IN THE COURT OF APPEALS OF IOWA

No. 7-275 / 96-0675

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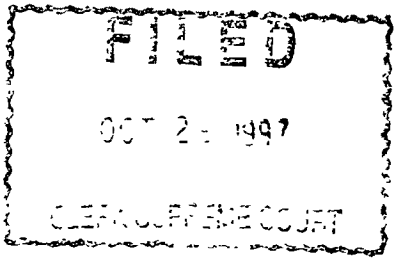
IN RE THE MARRIAGE OF BRUCE A. SHIMKAT AND LYNNE L. SHIMKAT

Upon the Petition of
BRUCE A. SHIMKAT,

Petitioner-Appellant,

And Concerning
LYNNE L. SHIMKAT,

Respondent-Appellee.



Appeal from the Iowa District Court for Webster County, Joel E. Swanson, Judge.

Petitioner appeals various economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Eric Borseth of Borseth & Genest Law Office, Pleasant Hill, for appellant.

Steven H. Lytle of Nyemaster, Goode, Voigts, West, Hansell & O'Brien, P.C., Des Moines, for appellee.

Heard by Sackett, P.J., and Huitink and Streit, JJ. Cady, C.J., takes no part.

SACKETT, P.J.

Petitioner-appellant Bruce Shimkat challenges the economic provisions and the allocation of college expenses in the decree dissolving his nearly twenty-year marriage to respondent-appellee Lynne L. Shimkat. We affirm as modified.

In this equity action, our scope of review is de novo. Iowa R. App. P. 4. Our duty is to review the entire record and determine rights anew from the credible evidence on issues properly presented and preserved. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court but are not bound by them. Iowa R. App. P. 14(f)(7). Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983).

Bruce was forty-five at the time of trial. This is his first marriage. He works for and holds a fifty percent ownership interest in a family-owned business, Shimkat Motor Company. He and Lynne are the parents of two children, Beth, born in October 1980, and Michael, born in December 1983. Bruce received a bachelor's degree prior to marriage. It was stipulated that his net monthly income as defined for purposes of applying the child support guidelines is $7552.74.

This is Lynne's second marriage. She has two children from her previous marriage who lived with the couple and for whom she received $275 a month in child support. The balance of her children's support and the expenses connected with their

college educations were paid by Bruce and Lynne. Lynne entered the marriage with both a bachelor's degree and a master's degree. She works for the State of Iowa as a parole and probation officer. It was stipulated that her net monthly income as defined for purposes of applying the child support guidelines is $2106.75.

The parties stipulated that physical care of the children of this marriage be with Lynne and that Bruce pay $1750 a month in child support. It was further agreed Lynne would carry medical insurance on the children and the parties would share the uncovered medical expenses and share the tuition for the children to attend a parochial school in Fort Dodge. Bruce also agreed to maintain a $200,000 life insurance policy with the children as beneficiaries.

The trial court made an award of assets and liability which, based on certain valuations established by the trial court and others agreed on by the parties, resulted in a division of certain assets with Bruce paying Lynne $129,000 under a payment schedule with interest from March 1, 1996.

Bruce challenges the trial court's treatment of his interest in Shimkat Motors three ways: (1) he contends the business is overvalued; (2) he contends he did not receive sufficient credit for gifts and inheritance; and (3) he challenges the trial court's decision to award Lynne a portion of the business's appreciation.

In assessing the economic provisions of a dissolution decree, we recognize the partners in 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). The Iowa courts do not require an equal division or percentage distribution. *Id; see also In re Marriage of Bare*, 203 N.W.2d 551, 554 (Iowa 1973); *In re Marriage of Havran*, 406 N.W.2d 450, 452 (Iowa App. 1987); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa App. 1984). 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). *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983).

Bruce's first challenge is to the valuation of his interest in Shimkat Motor Company. After Bruce's graduation from college and before his marriage, he went to work at Shimkat Motor Company, then owned by his father and his uncle Harry. Bruce and his brother Ed were working in the business at the time their father died in August 1987. Bruce and Ed each inherited from their father an undivided one-fourth interest in the business and real estate owned by the company. Bruce ultimately received an additional undivided one-fourth interest in the company from his uncle Harry.

Bruce currently owns an undivided one-half interest in the business. Lynne's expert valued this interest at $432,184. Bruce's expert accepted this as a fair value but not the fair market value, reasoning that because Bruce does not have a controlling interest in the business, the fair market value should be the fair value discounted by thirty-five percent. He reasoned there is not much of a market for a non-controlling interest. Bruce's expert valued his interest at $177,878.

The trial court concluded Bruce's interest was worth $425,000. Bruce contends this valuation is not fair because he does not control the business, which is a family-owned business. Consequently, there is little market for it.

The purpose of determining value is to assist the court in making equitable property awards and allowances. *In re Marriage of Dennis*, 467 N.W.2d 806, 808 (Iowa App. 1991). The general rule is a business should be valued at market value if it can reasonably be ascertained. *See id.* The valuation of a family business is difficult. *See id.* Because of the difficulty of the task of valuation, the law provides much leeway to the trial court. *Id.* Where the values determined by the district court for a closely-held family partnership or corporation are within the permissible range of the evidence, we will not disturb them on appeal. *See In re Marriage of Alexander*, 478 N.W.2d 420, 422 (Iowa App. 1991). There is, however, authority for discounting, under the circumstances of this case, stock in the family business to arrive at a fair valuation. *See In re Marriage of Muelhaupt*, 439 N.W.2d 656, 660 (Iowa 1989); *In re Marriage of Hoak*, 364 N.W.2d 185, 194 (Iowa 1985). We consider Bruce's arguments the business was overvalued in assessing his next claim that the trial court should not have given Lynne a portion of the appreciation of his gifted and inherited stock.

The trial court determined the inherited and gifted portion of Bruce's interest in the stock was $110,444, and Lynne was entitled to share in the increase in value of the business after it was gifted and inherited, calculated at $314,556.

Iowa Code section 598.21(1) states, "The court shall divide all property, except inherited property or gifts received by one party, equitably between the parties." However, Iowa Code section 598.21(2) provides an exception "upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage." In determining whether an equitable distribution of gifts or inherited property is warranted, the length of the marriage is an important factor. *In re Marriage of Oler*, 451 N.W.2d 9, 11 (Iowa App. 1989).

The trial court relied heavily on Lynne's efforts in accepting family and community responsibilities in electing to allocate to her what the trial court determined to be the appreciation in the business. The parties' joint efforts are not the controlling factor in determining whether gifts and inherited property should be subject to equitable division. *In re Marriage of Bethke*, 484 N.W.2d 604, 609 (Iowa App. 1992).

In considering whether appreciation of inherited and gifted property should be divided with Lynne, we consider that it has not changed form since the gift as a factor in Bruce's favor. *In re Marriage of White*, 537 N.W.2d 744, 746 (Iowa 1995). We look to Lynne's contributions to the appreciation as a factor in her favor. *See Muelhaupt*, 439 N.W.2d at 660-61. Lynne made no direct contribution to the business but she did involve herself in civic affairs which had some impact on the success of the business. She also took five years away from her career for children.

We consider too that Bruce made substantial contributions to the financial and educational needs of Lynne's children and that Lynne has a career and a good salary, unlike the spouse in *Muelhaupt* who did not work outside the home during the twenty-year marriage. We believe the trial court gave Lynne too much credit for appreciation of Bruce's inherited and gifted assets. We modify the property division to reduce the $129,000 the trial court ordered Bruce to pay Lynne to $75,000.

We have considered Bruce's other challenges to valuation of inherited and gifted property, but find with the above modification, the property division made by the trial court was equitable.

Bruce next challenges the trial court's decision to award Lynne alimony, and he challenges the amount thereof. The trial court awarded Lynne $750 a month alimony for sixty months, to cease upon her remarriage or the death of either party. Bruce argues the fact she is gainfully employed and receiving substantial property should negate her need for alimony.

Lynne absented herself from the job market for five years and worked part time for several more years. We note she was caring for her children from her prior marriage and the children she had with Bruce. In awarding alimony, we look to the particular circumstances of this case. The mandate is to achieve an equitable and just result under the circumstances. *See In re Marriage of Webb*, 426 N.W.2d 402, 405 (Iowa 1988). We look to Bruce's earning capacity and the standard of living the parties have maintained, as well as Bruce's relative ability to pay. *In re Marriage of*

Bethke, 484 N.W.2d at 608; *see also In re Marriage of Imhoff*, 461 N.W.2d 343, 345 (Iowa App. 1990). We also look to the factors of Iowa Code section 598.21(3) and the fact Bruce receives more property than Lynne. We affirm the award of alimony.

Bruce next complains of the trial court's decision to order him to pay one hundred percent of his children's educational expenses after high school, limited to the amounts at an in-state Iowa Board of Regents institution. Bruce does not challenge the percentage of the expenses he is ordered to pay. We therefore find it unnecessary to address the effect of Iowa Code section 598.21(5A) which became effective July 1, 1997,[1] on the amount of Bruce's obligation. Bruce asks that the decree be modified to allow him to use trust funds established by his parents for the purpose of paying his children's education expense.

The children have trust funds established by paternal grandparents to meet their financial needs while in college. Income from trusts is clearly relevant on the issue of college support. *In re Marriage of Lieberman*, 426 N.W.2d at 685; *see also In re Marriage of Meredith*, 394 N.W.2d 336, 339 (Iowa 1986). Absent the divorce, Bruce would not be ordered to pay for college support. *In re Marriage of Lieberman*, 426 N.W.2d at 685. The trust funds can, at Bruce's discretion, be used for college support. *See id.*

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[1] The case was tried before the 1997 amendment. This decision is filed after the amendment was adopted.

Bruce further challenges the order requiring him to pay $7500 toward Lynne's attorney fees in the decree and an additional $750 for post-trial motions. Lynne contends this was equitable and advances her fees were $27,000 and her expert charged $6000.

Attorney fees are not recoverable as a matter of right, but rest within the trial court's discretion and depend upon one spouse's financial needs and the other spouse's ability to satisfy them. *In re Marriage of Orgren*, 375 N.W.2d 710, 714 (Iowa App. 1985); *In re Marriage of Estlund*, 344 N.W.2d at 281. Any award of attorney fees depends on the financial circumstances and earnings of each party. *In re Marriage of Burham*, 283 N.W.2d 269, 278 (Iowa 1979). Considerable discretion is assigned to the trial court in the allowance of attorney fees. *Locke v. Locke*, 263 N.W.2d 694, 695 (Iowa 1978). The trial court did not abuse its discretion in awarding attorney fees.

We award no appellate attorney fees. Costs on appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.