Bowman v. Bennett, 250 N.W.2d 47, 50 (Iowa 1977). Because neither of the parties appealed the divorce decree, it is final as to the circumstances then existing. York v. York, 246 Iowa 132, 67 N.W.2d 28, 30 (1954).

It is unclear from the dissolution decree whether the court considered Sabine Davis' argument that some of the disputed property was purchased by money given to her by her family and therefore was not subject to division. Indeed, it is unclear whether this argument was even presented to the divorce court. In any event, the principle of collateral estoppel prevents Sabine Davis from raising that argument now.

Under the doctrine of collateral estoppel, "once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation." Iowa Elec. Light & Power Co. v. Mobile Aerial Towers, Inc., 723 F.2d 50, 52 (8th Cir. 1983), quoting Montana v. United States, 440 U.S. 147, 153, 99 S.Ct. 970, 59 L.Ed.2d 210 (1979). Collateral estoppel is binding on a bankruptcy court and precludes relitigation of factual issues if:

- (1) The issue sought to be precluded is identical to that decided by the state court,
- (2) The issue was actually litigated in the state court proceeding,
- (3) The issue was determined by a valid and final judgment, and
- (4) The determination of the issue was essential to the prior judgment.

Gross v. Gross, 722 F.2d 599, 604 (10th Cir. 1983). The issue of ownership of the disputed property in this case clearly meets these four requirements.

First, as stated above, the issue of title was determined by the dissolution decree. By ordering all the now-disputed property to be liquidated and the proceeds of the sale to be divided evenly between the parties, the court implicitly determined that such property was marital property. The state court would

not have ordered it sold had it been inherited by or received as a gift by Sabine. Section 598.21(2) prevents this. There was no finding based on equitable grounds that would have subjected Sabine's sole property to distribution.

Second, the issue of ownership was actually litigated in the divorce proceedings. Both parties had ample opportunity through the pre-trial stipulation process and the hearing that followed to present arguments as to the ownership of disputed property. Once the issue has been fully litigated, the doctrine of collateral estoppel proscribes relitigation of the issue regardless of whether the judgment may be wrong or the state court failed to take into consideration significant case law in its decision. Polley V. Spangler (In re Polley), 74 B.R. 68, 71 (Bankr. S.D. Ohio 1987); Gross v. Gross, 722 F.2d 599, 605 (10th Cir. 1983). This result does not work a hardship on either party; each had the opportunity to present their arguments as to ownership and division of the marital property and each party had the right of appeal in the Iowa courts. Gross v. Gross, 722 F.2d at 605. Hence, the argument that property purchased by Sabine Davis with funds given to her by her family constituted separate property that should not have been involved in the division of property between the spouses should have been litigated before the state court at the time of the divorce. Now that decree is final, it is too late to relitigate the issue in bankruptcy court.

The divorce court's decree was well reasoned, applying the property division standards set forth in Iowa Code § 598.21. The fact that the court did not specifically address Sabine Davis' contention that some of the property was purchased with gifted funds, is certainly not fatal to the decree.

A decree is to be construed like other written instruments; the determining factor is the intention of the court as gathered from all parts of the judgment. Effect must be given to that which is clearly implied as well as to that which is expressed.

Local Bd. of Health, Boone County v. Wood, 243 N.W.2d 862, 865 (Iowa 1976) quoting Rinehart v. State, 234 N.W.2d 649, 656 (Iowa 1975) (emphasis in the original).

Third, the collateral estoppel test in Gross v. Gross requires the issue to be determined by a valid and final judgment. In Iowa, a dissolution decree ordinarily settles all property rights and interests of the parties and if not appealed, the decree is final as to the circumstances then existing. Prochelo v. Prochelo, 346 N.W.2d at 529; York v. York, 67 N.W.2d at 30.

Fourth, the determination of the property rights of each party was essential to the dissolution decree. Iowa Code § 598.21(l) requires the divorce court to divide the property of the parties and transfer the title accordingly. Section 598.21(i) requires a divorce court to consider a variety of factors in determining an equitable division of property. The court is also required by statute to take into account gifted and inherited property. Section 598.21(2). The O'Brien County District Court made a judicial determination as to all the property rights between Glen and Sabine Davis. As a result, both parties are now precluded from relitigating these issues in another court. This court recognizes and accepts the ownership interests as determined by the divorce decree.

Finally, the court notes that although the O'Brien County divorce decree precludes this court from altering these interests, this court is not bound by the doctrine of collateral estoppel with respect to the valuation of marital assets. Valuation for divorce in bankruptcy takes place at different times; between these valuations, appreciation or depreciation of the disputed property may have taken place.

Therefore, any valuation of property in the divorce decree cannot be binding on this court. In re Erwin, 25 B.R. 363, 366 (Bankr. D. Minn. 1982). However, based on the determination of the lien

avoidance issue, this court does not think it is necessary to reach valuation issues raised by Glen Davis.

### **ORDER**

IT IS ORDERED that debtor's motion to avoid Glen Davis' lien, if any, on her undivided one-half interest in the homestead is granted.

IT IS FURTHER ORDERED that debtor's motion to avoid Glen Davis, lien, if any, on her undivided one-half interest in household goods is granted. To the extent that Glen Davis may claim a lien in the debtor's jewelry, bank accounts, motor vehicle, or the children's furniture, the motion to avoid such lien is granted. To the extent debtor's motion seeks to extinguish Glen Davis, undivided one-half ownership interest in personal property not awarded by the Iowa District Court solely to her, the motion is denied.

SO ORDERED THIS 31st DAY OF OCTOBER, 1989.

William L. Edmonds  
Chief Bankruptcy Judge