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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-025 / 93-495

IN RE THE MARRIAGE OF MARCY McKINSEY SPARKS AND JERRY DONIVAN SPARKS

Upon the Petition of
MARCY McKINSEY SPARKS,

Appellant,

And Concerning
JERRY DONIVAN SPARKS,

Appellee.

Appeal from the Iowa District Court for Mahaska County, Dan F. Morrison, Judge.

The wife appeals and the husband cross appeals the decree dissolving the parties' marriage. **AFFIRMED.**

Gerald F. Heslinga of Heslinga, Heslinga & Dixon, Oskaloosa, for appellant.

Greg A. Life of the Life Law Office, Oskaloosa, for appellee.

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

DONIELSON, C.J.

Marcy and Jerry Sparks were married on August 21, 1966. The district court entered a decree dissolving the marriage on January 27, 1993. They have one child, Susan, who is currently enrolled in college.

Marcy is employed as an elementary school teacher and has been for the last twenty-six years. She has attained a master's degree plus thirty hours.

Jerry manages and operates a Wendy's restaurant. He has medical difficulties with his heart and back which limit his physical activities.

Prior to the parties' dissolution, both parties owned a one-half interest in the building where the Wendy's restaurant is located and the corporation which owns the franchise and operates the business. The corporation is known as Wenoska. Jerry actively manages the business, Marcy had worked part-time as a bookkeeper for the business.

The decree of dissolution awarded Jerry, among other things, the Wenoska business, equipment and property. It awarded Marcy, among other things, the family residence and her IPERS account. It did not require either party to pay alimony. It ordered both parties to be equally responsible for the college tuition, housing, miscellaneous expenses and health insurance for Susan. It awarded the parties an alternating right to claim Susan as a dependent for income tax purposes. Marcy appeals and Jerry cross-appeals.

On appeal, the primary dispute concerns the valuation of the Wenoska business and building. Marcy asks that each party be awarded a one-half interest in the business or that it be sold and the proceeds divided equally. She asks that if the business is not sold Jerry be awarded a salary for managing it equal to her teaching salary.

I. Scope of Review.

In this equity action our review is de novo. Iowa Rule 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 Estlund, 344 N.W.2d 276, 279 (Iowa App. 1983). In so doing, we give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Id. We recognize that "factual disputes which depend heavily on the credibility of witnesses are best resolved by the trial court which has a better opportunity to evaluate credibility than we do." Maisel v. Gelhause, 416 N.W.2d 81, 86 (Iowa App. 1987).

II. Valuation of Assets.

To accurately assess the equity of the property division, we must determine from the evidence the value of the assets. In re Marriage of Bethke, 484 N.W.2d 604, 607 (Iowa App. 1992). If the district court's assessed values are within the permissible range of evidence they will not

be disturbed on appeal. In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973).

We recognize that the district court was without the benefit of professional appraisals when it attempted to establish a value to the corporation. However, we have the same problem upon review and would have been aided if the district court would have shown how it arrived at the value it set. It appears that the trial court set the value of the business at $350.000, less the encumbrance of $456,000 to set the net value at a negative $106,000. "Because of the difficulty of the task of valuation, the law provides much leeway to the trial court, even permitting the trial court to devise its own scheme for valuation." In re Marriage of Dennis, 467 N.W.2d 806, 808 (Iowa App. 1991). The record is replete with evidence regarding the value of the business from both parties. The district court's assessment of the value is within the permissible range of evidence.

III. Property Division.

The distribution of property should be equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(1). Estlund, 344 N.W.2d at 280. When reviewing a property division, the ultimate question is whether the property division was equitable. In re Marriage of Byall, 353 N.W.2d 103, 106 (Iowa App. 1984). We have rejected any rule based on a

percentage division of assets, and recognize that we must determine what is equitable under the specific facts of each case. Id. Our law does not contemplate a division of property on a price-per-hour basis, as though marriage is a business venture. Id.

The central issue of debate between the parties is the award of the business to Jerry. Marcy had worked for the business part-time to help get it started, while Jerry continues to rely upon the business for his livelihood. Marcy asserts awarding the business to Jerry denies her any benefit from the business now that it has prospered. This court has ruled on similar situations in the past. See In re Marriage of Lundtvedt, 484 N.W.2d 613 (Iowa App. 1992). In Lundtvedt the court found awarding the husband the post office in which he worked as postmaster was necessary to avoid a business relationship which would be difficult to manage. Id. at 615. The same logic applies here, as Jerry did testify he felt he would not be able to work with Marcy.

Furthermore, future earning capacity is a factor in determining the equities of the economic provisions of a dissolution. In re Marriage of Bathke, 484 N.W.2d 604, 607 (Iowa App. 1992). If Jerry was not awarded the business, he would likely be unemployed, and given his education and health problems, finding employment may be difficult. Marcy should be able to maintain her lifestyle as she is highly educated and employed as a teacher. In addition

Marcy has the security of her IPERS account, while Jerry has no retirement plan. We conclude the property division to be equitable under these circumstances.

IV. Alternating Tax Deduction.

The provisions of a dissolution decree dealing with dependency deductions are connected directly with the requirements of a noncustodial parent to provide support and the allocation of the allowance has a direct effect on the financial resources available to the child. In re Marriage of Lovetinsky, 418 N.W.2d 88, 90 (Iowa App. 1987). The tax deduction is clearly part of the child support issue that the district court was asked to decide. Marcy argues she alone should be entitled to the tax deduction for Susan because she lives with Marcy during the breaks from the school year. We disagree. Both parties share equally in the cost of tuition, housing, miscellaneous expenses and health insurance for Susan. Given this situation, we affirm the district court's decision to alternate the tax deduction.

V. Inherited Assets.

Jerry argues the district court erred by its inclusion of inherited assets in the property division. Inherited property is not typically subject to a property division, "except upon a finding that refusal to divide the property is inequitable to the other party." Iowa Code § 598.21(2)

(1993). In determining whether inherited property should be included, this court has found length of the marriage to be an important factor. See In re Marriage of Oler, 451 N.W.2d 9, 11 (Iowa App. 1989). In this case the couple was married for twenty-seven years. The length of this marriage with other factors makes it appropriate to include inherited assets in the property division.

VI. Mortgage Responsibility.

Marcy raises the objection that the home she was awarded was used as security for the mortgage on the business awarded to Jerry. The district court stated in the decree, "the Respondent shall assume any encumbrances on the real or personal property awarded to him and hold the Petitioner harmless therefrom."

VII. Reopening Evidence.

Marcy claims the district court erred by refusing to reopen evidence to allow the introduction of an existing appraisal of the business's value. We have held many times that in permitting the reopening of a case to permit the introduction of evidence overlooked or omitted by mistake a wide discretion rests in the trial court." Mealey v. Scott, 242 Iowa 787, 792, 48 N.W.2d 262, 265 (1951). The district court concluded, "discovery requests would have produced the item requested and Petitioner had the opportunity to provide her own valuation experts." Given

these circumstances, the district court did not abuse its discretion by refusing to reopen the evidence.

The costs of this appeal shall be assessed one-half to each party.

AFFIRMED.