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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF CAROL ANN OLSON AND ROBERT DEAN OLSON

Upon the Petition of)

CAROL ANN OLSON,)

Petitioner-Appellant,)

And Concerning)

ROBERT DEAN OLSON,)

Respondent-Appellee.)

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Filed March 31, 1987

7-85
86-1040

Appeal from the Iowa District Court for Webster County (No. D-3336) - R. K. Richardson, Judge.

Petitioner former wife appeals from the trial court's ruling on her application to enforce a provision of a dissolution decree; the provision specified how the proceeds from a future sale of the parties' floral business were to be divided. **REMANDED WITH INSTRUCTIONS.**

Mark S. Soldat, Algona, for appellant.

Bruce Cornell, Fort Dodge, for appellee.

Considered by Donielson, P.J., and Snell and Sackett, JJ.

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PER CURIAM

Petitioner wife appeals from the trial court's ruling denying her request for an accounting to enforce a provision of the divorce decree which specified how the proceeds from a future sale of the parties' floral business were to be divided. On appeal, the petitioner asserts that the trial court should have ordered an accounting of respondent husband's sale of the floral business. We remand for a further hearing on the issue of when the sale of the floral business took place.

The marriage of petitioner Carol Ann Olson and respondent Robert Dean Olson was dissolved in April 1984. In March 1986, Carol filed an application to enforce the decree. The parties' original divorce decree provided that if the parties' floral business was not sold by July 15, 1984, and the parties could not agree on how to operate the business, the business would be closed with sales continuing on a closed basis. If the sale of the business was closed on or before May 1, 1985, the net proceeds would be divided as follows: one quarter (1/4) to Carol and three quarters (3/4) to Robert. After May 1, 1985, if a sale was closed, Robert would be entitled to all of the net proceeds of the sale. Carol asserted in her motion that by October 1, 1984, Robert had closed the floral business and sold the assets and that Robert should be required to give an accounting of the sale. The trial court denied Carol's motion, stating that since the business was sold after July 15, 1984, Robert was entitled to all the net proceeds and thus had no responsibility to provide an accounting.

Our scope of review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, but we are not bound by them. Iowa R. App. P. 14(f)(7).

The sole question presented for our review is whether the trial court erred in denying Carol's motion for an accounting. Upon our de novo review, we are,

however, initially troubled with the fact that there has been no actual finding as to when the parties' floral business was actually sold. The trial court, in its May 20, 1986, ruling, stated that it appeared the business was sold after July 15, 1984, and that therefore Robert was entitled to all the sales proceeds, no accounting therefore being necessary. Carol, however, testified that the business was sold in October of 1984. Though on appeal Robert asserts that there was no evidence to show that the business was sold before May 1, 1985, our examination of the record of the May 19, 1986, hearing reveals that Robert's trial counsel, in cross-examining Carol, asked whether Carol "was aware of what happened from the funds from the sale at the auction?"

The parties' dissolution decree explicitly states that if a sale of the floral business was closed on or before May 1, 1985, Carol was to receive one-fourth of the proceeds and Robert three-quarters. It is therefore apparent that the trial court's use of the date of July 15, 1984, as the pivot point for division of the sale proceeds is incorrect, since that date concerns when or if the business should be closed if no sale had occurred as of that date.

The trial court, contrary to Robert's claim on appeal, in its May 20, 1986, decree, recognized that a sale of the floral business had actually occurred, but did not specify as to when such a sale would have taken place. Though Carol introduced some evidence tending to show that a sale had occurred in October of 1984, we find scant evidence in the record as to when a sale actually took place. Because we do not have sufficient evidence before us to make a just conclusion as to whether a sale had indeed occurred before May 1, 1985, and that an accounting of any sale assets be ordered, we remand the present case to the trial court and order that a hearing be held to determine when a sale of the parties' business did in fact occur. If the trial court finds that such a sale occurred on or before May 1, 1985, the trial court, if necessary to carry

out the provisions of the decree, shall order that Robert shall make a full and complete accounting to Carol as to the disposition of each and every asset and any proceeds resulting from the sale of such assets.

Robert, however, contends that the trial court would not have the jurisdiction to order an accounting since a final judgment had been rendered and Carol had not sought enforcement of the decree pursuant to execution. Iowa Code section 626.1 provides that "[j]udgments or orders requiring the payment of money, or the delivery of possession of property, are to be enforced by execution." Past pronouncements have held that ordinarily a lawful monetary award made in a final decree ordinarily should be enforced by execution. See In re Marriage of McMorrow, 342 N.W.2d 73, 75 (Iowa 1983); Arnold v. Arnold, 258 Iowa 850, 854, 140 N.W.2d 874, 877 (1966); Whittier v. Whittier, 237 Iowa 655, 661-62, 23 N.W.2d 435, 440 (1946); DeKlotz v. Ford, 332 N.W.2d 110, 113 (Iowa Ct. App. 1982). Equity jurisdiction, however, allows a court the necessary flexibility to determine the equities between the parties. Farmers Sav. Bank, Joice v. Gerhart, 372 N.W.2d 237, 245 (Iowa 1985). Equity regards substance over form and disregards technicalities to prevent injustice. Bump v. Stewart, Wimer & Bump, P.C., 336 N.W.2d 731, 733 (Iowa 1983). It is axiomatic that while a court of equity may have lost jurisdiction of the suit when a final judgment is entered, it has not lost jurisdiction of the decree, and retains the inherent power to enter appropriate orders for enforcement. See Kern v. Woodbury County, 234 Iowa 1321, 1323-24, 14 N.W.2d 687, 688 (1944); Dunton v. McCook, 120 Iowa 444, 448, 94 N.W. 942, 944 (1903). The trial court therefore has jurisdiction to order that Robert make a full accounting to Carol.

REMANDED WITH INSTRUCTIONS.