IN THE COURT OF APPEALS OF IOWA

No. 9-233 / 88-1388

FILED
OCT 24 1989
CLERK SUPREME COURT

IN RE THE MARRIAGE OF DIANE GENT AND HUBERT J. GENT

Upon the Petition of

DIANE GENT,

Appellant,

And Concerning

HUBERT J. GENT,

Appellee.

Appeal from the Iowa District Court for Keokuk County, Robert Bates, Judge.

Both parties appeal from a dissolution decree, challenging economic provisions. **AFFIRMED AS MODIFIED.**

Gerald F. Heslinga of Heslinga, Heslinga, Dixon & Grotewold, Oskaloosa, for petitioner-appellant.

Allan C. Orsborn of Keith, Orsborn, Bauerle & Milani, Ottumwa, for respondent-appellee.

Considered by Donielson, P.J., and Schlegel and Habhab, JJ.

DONIELSON, P.J.

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The parties, Diane and Hubert Gent, were married in 1966. They have six children, two of whom were adults at the time of trial. One of the adult children is a college student and lives with Diane part time.

The dissolution decree placed the minor children in the parties' joint legal custody and in Diane's physical care. This custody arrangement is not challenged on appeal.

Hubert has farmed throughout the marriage. His farming operation has shown consistent losses in recent years, and Diane asserts only assistance from relatives kept the operation afloat.

Diane is a registered nurse earning $7.90 per hour for a 32-hour week. She was a full-time mother during much of the marriage but returned to the work force about five years before trial.

The parties' primary asset was a 200-acre farm which was essentially free from debt. The parties purchased this farm from Hubert's parents, but his parents later forgave much of the contract debt. The parties disagree on the farm's value; Hubert's estimate is $120,000, while Diane's is $200,000. The district court, relying on tax assessment records and other factors shown in the record, found the farm's value to be $173,700.

The dissolution decree awarded the farm to Hubert, on the condition he pay Diane $80,000 in cash. If he fails to

obtain financing and make this cash payment, the farm is to be sold and the net proceeds divided evenly between the parties.

Diane was awarded investments worth $12,000; these investments were derived from an inheritance received by Diane during the marriage. Diane was also awarded two vehicles and other personal property. She was also directed to assume half of a $28,000 judgment against the parties held by her father.

Hubert was awarded all the farm machinery and livestock, plus two vehicles, various life insurance policies, and various personal property. He was directed to pay the other half of the $28,000 judgment owed to Diane's father. Hubert was also directed to assume various other unsecured debts, apparently totaling a little over $20,000.

The decree directed Hubert to pay Diane child support of $100 per month per child for so long as three or more children are eligible for support. When fewer than three children are eligible, support is to remain at $300 per month until no support obligation remains. Neither party was awarded alimony or attorney fees.

Diane has appealed from the dissolution decree, and Hubert has cross-appealed. Diane contends the district court should have ordered the farm sold and the proceeds evenly divided, without giving Hubert a chance to avoid the sale by paying cash to Diane. Diane seeks a larger award

of child support. She also asks she be given the income tax exemptions for all the children, and for Hubert to be required to maintain health insurance for the children.

In his cross-appeal, Hubert contends the district court should have set aside to him some $74,000 in gifts or inheritances received from his parents during the marriage. He also contends the district court placed too high a value on the farm real estate and therefore awarded Diane too large of a property award. Finally, Hubert contends he should have been given a new trial because Diane's testimony about the farm's value came as a surprise to him. Our scope of review in this equitable proceeding is de novo. Iowa R. App. P. 4.

I. **Farm Property.** Diane argues the trial court should have ordered the parties' 200-acre farm sold and the proceeds divided between her and Hubert. She contends this would be equitable, would ensure Hubert would have the cash to meet his support payments, and it would force Hubert to abandon his largely unsuccessful farming operation and obtain other employment.

In reviewing a trial court's division of marital property, we are guided by the principle a justified property division is one which is equitable under the circumstances. In re Marriage of Stewart, 356 N.W.2d 611, 61 (Iowa App. 1984). In determining whether a property division is equitable under the specified facts of a

particular case, we recognize all economic aspects of a divorce decree must be viewed as an integrated whole. In re Marriage of Bornstein, 359 N.W.2d 500, 503 (Iowa App. 1984).

Our analysis of a property division is governed by Iowa Code section 598.21(1) (1987). We specifically note a court is to consider the economic circumstances of, and the tax consequences to, each party when making a property division. Iowa Code § 598.21(1)(i), (j) (1987). The forced sale of property raises questions concerning income tax liabilities. In re Marriage of Callenius, 309 N.W.2d 510, 515 (Iowa 1981).

The record in this case reveals Hubert has farmed all of his adult life, and while he may have carpentry and mechanical skills, there was no evidence he could obtain employment utilizing those skills. The farm owned by the parties is essentially unencumbered, and though Hubert's farming operations have seen unprofitable times in a few of the recent years, his 1987 income tax return reflected a net farm income of $19,185. There is no evidence to demonstrate Hubert will not be able to make his support payments unless the farm is sold. To the contrary, it is apparent from the record that during the parties' separation, Hubert paid approximately $800 a month in child support and health insurance premiums for his family. The only source of income Hubert had to meet those obligations

was the farm operation. This court sees no basis in Diane's argument that a sale of the farm property is necessary to guarantee Hubert's ability to meet his child support obligations.

Our appellate courts have previously recognized the reasonableness of a trial court awarding a farm to the spouse who operated it, and in fixing a cash payment to the other spouse so the farmer-spouse might retain ownership of the farm. See Callenius, 309 N.W.2d at 515 and cases cited therein. Exact equality is not required in such a property division. Id. The circumstances in this case do not warrant forcing a sale of the farm; and, in fact, to do so would leave Hubert without an occupation and any means of supporting himself. We affirm the trial court's division of property.

II. **Child Support and Health Insurance.** Diane contends Hubert should be required to pay at least $800 per month as child support, and he should have been required by the trial court to continue to provide health insurance for his children. The trial court fixed Hubert's child support obligation at $100 per month per child for so long as support is required pursuant to section 598.1(2). The trial court provided the level of child support should not be reduced below a level of $300 per month. Although the issue of health insurance was raised at trial, and Hubert indicated his intention to continue providing health

insurance for his children, no provision for such insurance was included in the decree.

It is well established parents have a legal obligation to support their children. In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976). The obligation of support should be apportioned according to the ability of each parent to contribute. In re Marriage of Bornstein, 359 N.W.2d 500, 504 (Iowa App. 1984). The factors to consider are: the financial resources of the child; the financial resources of both parents; the standard of living the child would have enjoyed had there not been a dissolution; the cost of day care; the physical and emotional health needs of the child; and the child's educational needs. Iowa Code § 598.21(4) (1987).

Upon a review of the record, and an examination of each party's circumstances, this court finds Hubert should be required to provide health insurance for the children comparable to that previously provided. The child support award made in this case is relatively modest, and Diane's ability to support herself and six children is limited. She is a registered nurse, and though she is working at the highest level of employment available to her in her community, she grossed only $11,887 in 1987. Hubert is in a stronger position financially to provide health insurance for the children.

In light of our decision requiring Hubert to provide health insurance for the children, we see no reason to modify the child support award. As augmented by the obligation to provide health insurance, we find the trial court's child support order to be reasonable and equitable.

III. **Dependency Deductions.** Diane claims the trial court erred in dividing the federal income tax deductions for dependents between the parties. After reviewing the economic circumstances of each party and the financial obligation of each to support the children, we conclude the division of the income tax exemptions was equitable and should not be modified by this court.

IV. **Gifts and Inheritances.** Hubert claims the trial court erred in not setting aside over $74,000 in property he received as gifts (debt forgiveness) and inheritances from his parents. As a general rule, gifts or inheritances received by a party during the marriage, are not subject to a property division unless the failure to do so would be inequitable to the other party or to the children of the marriage. Iowa Code § 598.21(2) (1987). A court must weigh a variety of factors in determining how such property should be treated. In re Marriage of Vrban, 359 N.W.2d 420, 427 (Iowa 1984) (lists five factors which are to be considered).

Hubert contends nearly ninety percent of the gifts and inheritances related directly to the 200-acre farm, and

this is a clearly identifiable asset which remains today. Hubert claims this court should set aside the amount of $74,567.03 and adjust the property award made by the trial court. The trial court considered what effect the inherited and gifted assets should have, and it concluded it would be inequitable to set them aside when making the property division:

> The record requires all acquisitions be considered. It would be inequitable to set aside the inherited or gifted assets. [Section 598.21(2).] The receipt and use of this property was part of the economic pattern firmly established and by virtue of which the parties now have a positive net worth.

Upon a review of the record, this court concludes the trial court did not err in refusing to set aside the gifts and inheritances. The length of the parties' marriage, Diane's economic contributions to the family expenses during the period in which the farm was operating at a loss, and the special needs inherent in providing for six children make it inequitable to set aside over $74,000 in gifts and inheritances.

A factor a court may take into consideration in making this decision is the length of the parties' marriage. In re Marriage of Mentel, 359 N.W.2d 505, 506 (Iowa App. 1984). This marriage lasted approximately 21-1/2 years, and through much of the marriage, farming was the major source of income for the family. The trial court noted in its findings of fact that in addition to raising the six

children and keeping the house and garden, Diane had also acted as bookkeeper for the farm operations and had done some farm work such as caring for livestock. The length of the parties' marriage and the central role farming played in their lives, dissuades this court from setting aside the nearly $75,000 of gifts and inheritances which were directly related to acquisition and retention of the farmland.

We also recognize that during the last five years of the marriage, Diane began to work outside the home at Maplewood Manor. Her resumption of nursing corresponded with the period in which the farm was operating at a loss. Diane's outside income went entirely to providing for family obligations. Had this outside income not been available to cover family expenses, it is possible the family could not have afforded to continue running the farm at a loss. Such separate contributions by a party to the economic welfare of the family, are to be considered by this court to the extent that they enable the family to preserve and maintain gifted or inherited property. Vrban, 359 N.W.2d at 427.

This court also notes the special needs of a spouse and children may be considered when deciding if a gift or inheritance should be set aside from a property division. Id. In this case Diane has the physical care of the parties' six children. The expense of housing, feeding,

and providing the basic necessities for six children can be quite costly. Diane is already working at the highest level of employment available to her in her community, and yet her income from nursing is not great. It is most likely her ability to provide for her children, will have to be derived to some extent from the property division awarded by the trial court. To set aside over $74,000 in property to Hubert as gifts and inheritances, would largely reduce the amount of property available to be awarded to Diane and ultimately used to support the children. It would be inequitable to set aside the inheritances and gifts made to Hubert in this case.

V. **Valuation.** Hubert claims the trial court erred in concluding the farm real estate had a value of $173,700. On her affidavit of financial status and on the stipulation of assets and liabilities, Diane indicated the property was worth $150,000. On his affidavit and in the stipulation Hubert valued the property at $120,000. At trial Hubert valued the farm in the range of $120,000 to $125,000. Diane indicated her opinion that the farm was worth approximately $1,000 an acre or $200,000. During examination by Diane's attorney, Hubert admitted signing a financial statement at his bank on January 1, 1986, which valued the property at $150,000. Diane also admitted into evidence tax assessment records which revealed the farm contained 193 taxable acres with an assessed valuation of $179,267.

In the past we have recognized a trial court may adopt a valuation which falls between a wife's estimate and a husband's estimate. In re Marriage of Athy, 428 N.W.2d 310, 313-14 (Iowa App. 1988) (trial court could properly value home equity as an amount between wife and husband's estimates). There was sufficient evidence from which the trial court could make its conclusion the property was worth $173,000. Both the tax assessment records and the 1986 financial statement Hubert signed at the First Interstate Bank, support a valuation higher than the $120,000 figure advanced by Hubert. Hubert's concern with the fact that Diane expressed an opinion at trial of the property's value, which was considerably higher than the estimate she provided during the discovery process, is misplaced. Diane's inconsistency and her own admission at trial that she did not really know what the property was worth, reflects on her credibility but it does not preclude the trial court's valuation. We affirm the trial court's valuation in this case.

VI. New Trial. Finally, Hubert contends the trial court erred in overruling his motion for a new trial. He argues Diane's trial testimony with regard to the value of the property constitutes irregularity, misconduct, and surprise, and he was prejudiced thereby. This court cannot prevent a party from testifying contrary to his or her prior sworn statements in a deposition or financial

statement. By choosing to do so, a party risks losing his or her credibility with the court, and creates the possibility a court would entirely disregard his or her opinion.

Diane's testimony was inconsistent with the estimates she made on her financial affidavit, the joint stipulations of assets, and in her deposition testimony. This inconsistency was brought to the trial court's attention and, if anything, it diminished any credibility her opinion may have had with the court.

We cannot find Hubert was substantially prejudiced by Diane's testimony. Other sufficient evidence existed from which the trial court could value the property at $173,000. The trial court did not err in denying Hubert's request for a new trial.

AFFIRMED AS MODIFIED.