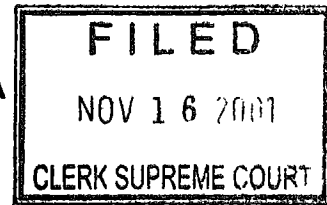


IN THE COURT OF APPEALS OF IOWA

No. 1-133 / 00-1041
Filed November 16, 2001



IN RE THE MARRIAGE OF SANDRA J. ZANE
and JOHN M. ZANE

Upon the Petition of
SANDRA J. ZANE,
Petitioner-Appellee,

And Concerning
JOHN M. ZANE,
Respondent-Appellant.

Appeal from the Iowa District Court for Van Buren County, James P. Rielly,
Judge.

The respondent appeals the child visitation schedule and property distribution
provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Timothy D. Roberts of Anderson, Roberts & Porth, P.L.C., Burlington, for
appellant.

Thomas M. Walter of Johnson. Hester, Walter & Breckenridge, Ottumwa, for
appellee.

Considered by Sackett, C.J., and Zimmer and Miller, JJ.

000321

SACKETT, C.J.

The respondent-appellant/cross-appellee, John Zane, appeals the visitation schedule and property distribution provisions of the parties' dissolution decree. He claims his visitation award is minimal and should be expanded, and the district court erred in valuing their family farm corporation stock. Petitioner-appellee/cross-appellant, Sandra Zane, claims the court should have entered an order for medical support. She also requests an award of appellate attorney fees. We affirm as modified.

Background facts and proceedings

John and Sandra Zane married in 1979. They have three children, Kylee, born March 9, 1982, Angela, born May 22, 1985, and Andrew, born May 12, 1988. John farmed for many years with his parents and owned a share of the family farm corporation, Zane Farms, Ltd. Through gifts from his parents, John owned 14.21 percent and Sandra owned 5.88 percent of Zane Farms stock. In 1994, John became a deputy county sheriff. He works three day shifts, then three night shifts, then has three days off. Sandra works weekdays and half of every fifth Saturday as a secretary at the Mount Hamill Elevator and Lumber Company. Sandra petitioned for dissolution in June 1998.

The court dissolved the parties' marriage by decree dated June 12, 2000. The main issues at trial concerned the value of Zane Farms' stock and assets and child visitation. John argued he should receive a setoff for the gifts of farm stock he received from his parents and for the premarital assets he brought into the marriage. The court determined the total net value of Zane Farms stock was \$512,405, and

awarded John his share of Zane stock, Sandra's share of Zane stock, and a debenture issued to John for his contribution of equipment when the corporation was formed. Of total net assets of the parties of \$217,302.28, John was awarded a total of \$212,056.71. Sandra was awarded \$5245.57. The court ordered John to pay Sandra an equalization payment of \$103,214.06, to be secured by John's stock until fully paid.

John requested visitation with the children half of the time – his three days off and two of the three nights when he works the day shift. The court awarded John visitation of alternate weekends, alternating holidays, two days each summer week when he had three days off, and two weeks of uninterrupted summer visitation.

Claims on appeal

John. On appeal, John claims the visitation award was minimal and does not comply with Iowa Code section 598.41(1) which provides for "liberal visitation" to "assure the child the opportunity for the maximum continuing physical and emotional contact with both parents. . . ." Iowa Code § 598.41(1)(a) (1999). He argues he should have time during the week and that the visitation should be designed to fit the parties' work schedules better. He notes that the half-time visitation he requested was the same as the parties had been using during the two-year pendency of the dissolution.

Concerning the property division, John claims the court (1) did not set off to him a premarital asset, (2) did not properly treat the gifts of corporate stock to the parties, (3) did not include all the corporation's liabilities in calculating its net value,

and (4) did not apply discounts to Sandy's minority ownership. He also claims an arithmetical error in adding some assets to the total twice.

Sandy. On appeal, Sandy claims the court failed to comply with Iowa Code section 598.21(4)(a) in that it did not "order as child medical support a health benefits plan. . . ." Iowa Code § 598.21(4)(a) (second unnumbered paragraph). In his reply brief, John concurs with Sandy's claim. Sandy filed a rule 179(b) motion after the decree was issued, but did not raise this issue in her motion.

Sandy also requests an award of all of her appellate attorney fees arguing John's appeal was frivolous and she does not have the ability to pay because John has all the assets and has not made the equalization payment.

Discussion

Visitation. What John seeks is nearly shared physical care. With his nine-day schedule cycle, the routine schedule of the children would be disrupted continually. The visitation awarded is not out of line with common "liberal visitation" awards. Although the court did not provide for visitation during the week, that is not a requirement of the statute or of case law. In addition, the visitation award in the decree is only the minimum visitation set by the court. Nothing in the decree prevents the parties from agreeing to as much additional visitation as they want, including midweek times or a schedule similar to what they used during the pendency of the case. We affirm on this issue.

Health benefit plan. Sandy argues the statute "mandates that the court must mandate" such medical support. The language of section 598.21(4) is qualified, requiring a court-ordered health benefit plan, "if available to either parent at a

reasonable cost." Iowa Code § 598.21(4). The record shows John has medical/hospital insurance available to him. He agreed to maintain that insurance for the benefit of the children prior to the dissolution. We modify the decree of dissolution and order John to provide health benefit coverage for the children as set forth in Iowa Code section 598.21(4).

Property division.

A. *Premarital assets.* John claims he brought about \$30,000 into the marriage, which he contributed to the family farm corporation when it was formed. He received a debenture from the corporation for his contribution. The court treated the debenture and its accumulated interest as one of the parties' assets for division. John argues his premarital assets should have been set off to him.

Property which a party brings into the marriage is a factor to consider in making an equitable division. Iowa Code § 598.21(1)(b). In some instances, this factor may justify a full credit, but does not require it. . . . A premarital asset is not otherwise set aside like gifted and inherited property. Instead, it is a factor to consider, together with all the other circumstances, in making an overall division. Its impact on the ultimate distribution will vary with the particular circumstance of each case. Furthermore, in considering accumulations to premarital assets, we do not limit our focus to the parties' direct contributions to the increase. Instead, we broadly consider the contributions of each party to the overall marriage, as well as all other factors. Iowa Code § 598.21(1). Financial matters make up but a portion of a marriage, and must not be emphasized over the other contributions made to a marriage in determining an equitable distribution.

In re Marriage of Miller, 552 N.W.2d 460, 464-65 (Iowa Ct. App. 1996). Given the length of the marriage and the fact that John's premarital assets are accounted for in the reduction in the value of the corporation by the amount of the debenture he received for the assets, we find the district court's allocation equitable.

B. Gifted Stock. During the course of the marriage, John's parents gave John and Sandra shares of stock in the family farm corporation. John argues the court should have set aside the gifted stock to the parties before distributing the parties' assets. John testified that he took a reduced salary for his work for the corporation so that the money could be left in the corporation to build it up. That meant the couple enjoyed a lower standard of living than they might have otherwise. "Generally, 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." *In re Marriage of Steele*, 502 N.W.2d 18, 20 (Iowa Ct. App. 1993). Given the length of the marriage, Sandra's direct and indirect contribution to the increase in value of the family corporation, and considering the factors in *In re Marriage of Thomas*, 319 N.W.2d 209, 211 (Iowa 1982),¹ we affirm the court's distribution of gifted stock as equitable. John retains his ownership in the family farm corporation. None of the corporate stock is put in the hands of a non-family member. See *In re Marriage of Callenius*, 309 N.W.2d 510, 515 (Iowa 1981)

¹ The factors include:

- (1) contributions of the parties toward the property, its care, preservation or improvement;
- (2) the existence of any independent close relationship between the donor or testator and the spouse of the one to whom the property was given or devised;
- (3) separate contributions by the parties to their economic welfare to whatever extent those contributions preserve the property for either of them;
- (4) any special needs of either party;
- (5) any other matter which would render it plainly unfair to a spouse or child to have the property set aside for the exclusive enjoyment of the donee or devisee.

Thomas, 319 N.W.2d at 211. The court went on to say:

Other matters, such as the length of the marriage or the length of time the property was held after it was devised or given, though not independent factors, may indirectly bear on the question for their effect on the listed factors. Still other matters might tend to negative [sic] or mitigate against the appropriateness of dividing the property under a claim that it falls within the exception.

Id. (cited in *In re Marriage of Fall*, 593 N.W.2d 164, 166 (Iowa Ct. App. 1999).

(recognizing the reasonableness of a trial court awarding a farm to the spouse who operated it and in fixing the awards and schedule of payments to the other spouse so the farmer-spouse might retain ownership of the farm).

C. Valuation of the corporation. John claims the court did not properly value the family farm corporation. He contends it did not subtract the interest accrued on debentures issued to family members. He also contends the corporate bank accounts were included in the valuation and then added again as separate items of property. We do not find substantial evidence presented of the amount of interest owing on John's mother's debenture, whether there was any real intent to repay her, or whether the structuring of the corporate assets and debts was merely an estate planning tool. The bank accounts were agreed to be separate items by the parties in the stipulation of assets and liabilities. Using the book value of the corporation or the value taken from tax forms is a permissible way to value a closely-held corporation. *See In re Marriage of Steele*, 502 N.W.2d 18, 21 (Iowa Ct. App. 1993). The trial court has much leeway in the difficult task of valuing such corporations. *Id.* We find the value used by the court is within the permissible range supported by the evidence. *See In re Marriage of Huisman*, 532 N.W.2d 157, 160 (Iowa Ct. App. 1995). We affirm the valuation of the corporation.

D. Discounting share values. John claims the value of Sandra's shares should be discounted because they represent minority ownership in a closely-held family corporation and are not marketable. Courts have discounted the value of stock for minority ownership and lack of marketability in distributing assets in a dissolution of marriage, but there is no requirement that a discount be applied.

The purpose of determining value is to assist the court in making equitable property awards and allowances. *In re Marriage of Dennis*, 467 N.W.2d 806, 808 (Iowa Ct. App. 1991). . . . However, the valuation of a closely-held corporation is difficult, and the market value of stock in a closely-held corporation can rarely be ascertained. *Id.* Because of the difficulty of the task of valuation, the law provides much leeway to the trial court. *Id.*

Steele, 502 N.W.2d at 21; see *Dennis*, 467 N.W.2d at 808-09. The shares gifted to Sandra represent less than six percent of the stock in the corporation. John received the shares in the distribution of assets in the dissolution. We find it was equitable not to discount the shares under the circumstances of this case.

Equalization payment. John claims he does not have the ability to pay the equalization payment unless it is paid over time. The decree provided for John to pay alimony, child support, and a post-secondary education subsidy. Although John does have these payments, some of his living costs are covered by the corporation. We find it equitable for John to pay the judgment due Sandra over a period of ten years, with interest at five percent accruing from the date of the decree.

Attorney fees. Sandra seeks an award of appellate attorney fees, claiming John's appeal is frivolous and she was required to defend the court's decree. An award of appellate attorney fees is discretionary. We consider the needs of the requesting party, the ability of the other party to pay, and whether the requesting party was obligated to defend the district court's decision on appeal. *In re Marriage of Thielges*, 623 N.W.2d 232, 240 (Iowa Ct. App. 2000). We do not find John's appeal to be frivolous. Given the financial circumstances of the parties, we decline to award appellate attorney fees. Costs of this appeal are taxed to John.

AFFIRMED AS MODIFIED.

000323