FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF STEVEN R. ANDERSON
AND CONNIE J. ANDERSON

Upon the Petition of)
STEVEN R. ANDERSON,)
Petitioner-Appellant.)
And Concerning)
CONNIE J. ANDERSON,) 8-380
87-1613
Respondent-Appellee.)

Appeal from the Iowa District Court for Madison County (No. DM 3-806), Theodore H. Miller, Judge.

The husband appeals a dissolution decree, challenging various economic provisions. **AFFIRMED AS MODIFIED.**

Steven H. Lytle, of Erickson, Miller & Lytle, P.C., West Des Moines, for petitioner-appellant.

Lylea Dodson Critelli, of Nick Critelli & Associates, P.C., Des Moines, for the respondent-appellee.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ.

OXBERGER, C.J.

The petitioner husband appeals from the economic provisions of the dissolution decree. The petitioner appeals both the property division and the award of child support. He also requests attorney fees on appeal. The petitioner contends the trial court failed to make an equitable division through error in: (1) valuing the corporation which the wife in this action serves as president and CEO; (2) placing a value on the marital home, and (3) omitting several assets of the parties. The petitioner further contends the trial court erred in its determination of child support, attorney fees to be paid and in a lump sum cash payment.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. Our responsibility is to review the facts as well as the law to determine rights anew from the credible evidence on issues properly presented and preserved. In re Marriage of Full, 255 N.W.2d 153, 158 (Iowa 1977). While we give weight to the findings of the trial court, especially where the credibility of witnesses is involved, we are not bound by them. In re Marriage of Novak, 270 N.W.2d 592, 597 (Iowa 1974); Iowa R. App. P. 14(f)(7). As in all cases of this type, precedent is of little value and our decision must ultimately depend on the particular facts of this case. In re Marriage of Kehrli, 241 N.W.2d 923, 926 (Iowa 1976). We affirm as modified.

The parties, Steven and Connie, were married in 1970. They are the parents of three children, boys born in 1971 and 1974 and a girl born in 1978. The decree provided for joint legal custody of the children with Steven being awarded physical custody. Steven remains in the Truro home with the children. These custody provisions are not challenged on appeal.

Steven is a high school teacher in Truro, Iowa who earns about $24,000 per year. He also receives a small income, roughly $1,000 per year, from an inherited fractional interest in a small farm. Connie was employed as a nurse throughout much of the marriage. In 1985 she formed and incorporated a business which provides home nursing services for people who desire to stay at home during time of illness. She is the principal stockholder of this business, which has been very successful due to her efforts and management style. The trial court found Connie's personal income from the corporation to be $35,000 per year. The court valued Connie's stock in the corporation at $55,000. The court noted Steven had taken no role in the formation of the corporation.

The trial court awarded Connie all of her stock in her corporation, plus furnishings with a value of about $2,500. The court awarded Steven the parties' equity in the marital residence in Truro valued at $6,500, three vehicles, furniture, a $2,000 bond, and his IPERS

retirement fund valued at $16,400. The trial court also directed Connie to pay Steven a cash property award of $12,000.

The trial court ordered Connie to pay Steven child support of $200 per month per child for a total of $600 per month. Connie was also directed to contribute $2,000 toward Steven's attorney fees.

I. Child Support

Steven claims the trial court erred in its award of $200 per child per month or $600 per month for child support. Steven claims the trial court erred in its finding of the amount of Connie's income. The trial court found Connie's income to be $35,000 and her income potential to be $40,000 per year. Steven claims Connie has a great amount of control as to the amount of her income. Steven claims her income is $45,000. Connie asserts, however, that she is not the only member on the board and does not have as much control over her income as Steven claims. She claims her income fluctuates and especially recently when the company had to hire many new administrative staff members. While the record does indicate that for someone in Connie's position her income will fluctuate with the company's performance, we would note there is potential for increase as well as decrease. Connie also has good bonus potential. We find the record to support a finding that Connie's income, including bonuses, is $40,000.

Steven claims monthly expenses in the amount of $2,498. Connie's monthly expenses are $1,965. Steven's monthly net income is $1,472. Connie's income is $2,416 per month. Steven also receives $85 per month of farm income. We find the child support obligation which was set at $200 per child per month for a total of $600 per month to be appropriate. We also find the medical insurance coverage obligation appropriately placed with Connie, as the children will be covered under her policy through work.

II. Property Settlement

Steven claims the property settlement as ordered by the trial court is inequitable. He claims the trial court erred: (1) in its finding as to the value of the marital home; (2) in its finding as to the value of Connie's corporate interest; (3) in awarding a lump sum payment of $12,000; and (4) in omitting several assets.

The distribution of the property of the parties should be that which is equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(1) (1987). In re Marriage Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983). Under this statute, the ultimate question is whether the distribution of the property is equitable; there is no rule based upon percentage division of assets. In re Marriage of Lattig, 318 N.W.2d 811, 814 (Iowa App. 1982). Division of property is based on each marital partner's right to a just and equitable share of

the property accumulated as the result of their joint efforts. In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981).

Evidence was presented at trial by both parties as to the value of the marital home. Steven had a professional appraiser testify the home was worth $39,000. Steven listed the house on his financial affidavit as being worth $43,000, which was the value of an offer made on the house two years ago. Connie listed the house at $46,800 on her financial affidavit. The record indicates there have been several improvements made to the house. The trial court, apparently finding neither party's valuation totally credible, took an average of the two parties' figures and placed the value of the house at $41,500. We affirm the trial court's finding as to the value of the home. The marital home has a mortgage encumbrance of $35,000. This makes the equity value, which was awarded to Steven, $6,500.

Most of the trial in this action centered around the value of Connie's business. We note at the outset the valuation of a corporation is not an easy task. It is also a task which can be accomplished by a number of different methods. Steven argues that Connie's expert erred by valuing the corporation by a liquidation value approach. He contends his expert's approach, based on the marketable value, is the better approach. This approach assumes a

willing buyer and a willing seller. However, Connie notes there are many factors to be considered in valuing a corporation and specifically in valuing a home health corporation. Connie's expert researched this specific type of corporation in order to determine its value. Important factors in this determination include that: there are nine competitors in the Des Moines area alone, two of which are run by major area hospitals; the nature of the home health business is that it is management intensive which means its success or failure depends heavily on its management. Connie also noted that Steven was not supportive of her, financially or otherwise, when she started this corporation in 1985. An equitable division of property should be a function of the tangible contributions of each party and not the mere existence of the marital relationship. In re Marriage of Lattig, 318 N.W.2d 811, 815 (Iowa App. 1982). We note while Steven did not support Connie financially, he did become the primary caretaker of the children during the time in which Connie was developing her business. The trial court found Connie's interest in the business to be worth $55,000. Steven contends Connie's interest is worth $150,000. However, we find the record indicates Connie's interest in her business is worth $60,000 as established by Connie's expert.

Steven also contends the trial court erred in omitting three assets: (1) a savings account of Connie's worth

$3,800; (2) a savings account of Steven's worth $500; and (3) a 1967 Mustang Convertible of Connie's.

After consideration of the items above, and upon our finding of the value of the business to be $60,000, we find a lump sum payment to Steven in the amount of $15,000 to be a more appropriate sum.

The trial court ordered Connie to pay Steven $2,000 in attorney fees. We affirm this award on appeal.

AFFIRMED AS MODIFIED.