

FILED

APR 29 1980

CLERK SUPREME COURT

497

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MARY JOAN FARVER AND PAUL V. FARVER

Upon the Petition of	)	
MARY JOAN FARVER,	)	Filed April 29, 1980
Petitioner-Appellee,	)	
and concerning,	)	
PAUL V. FARVER,	)	0-25
Respondent-Appellant.	)	<u>2-63885</u>

Appeal from Marion District Court - Robert O. Frederick, Judge.

Respondent-husband appeals property division of dissolution decree. - Affirmed
as Modified.

Theodore T. Duffield, of Patterson, Lorentzen, Duffield, Timmons, Irish
& Becker, Des Moines, for respondent-appellant.

Ross H. Sidney, of Grefe & Sidney, Des Moines, for petitioner-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Respondent-husband, Paul Farver, appeals from the property division of the decree dissolving the marriage between himself and petitioner-wife, Joan Farver. Paul contends that many of the trial court's fact findings and conclusions of law were erroneous. Paul also asserts that the trial court should have considered the value of three spendthrift trusts to which Joan is a beneficiary, and Paul's contributions to the increased value of the stock that comprises the corpus of each trust, in determining the property division. Paul also alleges that the trial court erred by not considering the future tax consequences in valuing his IRA account. We modify certain provisions of the property division and affirm the remainder of the decree.

Paul and Joan were married October 12, 1945. At the time of marriage, Joan had \$55,000 worth of assets and Paul had \$10,000. Paul and Joan had three children, all of whom are married and independently provided for. Two years after the marriage, Paul began a thirty-year career with the Rolscreen Company, owned by Joan's family. He worked his way through the ranks and was president of the company for the last ten years of his employment. During the marriage, the parties accumulated considerable assets, and the division of those assets is essentially the only issue raised by this appeal.

Our review is de novo. Iowa R. App. P. 4. We are not bound by the trial court's findings of fact, but we give weight to them, especially regarding the credibility of witnesses. Iowa R. App. P. 14(f)(7). In reviewing the property division provisions of a dissolution decree, we consider the factors enunciated in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except fault. In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972).

Paul raises a total of nineteen issues separately challenging many of the trial court's findings of fact and conclusions of law related to the property division between the parties. Joan correctly points out that the argument in Paul's brief did not contain his contentions with respect to the issues presented in separately numbered divisions corresponding to the separately stated issues pursuant to Iowa R. App. P. 14(a)(5). Furthermore, there was no authority cited in support of seventeen of the nineteen issues. Consequently, we could deem these issues waived pursuant to Iowa R. App. P. 14(a)(3). Because of our desire to address the merits of cases, especially cases brought

in equity which we review de novo, we will not in this instance regard Paul's failure to comply with these rules of appellate procedure as barring further consideration. However, for the sake of brevity, it will suffice to say that those challenged findings of fact and conclusions of law not directly addressed in this opinion have been considered in our de novo review of the record and stand affirmed on appeal.

Our consideration of the Schantz factors leads us to conclude that an equitable property division between these two parties requires an attempt at dividing the marital assets as equally as possible. The trial court allowed Joan to keep her stock in the Rolscreen Company, and valued that stock at \$1,140,000. Paul contends that the trial court undervalued the stock, and, in addition, failed to consider the effect of a proposed plan of recapitalization on the stock's value.

In valuing stock of a corporation, an exact value need not be arrived at, since the only purpose of determining the stock's value is to aid in making an equitable property award. In re Marriage of Moffatt, 279 N.W.2d 15, 19 (Iowa 1979). We conclude that the value arrived at by the trial court was appropriate for that equitable purpose. Regarding Paul's contention that the recapitalization plan should have been considered in valuing the stock, we conclude that the trial court's decision not to consider the recapitalization plan was proper. The recapitalization plan had not yet been approved at the time of trial. The requisite consent of the stockholders, trustees, and beneficiaries of trusts that own Rolscreen Company stock had not been obtained. The plan was still subject to Internal Revenue Service approval. Since the date of trial is the only appropriate time for assessing the net worth of the parties, id. at 20; In re Locke, 246 N.W.2d 246, 252 (Iowa 1976), the trial court properly declined to consider the effect on the value of stock of a recapitalization plan that had not been approved at the date of trial.

Paul asserts that the trial court should have considered Joan's interest in three spendthrift trusts, and Paul's contribution to the increased value of the Rolscreen stock that funds the trusts. At the time of trial, Joan was the income beneficiary of two of the trusts, holding a remainder interest in the corpus of those trusts, which would become possessory upon the death of both of Joan's parents, provided Joan survives both her parents. The third trust provided Joan's mother with the beneficial income interest

for her life. Upon Joan's mother's death, the income was to be paid to Joan and her brother. Following the death of both parents, Joan and her brother would divide the trust corpus equally, provided they survive their parents. If either Joan or her brother predeceased their parents, their remainder interest would go to the heirs of their body. If either predeceased their parents without heirs of their body, their remainder interest would be transferred to the survivor of the two.

At the time of trial, both of Joan's parents were alive. With that in mind, the trial court determined that since Joan had no present possessory interest in the trusts at the time of trial, the trust values could not be considered in dividing the marital assets. We agree.

Joan's remainder interest in two of the trusts was subject to the condition of her surviving her parents. A remainder interest subject to such a survivorship condition is considered a contingent interest in Iowa. See Huse v. Noffke, 271 N.W.2d 682, 684 (Iowa 1978); Buchan v. Buchan, 254 Iowa 566, 569-70, 118 N.W.2d 611, 613-14 (1962). Likewise, the third trust subjecting Joan's remainder interest to the condition of her surviving her parents, or having heirs of her body who meet the survival condition, also only gave Joan a contingent interest in the trust corpus at the time of trial. See Pringle v. Houghton, 249 Iowa 731, 734-35, 737, 742, 88 N.W.2d 789, 790-92, 795 (1958). Since we determine the value of the marital assets at the time of trial, Locke, 246 N.W.2d at 252, we conclude that the trial court properly declined to consider Joan's interest in the three spendthrift trusts since her interest was only contingent at the time of trial, as opposed to a vested or present possessory interest. See Loeb v. Loeb, 261 Ind. 193, 196-200, 301 N.E.2d 349, 352-53 (1973); In re Marriage of Hirsch, ___ Ind. App. ___, ___, 385 N.E.2d 193, 196 (1979). But see Leighton v. Leighton, 81 Wis.2d 620, 634-35, 261 N.W.2d 457, 464 (1978); Trowbridge v. Trowbridge, 16 Wis.2d 176, 183-88, 114 N.W.2d 129, 134-36 (1962); cf. In re Marriage of Beeh, 214 N.W.2d 170, 172 (Iowa 1974) (trust remainder interest with no survivorship requirement was treated as vested and could be considered in property division determination). See generally Essex v. Essex, 195 Neb. 385, 386-87, 238 N.W.2d 235, 237 (1976). Since we conclude that the value of the trusts is not a proper matter for consideration in this property division, Paul's request that we consider his contribution to the increased value of the Rolscreen stock that provides the corpus

for each of the trusts must also be denied on the ground of irrelevancy. Essex, 195 Neb. at 386-87, 238 N.W.2d at 237.

Paul contends that the trial court improperly valued his interests in an employment contract with Rolscreen and an IRA account by not considering the adverse tax consequences of these two future sources of income. Paul cites no Iowa authority that requires us to consider the tax consequences of his future income. Whether courts should be required to consider future tax consequences of certain sources of income in determining an equitable property division is a question we do not reach. We conclude that we cannot consider only the tax consequences of one provision of a property division. If tax consequences are to be properly considered, they should be considered with regard to the whole property division, rather than one or two income-producing sources. We would be required to also consider the tax consequences of Paul's Chicago condominiums, which are apparently serving as a form of "tax shelter" for Paul at the present time. In the absence of evidence regarding the tax consequences of the other marital assets that were divided by the decree, we simply conclude, as the trial court did, that Joan's Rolscreen stock and Paul's employment contract and IRA account are relatively equivalent as future income sources for the parties. The trial court valued Paul's employment contract at \$832,981 and his IRA account at \$538,000. Our review of the record leads us to conclude that these valuations are correct, and we determine that the trial court's award of those income-producing devices to Paul as an offset to Joan's stock interests was equitable and just. We now turn to the division of the other marital assets.

The trial court valued two Aspen, Colorado condominiums at their purchase price, valuing one at \$49,500 and the other at \$39,500. Based on those valuations, the trial court awarded the \$49,500 condominium and its furnishings to Joan along with the furnishings of the other condominium, and ordered the sale of the \$39,500 condominium with the proceeds to be divided equally between Joan and Paul. Paul contends that the trial court should have valued the condominiums at their present value rather than their purchase price. Considering our adherence to the principle that marital assets should be valued at the time of trial, Locke, 246 N.W.2d at 252, we agree with Paul's contention. Paul testified at trial that the present value of both of the condominiums was \$320,000.

We conclude that this is a reasonable value for the two condominiums and we adopt it. Consequently, applying this value to the trial court's provision regarding the Aspen condominiums, we find that Joan's award has a present value of \$249,600 and Paul's has a present value of \$70,400.

We also note that the record is unclear regarding the value of the personal property each party was allowed to retain. Paul asserts that the value of Joan's personal property, considering only her jewelry, furs, and household furniture and furnishings, was \$184,500. Joan contends that the value of her personal property was \$150,000. From our review of the record, we find that \$175,000 is an appropriate value for Joan's personal property. Both parties are in apparent agreement that the value of Paul's personal property is \$12,000 and we accept that figure.

Applying these new values to the trial court's division of the marital assets, we find the following property division:

<u>Joan</u>		<u>Paul</u>	
Art	\$ 21,000	Art	\$ 38,000
Equity in Colorado Townhouse	18,000	Equity in Chicago Condominiums	98,000
Proceeds from sale of Pella residence	132,570	Proceeds from sale of Pella residence	0
Aspen Condominiums	249,600	Aspen Condominiums	70,400
Automobiles	7,500	Automobiles	10,000
Bank Accounts	102,929	Bank Accounts	6,000
Personal Property	175,000	Personal Property	12,000
		IPALCO Stock	5,000
		Amount owed on sale of stock to children	78,000
Tax Liability	(10,000)	Amount acquired from Joan without reimbursement ¹	130,000
Totals		\$447,400	
\$696,599			

In light of our previously-stated goal of an equal division of the marital assets, the trial court's property division, after applying the new values determined in this opinion, is inadequate. Consequently, we modify the trial court's property division by awarding one-third of the proceeds of the sale of the parties' Pella residence to Paul, while allow-

¹ Paul withdrew \$50,000 from a joint bank account and liquidated \$80,000 worth of Joan's municipal bonds sometime around the time of the breakdown of the marriage for the purpose of purchasing his Chicago condominiums. The trial court allowed Paul to retain these funds without any obligation to Joan.

ing Joan to retain the remaining two-thirds. In addition, we order the sale of both of the Aspen condominiums, and an equal division of the proceeds of the sale between the parties. With these modifications, the property division now is as follows:

<u>Joan</u>		<u>Paul</u>	
Art	\$ 21,000	Art	\$ 38,000
Equity in Colorado		Equity in Chicago	
Townhouse	18,000	Condominiums	98,000
Proceeds from sale		Proceeds from sale	
of Pella residence	88,380	of Pella residence	44,190
Proceeds from sale		Proceeds from sale	
of Aspen Condominiums	160,000	of Aspen condominiums	160,000
Automobiles	7,500	Automobiles	10,000
Bank Accounts	102,929	Bank Accounts	6,000
Personal Property	175,000	Personal Property	12,000
		IPALCO Stock	5,000
		Amount owed on sale of	
		stock to children	78,000
Tax Liability	(10,000)	Amount acquired from Joan	
		without reimbursement	130,000
Totals		\$581,190	
\$562,809			

Under this property division, Paul receives 50.8% of the marital assets and Joan receives 49.2%. Under the circumstances, such a property division is just and equitable. The remainder of the decree is affirmed. Costs are taxed equally to both parties.

AFFIRMED AS MODIFIED.