FILED
JUN 26 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF
DIANA ELIZABETH McKNIGHT AND GARY MARTIN McKNIGHT 423

Upon the Petition of	)	
DIANA ELIZABETH McKNIGHT,	)	Filed June 26, 1984
Petitioner-Appellee,	)	
And Concerning	)	
GARY MARTIN McKNIGHT,	)	4-191 83-734
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Clarke County - Van Wifvat, Judge.

Respondent appeals from the property division and child support provisions of the parties' dissolution decree. AFFIRMED.

James H. Cothern and David H. Traxler, Osceola, Iowa, for respondent-appellant.

Richard J. Murphy, Osceola, Iowa, and Richard O. McConville, Des Moines, Iowa, for petitioner-appellee.

Considered by Oxberger, C.J., Donielson, and Schlegel, JJ.

SCHLEGEL, J.

Respondent, Gary McKnight, appeals from the property division and child support provisions of the parties' dissolution decree. Gary asserts on appeal that the property division is inequitable because the court failed to consider an $19,000 loan owed by the parties and improperly valued a farm owned by the parties. Gary also asserts that the child support was excessive in light of his income. We affirm.

I. Scope of Review. Our review of this equitable proceeding is de novo. In re Marriage of Castle, 312 N.W.2d 147, 148 (Iowa Ct. App. 1981).

II. Property Division. Our analysis begins with Iowa Code section 598.21 (1981), which codified many aspects of our prior case law. A justified property division is one that is equitable under the circumstances. Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976). The factors to be considered in achieving a fair and equitable determination of the property rights of the parties are set forth in Iowa Code section 598.21(1) (1981).

A. Gary and Diana were married in 1973. Diana brought assets valued at $350 into the marriage and Gary brought assets valued at $4,500 into the marriage. Both parties had a high school education and were twenty years old when they were married. Diana worked prior to the marriage as a cook and waitress. She was responsible during the marriage for the parties' home and care of their three children. She is not presently employed outside the home. The parties' children were aged eight, six and one and one-half at the time of trial.

Gary worked at various jobs during the marriage, but his primary occupation since 1977 has been in buying and reselling used farm equipment. The parties also engaged in some farming on their forty acre homestead. Diana assisted in the machinery business and farming during the marriage. She has not, however, worked at any outside occupation since the marriage. Both parties apparently enjoy good health.

We find after a careful review of the record that the trial court divided the equity in the parties' assets approximately equally. Gary apparently will be responsible for the entire debt on the cattle, but the record shows that he was able to sell nine animals after the parties' separation and prior to the dissolution. We believe this case warrants an approximately equal division of the marital equity and therefore affirm the trial court's decision.

B. Gary contends that the trial court ignored a $19,000 loan owed by the parties to his aunt, Carrie Stills. Alternatively, he argues that, in any event, the $19,000 was a gift only to him and should be set aside for his use. See Iowa Code § 598.21(2) (1981). Diana asserts the $19,000 was intended to be a gift to the entire family and should not be set aside for Gary.

The evidence indicates that Stills had her attorney prepare a promissory note for $19,000. The note was dated March 1, 1981. Stills testified that she presented the check for that amount to both Gary and Diana, but that she intended for the transfer to be a loan and not a gift. The note indicates that two payments of $4,500 principal plus interest were due prior to the trial in this case. Stills, however, testified that she had done nothing to collect the amount due and had not required Gary or Diana to sign the promissory note.

There is no evidence that, if the $19,000 was intended to be a gift, it was intended to be a gift to Gary alone. See In re Marriage of Wendt, 339 N.W.2d 615, 616 (Iowa Ct. App. 1983). The money was to be used to help purchase a farm so that the parties could provide a home for their children. Therefore, the issue is whether the transfer of $19,000 for a down payment on the parties' homestead was intended to be a gift or a loan.

The question of whether or not there has been a gift must of necessity be controlled solely by the intention of Stills at the time of the transfer of the $19,000. Yagge v. Tyler, 225 Iowa 352, 357, 280 N.W. 559, 562 (1938). Diana testified that Stills' intention in giving them the $19,000 was to enable them to

live close to Stills so Stills might continue to maintain a close relationship with the parties' children. Gary testified that the money was intended to be a loan; however, the parties had not been required to sign the note evidencing the obligation. Most troubling is Stills' testimony at trial that she did not intend the transfer to be a gift. However, we believe that her actions at the time of the transfer clearly indicates an intent to make a gift. We hold that for purposes of determining an equitable property division in this dissolution action, the $19,000 transfer is to be considered a gift.

C. Gary also asserts that the trial court overvalued the parties' homestead. He sought to show that the property had decreased in value since the parties purchased it in 1981 for $64,000. Both parties stated on their affidavits of financial status that the value of the homestead was $65,000. See Iowa Code § 598.13 (1981). Gary, however, subsequently filed an affidavit listing the value of the property as $50,000 and he introduced testimony at trial, through his expert witness, that the land was only worth $50,000 at the time of trial. The county assessor testified on rebuttal, however, that there had been no change in the assessed valuation of the property since the parties had purchased it, and that assessed valuation is based in part on the fair market value. The present balance on the contract for the farm is $44,000. Although the evidence is conflicting, we give weight to the fact findings of trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). The trial court's determination that the parties have $20,000 equity in their homestead is supported by the evidence, and we adopt its finding as our own.

III. Child Support. The trial court ordered Gary to pay child support of $116.66 per child per month to continue until each child reaches the age of 18, marries, dies, or becomes emancipated. Gary's 1979, 1980, and 1982 income tax returns show his gross adjusted income to be $9,230, $8,284, and $5,849, respectively. Gary argues that he is unable to pay the amount of child support ordered by the court.

We consider the factors in Iowa Code section 598.21(4) (1981) in determining the amount of child support. The parties' three children have no resources and are presently receiving governmental assistance. Diana may receive some assets in the future under the property division, but most will be consumed in providing a home for the parties' children. Diana is unemployed and it will be difficult for her to develop her earning capacity, particularly in light of the fact that she receives no alimony and must care for the parties' small children. The children are presently healthy but in clear need of support.

Gary, on the other hand, has worked at numerous jobs in the past and, at one point during the marriage worked at two jobs at the same time. He presently is self-employed in a used farm machinery business which apparently provides only a limited income to him. We do not suggest that Gary must work two jobs. However, if he is unable to provide the support which he has a demonstrated capacity to provide, he may be required to seek employment elsewhere or additional part-time employment. See In re Marriage of Janssen, ___ N.W.2d ___, ___ (Iowa 1984). He cannot ignore the needs of his children.

Accordingly, the provisions of the trial court's decree that Gary appeal from are affirmed.

AFFIRMED.

Donielson, J., concurs; Oxberger, C.J., dissents.