IN THE COURT OF APPEALS OF IOWA

No. 5-577 / 94-1935

FILED
MAY 31 1996
CLERK SUPREME COURT

IN RE THE MARRIAGE OF ROBERT ALLEN HARRIS AND MARY ESTHER HARRIS

Upon the Petition of
ROBERT ALLEN HARRIS,

Petitioner-Appellant\Cross-Appellee,

And Concerning
MARY ESTHER HARRIS,

Respondent-Appellee\Cross-Appellant.

Appeal from the Iowa District Court for Story County, William J. Pattinson, Judge.

Robert Harris appeals and Mary Harris cross-appeals various provisions of the parties' dissolution of marriage decree. **AFFIRMED.**

Sharon Soorholtz Greer of Cartwright, Druker & Ryden, Marshalltown, for appellant.

Thomas J. Cahill of Cahill Law Offices, Nevada, for appellee.

Considered by Sackett, P.J., and Cady and Huitink, JJ. Vogel, J., takes no part.

CADY, J.

Robert Harris appeals and Mary Harris cross-appeals certain provisions of the parties' decree for dissolution of marriage. On our de novo review, we affirm.

Robert and Mary were married in 1983 and had two children. When Robert entered the marriage, he owned an automobile racing corporation called Bob Harris Racing Products. In 1985, during the marriage, Robert sold this company, with a net gain of $70,000. However, the buyers went into default, and Robert obtained some of the inventory and machinery back. In 1987, Robert started a new corporation entitled Harris Auto Racing, Inc. Robert became the president and CEO of Harris Auto Racing, Inc. (Harris Auto). Robert owns 40.25 percent of the Harris Auto stock. Mary owns 35.75 percent of the stock, with the remainder owned by outside investors.

Throughout the marriage, Mary held several jobs. She currently is employed full-time at a Mason City newspaper selling advertising. She had previously worked at Harris Auto, but had difficulty dealing with the staff.

At the dissolution hearing, Robert presented an appraisal of Harris Auto conducted by Rene Niese. Niese reduced the value of the corporation due to the presence of certain "obsolete" items of inventory, valued at $52,000 and deducted certain "intangibles," valued at $50,000. Looking at the fair market value minus liabilities, he concluded the total stockholder's equity in Harris Auto to be $127,747. Niese further reduced the value of this shares by 35 percent to offset the minority

interest each party had in the corporation. He testified, however, if Robert received all of the couple's Harris Auto shares, the minority deduction should not be considered. He as well reduced the value by 15 percent for an immediate sale price.

The district court generally approved of Niese's method of valuing the corporation. It, however, found no evidence indicating certain inventory was obsolete. The court further concluded certain intangibles, such as the product designs, customer lists, and supplier agreements possessed some value, and added $25,000 for intangibles and $35,000 for inventory to the value of the corporation. It also declined to adopt a sales expense discount or a minority discount to the value of the corporation.

The district court determined Mary's interest in the business was $50,000 and, in light of the rest of the property and debt distribution, ordered Robert to pay Mary $67,500 in seven installments. The court awarded the parties joint legal custody of the children with Robert as the primary physical caretaker. The court declined to award Mary her requested alimony, and ordered Robert to pay $1000 of Mary's $7000 requested attorney fees.

Both parties filed Rule 179(b) motions. The district court denied Robert's motion to reconsider its valuation of the corporation. It modified the decree to set an earlier due date for the first installment of the property settlement and ordered Robert to pay Mary $1000 for attorney fees by January 1, 1995.

Robert appeals contending the district court erred in not accepting all of Niese's calculations of the value of Harris Auto, and in failing to apply a minority share discount. He maintains his business is not growing, cash poor, and essentially the same business he sold years before for $70,000. He maintains he should only be required to pay Mary a property settlement of $14,514.50. Mary cross-appeals contending the district court's division of marital property was inequitable, as she receives a smaller percentage of the parties' assets. She further contends the district court erred in not awarding her alimony and in not ordering Robert to pay more attorney fees. She also seeks appellate attorney fees.

I. Standard 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 of Auto Racing Business

The valuation of closely held family corporations essentially operated by one person, with minority shareholders and no ready market, is difficult. *In re Marriage of Muelhaupt*, 439 N.W.2d 656, 660 (Iowa 1989). Here, Robert urges us to adopt Niese's valuation, as it is the only appraisal of the business, and reflects the zero-growth stage of the corporation and its questionable viability.

Discounts have been allowed for minority shares in closely held corporations where there is no ready market for the shares. *In re Marriage of Steele*, 502 N.W.2d 18, 21 (Iowa App. 1993); *In re Marriage of Hoak*, 364 N.W.2d 185, 192 (Iowa 1985). Here, however, Robert received all of the marital stock of Harris Auto. The marital share constituted 76 percent of the total Harris Auto stock. Robert's appraiser, Niese, also testified if Robert received all of the marital stock, the minority share discount should not apply. As such, we find the district court properly refused to apply the minority share discount to the corporation's valuation.

Robert contends Mary could have obtained an evaluation as to whether the inventory at the plant was obsolete and it was not the court's place to determine whether or not the inventory became obsolete. However, Niese testified Robert provided the information concerning the obsolete assets, and he made no independent evaluation as to whether the inventory was obsolete. No independent evaluation was made for the court to rely upon concerning the obsolete inventory. The corporation's most recent balance sheet was admitted into evidence, and showed the value of the inventory which Robert claimed was obsolete. We find the value placed on these assets by the district court to be well within the permissible range of evidence and will not disturb them on appeal. *See In re Marriage of Bare*, 203 N.W.2d 551, 554 (Iowa 1973); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa App. 1984).

Moreover, we find no error in the district court's inclusion of the value of certain intangible items, such as customer lists, product designs, and supplier

agreements. While Robert claims his business is not growing, he testified it showed a profit this past year. These intangibles are also included on the balance sheet. The inclusion of these intangible items is clearly supported by the evidence presented and we will not disturb the trial court's findings. *See Bare*, 203 N.W.2d at 554; *Griffin*, 356 N.W.2d at 608.

III. Property Distribution

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.*

While Mary received a substantially smaller percentage of the marital assets, Robert received a substantial amount of debt. The court considered the corporation's profit history and its large corporate debt. It recognized the risk attendant to Robert's award of stock, as opposed to Mary's award of a cash settlement. We find the property distribution to be fair and equitable.

IV. Alimony

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3) (1993). *See In re Marriage of Hayne*, 334 N.W.2d 347,

350 (Iowa App. 1983). Mary contends the district court denied her alimony, relying on her property settlement. She claims since her property settlement can be discharged in bankruptcy, she is entitled to an alimony award.

The district court relied on factors other than the property distribution to deny Mary's request for alimony. Mary worked throughout the marriage and currently works full-time for a Mason City newspaper. She earns approximately $1100 per month. Robert's earns approximately $1400 per month from Harris Auto. Both parties are in good physical and emotional health and have essentially the same education level. Mary has not indicated she seeks additional education or training to improve her skills. The evidence shows Mary is capable of supporting herself. We agree with the district court an award of alimony was not warranted in this case.

V. Attorney Fees

Iowa trial courts are permitted considerable discretion in allowing attorney's fees and costs in dissolution actions. *In re Marriage of Morehead*, 224 N.W.2d 242, 245 (Iowa 1974). To overturn an award the complaining party must show that the trial court abused its discretion. *Id.* Awards of attorney fees must be for fair and reasonable amounts, *In re Marriage of Willcoxson*, 250 N.W.2d 425, 427 (Iowa 1977), and based on the parties' respective abilities to pay. *In re Marriage of Lattig*, 318 N.W.2d 811, 817 (Iowa App. 1982). We find no abuse of discretion in district court's award of $1000 in trial attorney fees, in light of Mary's earning capacity.

An award of appellate attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. *In re Marriage of Kern*, 408 N.W.2d 387, 390 (Iowa App. 1987). 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 Castle*, 312 N.W.2d 147, 150 (Iowa App. 1981).

We find an award of appellate attorney fees is not warranted in this case. Mary receives a cash settlement award and is employed full- time, earning a salary close to Robert's, which will aid in her ability to pay her attorney fees.

AFFIRMED.