FILED
AUG 25 1994
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-153 / 93-926

IN RE THE MARRIAGE OF MITCHELL J. WEISS AND BEVERLY A. WEISS

Upon the Petition of
MITCHELL J. WEISS,

Appellee,

And Concerning
BEVERLY A. WEISS,

Appellant.

Appeal from the Iowa District Court for Bremer County, Paul W. Riffel, Judge.

Respondent appeals the property award provision of the parties' dissolution decree. **AFFIRMED.**

Gary J. Boveia of the Boveia Law Firm, Waverly, for appellant.

Gerald B. Carney of Carney & Gohlke, Waverly, for appellee.

Considered by Donielson, C.J., and Sackett and Huitink, JJ.

DONIELSON, C.J.

Mitchell and Beverly Weiss began residing together in approximately August 1984 and they were married on February 14, 1986. It was the second marriage for each party. Mitchell and Beverly had no children of their own, although Mitchell's two children from his first marriage did reside with him and Beverly following a 1990 modification action.

During the marriage Beverly and Mitchell maintained separate bank accounts. Beverly was employed as a clerk in a clothing store and used her income to pay the family telephone bill and her car payment. Mitchell's income from his employment as a production supervisor and from his farm operation was significantly higher than Beverly's income and was used to pay for all of the remaining household expenses and for expenses related to the farming operation.

The parties separated on September 29, 1991, and Mitchell filed a petition for dissolution of the marriage on November 11, 1991. The dissolution trial was held on December 16, 1992, and the trial court's findings of fact, conclusions of law and decree were filed on May 11, 1993.

Beverly was thirty-three years old at the time of trial and Mitchell was forty. Beverly brought a vehicle, household goods and miscellaneous items worth a combined total of $6,200 into the marriage.

There was much dispute at trial regarding the value of the property Mitchell brought into, and inherited during,

the marriage. The district court determined Mitchell brought $20,675 worth of property into the marriage and inherited a total of $37,000 in cash and real estate.

The trial court awarded Beverly her 1990 Beretta automobile subject to its encumbrance, and the cash, bank accounts, insurance policies and household furniture and appliances currently in her possession or under her ownership or control. Mitchell was awarded the real estate, and the vehicles, farm machinery, equipment, grain, livestock, household furniture, appliances, cash, bank accounts and insurance policies currently in his possession or under his ownership or control. The trial court ordered the entry of a qualified domestic relations order to provide for an equitable division of Mitchell's pension benefits.

The trial court determined Mitchell's inheritance should not be subject to a property division. After setting aside the inherited property and taking into account the value of the property each party brought into the marriage, the trial court concluded Mitchell should pay Beverly $13,500 in five annual installments of $2,700 in order to effect an equitable division of the property accumulated during the marriage. Beverly now appeals.

Beverly contends the property award is inequitable and requests the trial court cash award be increased to $33,432.95. She also seeks appellate attorney fees in the amount of $2,000.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

Beverly contends the trial court's property award is not equitable and does not adequately compensate her for the contributions she made to the marriage. She contends the trial court overvalued Mitchell's inheritance and the value of the property he brought into the marriage. Based upon our de novo review we affirm the trial court's decision in its entirety.

I. Inherited Property.

In 1984 Mitchell's parents gifted by deed an undivided one-half interest in real estate to their three children subject to the retained life estate of the parents. Mitchell's father died in March 1985 and probate records indicate Mitchell's interest in the real estate was valued at $23,300. Mitchell's mother died in December 1988 and Mitchell subsequently acquired his sisters' interests in the real estate. He paid each of his sisters $19,335 on March 15, 1989, in exchange for their one-third interests.

In determining the value of the inherited real estate, the trial court relied on Mitchell's assertion that his inherited interest in the real estate was worth $23,300. Beverly contends the actual value is more accurately reflected by the amounts Mitchell paid to acquire his sisters' equal interests in the land. We recognize varying types of evidence were submitted from which the trial judge could determine the value of the inherited real estate. It was within the reasonable discretion of the judge to refer to the 1985 probate records in determining Mitchell's real estate inheritance was worth $23,300, and we will not modify this finding.

Beverly also challenges the trial court's findings with regard to the value of the cash inheritance Mitchell received from his mother's estate. Probate records indicate the value of the gross estate was $41,095.95 and the net value of the estate after deductions was $36,095.95. Mitchell testified there were no deductions or debts and he actually inherited one-third of the $41,095.05 gross estate or $13,698.65. No direct evidence contradicted this assertion and the trial judge was in the best position to assess Mitchell's credibility with regard to this matter. The trial court's valuation of the cash inheritance will not be modified.

II. **Property Brought Into Marriage.**

Beverly asserts Mitchell had no more than $13,091.00 in property at the time of their February 14, 1986 marriage. In determining the value of the property Mitchell brought into the marriage, the trial court had the benefit of reviewing financial statements Mitchell had completed on September 16, 1985 and on February 14, 1986. The trial court made very specific findings as to the value of the assets Mitchell had prior to his marriage to Beverly. The trial court excluded from its calculations two substantial assets (Mitchell's home and restaurant acquired during a prior marriage) from its determination. Its decision to do so was quite favorable to Beverly in that it significantly reduced the value of the assets Mitchell was deemed to have at the time of his marriage to her. It is apparent the trial court did a careful review of the September 1985 financial statement and drew deliberate and careful conclusions as to the value of Mitchell's assets. We will not disturb those conclusions. Upon our review of both financial statements we find it was reasonable for the trial court to have relied on those figures in determining the value of Mitchell's property at the time of his marriage. We will not modify its determination of the amount of property Mitchell brought into the marriage.

We have reviewed Beverly's arguments pertaining to her contributions to the family household and farm operations and find no basis for modifying the trial court's property

award. Beverly's request for appellate attorney fees is denied.

AFFIRMED.