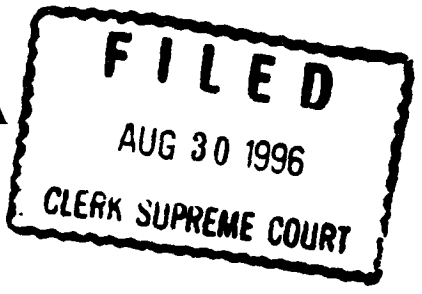
IN THE COURT OF APPEALS OF IOWA



No. 6-132 / 95-152

IN RE THE MARRIAGE OF MICHAEL R. MALLOY AND KATHY A. MALLOY

Upon the Petition of
MICHAEL R. MALLOY,

Appellee,

And Concerning
KATHY A. MALLOY,

Appellant.

Appeal from the Iowa District Court for Marshall County, Carl E. Peterson, Judge.

Kathy Malloy appeals the provisions of the parties' dissolution decree. **AFFIRMED.**

Lee M. Walker of Walker, Knopf & Billingsley, Newton, for appellant.

Susan S. Klaessy of Fairall, Fairall, Kaplan, Hoglan, Condon & Klaessy, Marshalltown, for appellee.

Considered by Cady, P.J., and Streit and Vogel, JJ.

VOGEL, J.

Kathy and Michael Malloy were married on January 16, 1988. There were no children born of the marriage. Michael filed a petition for dissolution of marriage on March 3, 1994. The trial began on November 30, 1994.

The primary issue at trial was the valuation of the couple's assets. The district court found the value of the parties' assets to be $353,747.50, consisting mostly of financial holdings and a farm acreage. The district court found $253,000.05 of the assets were brought into the marriage by Michael and $20,000 was brought in by Kathy. The court noted Michael was very frugal during the marriage and changed his spending habits dramatically after the separation. The court found Michael spent more than he earned which resulted in a reduction of the marital assets and he did a great deal of shifting of assets prior to the time of trial. The district court also found. Michael lacked candor regarding the transfer of funds and his credibility was questionable concerning the valuation of the assets. Among other things, the district court awarded Kathy rehabilitative alimony of $300 per month, half of the household furnishings, the life insurance policy on her life, and a $40,000 cash settlement.

Kathy appeals.

I. ***Scope of Review.*** 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).

II. ***Valuation.*** Kathy contends the district court erred in determining the value of the parties' assets at the time of the trial was $353,747.50. Specifically, Kathy argues the district court should have valued particular assets at a time about two months prior to filing. Kathy contends this method of valuation was necessary due to Michael's shifting of funds prior to trial.

The date of the dissolution trial is the only reasonable time when an assessment of the parties' net worth should be undertaken. *In re Marriage of McLaughlin*, 526 N.W.2d 342, 344 (Iowa App. 1994) (citing *Locke v. Locke*, 246 N.W.2d 246, 252 (Iowa 1976)). That does not mean valuations cannot be assigned by the parties well in advance of trial to allow appropriate discovery. It also does not foreclose equity being done when there is a dramatic change in the parties' net worth prior to trial, as property settlements are within the court's equitable jurisdiction. *See In re Marriage of Hitchcock*, 309 N.W.2d 432, 434-35 (Iowa 1981). The district court looked at these factors and acknowledged some of Kathy's contentions regarding financial transactions which took place prior to the time of trial. The court also discussed Michael's credibility problems in some detail. The district court was further hindered in determining the value of the marital assets by the quality of the record developed at trial.

Kathy's contentions regarding the shifting of funds, while they may indeed be valid, cannot be given the desired consideration due to the inadequacy of the record and the manner in which the arguments are raised on appeal. In addition, no evidence is available to us concerning a complete accounting of Michael's receipts and disbursements which might have been appropriate considering he co-mingled his personal finances with his business. Finally, Kathy admitted in testimony she did not know if any assets were in fact missing.

We conclude the district court made its best effort, under the circumstances of this case, to account for both the shifting of assets and Michael's credibility problems.[1] As the district court's findings on valuation are well within the range of permissible evidence, we will not disturb them on appeal. *See In re Marriage of Bare*, 203 N.W.2d 551, 554 (Iowa 1973); *In re Marriage of Brainard*, 523 N.W.2d 611, 616 (Iowa App. 1994).

III. ***Distribution of the Assets.*** Kathy contends the district court erred in the distribution of the marital assets. She argues errors in the valuation of the marital assets led to errors being made in the distribution in the assets.

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[1] Michael makes a passing reference in his brief regarding the possibility the district court may have made a couple of typographical errors when setting out the value of the acreage and the value of the assets Kathy brought into the marriage. Since Michael makes no formal request to correct the values and does not raise the issue in the form of a cross-appeal, we decline to disturb the district court's findings on these matters.

The partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). Iowa courts do not require an equal division or percentage distribution. *Id.* The determining factor is what is fair and equitable in each circumstance. *Id.* The distribution of the property should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1993).

We conclude the findings concerning property distribution made by the district court were equitable under the circumstances of this case and we decline to disturb them on appeal.

IV. ***Attorney Fees.*** On appeal, Kathy requests appellate attorney fees. An award of attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Gilliam*, 525 N.W.2d 436, 439 (Iowa App. 1994). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. *In re Marriage of Roberts*, 545 N.W.2d 340, 345 (Iowa App. 1996). We determine each party must pay their own appellate attorney fees.

AFFIRMED.