FILED
JUN 27 1995

IN THE COURT OF APPEALS OF IOWA

No. 5-224 / 94-982

IN RE THE MARRIAGE OF RODNEY J. DOORENBOS AND PATRICIA A. DOORENBOS

Upon the Petition of
RODNEY J. DOORENBOS,

Appellee,

And Concerning
PATRICIA A. DOORENBOS,

Appellant.

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

Patricia Doorenbos appeals the district court's valuation and division of the net equity of Agri-Enterprises, Inc., a closely held corporation. **AFFIRMED AS MODIFIED.**

Kay E. Dull, Sioux City, for appellant.

Russell S. Wunschel and Dee Ann Wunschel Crouse of the Wunschel Law Firm, P.C., for appellee.

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

HUTTINK, J.

Patricia Doorenbos appeals the district court's valuation and division of the net equity of Agri-Enterprises, Inc., a closely held corporation. We modify the district court award and remand for entry of judgment in accordance with this decision.

Rodney and Patricia Doorenbos were married in June 1966. In 1975 Rodney formed Agri-Enterprises (Agri), a grain elevator business. Rodney is the sole shareholder of this corporation.

Rodney filed a petition for dissolution in January 1992 In July the parties' stipulated to an equal division of fixed assets, physical assets, and noncorporate assets valued at $283,826. They agreed to complete a year-end audit to determine Agri's net current equity, after which Rodney (through the corporation) would pay Patricia one-half of the amount. In July the net current equity of Agri was approximately $198,000.

The parties also agreed (1) to maintain Rodney's salary at $25,000 per year, (2) any distributions between August 1 and December 31 were to be paid out equally, (3) there should only be routine maintenance to fixed assets, and (4) taxes or other expenses would not be prepaid. All audit fees, attorney fees and court costs for both parties would be paid with corporate funds.

The stipulation was read into the record. Patricia's attorney reduced the stipulation to writing as ordered by the court but Rodney refused to sign although he

did not challenge any of the substantive terms described above. In November the court held a hearing on enforcement of the stipulation and its reduction to a written decree.

In December 1992 the court entered a dissolution decree incorporating all of the stipulated terms. The court ordered Rodney to pay Patricia one-half of the value of the fixed, physical, and noncorporate assets as part of the property settlement ($141,913). In addition the court awarded Patricia rehabilitative alimony in the amount of $540 for fourteen months. These amounts were to be paid by Rodney personally.

Finally the court ordered the net current equity of Agri be divided equally between the parties as of December 31, 1992. Rodney was ordered to pay Patricia her half no later than March 15, 1993. Neither party appealed the terms of the decree.

In March 1993 Rodney tendered a check for $69,224.62 to Patricia. This amount represented her share of net current equity plus those amounts Rodney had paid for alimony and property settlements with corporate funds. Patricia refused to accept the check.

A hearing was held in May 1994 for the sole purpose of determining Agri's net current equity. The district court found Rodney had improperly expended corporate funds on several occasions. The court added back the improper expenditures and determined Agri's adjusted net current equity was $110,567.03. Accordingly the court awarded Patricia $55,283.61.

Our review in equity actions is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of the witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

On appeal Patricia contends the trial court failed to correctly determine the Agri-Enterprises' net current equity as required by the parties' stipulation and subsequent decree. We agree.

We initially note a stipulation of settlement in a dissolution proceeding is a contract between the parties. *In re Marriage of Lawson*, 409 N.W.2d 181, 183 (Iowa 1987). The stipulation becomes final when it is accepted and approved by the court. *Id.* It is the decree and not the stipulation which creates whatever rights the parties have. *In re Marriage of Von Glan*, 525 N.W.2d 427, 430 (Iowa App. 1994) (citation omitted).

In entering the decree the district court found

> the agreement placed upon the record, at the insistence of the Court and which the Court advised the parties it would enforce, was sufficiently definite for this Court to equitably enforce the same pursuant to its terms.

The substantive terms of the decree (property settlement, alimony, and division of net current equity) were not appealed, therefore the decree was final except as to the determination of Agri's net current equity.

The December 31, 1992, balance sheet showed Agri's net current equity was $58,264.83. Rodney claims the large reduction in equity between July and December

was legitimate. We, however, after reviewing the record, are convinced Rodney exploited his shareholder authority to reduce Agri's net current equity, thereby minimizing his obligations to Patricia.

The trial court adjusted the year-end net current equity to account for the following unauthorized expenditures or personal payments Rodney made with corporate funds:

(1)	$2,160.00	four months of alimony ($540 x 4)
(2)	$5,050.00	truck repair
(3)	$35,769.52	property settlement payment ($35,000 + 769.52 in interest)
(4)	$7,474.15	monthly property settlement payments (($1848.54 x 4 months) + 79.99 in interest)
(5)	$1,848.53	December property settlement payment

Our de novo review of the record reveals two additional unauthorized expenditures. First, the year-end net current equity must be adjusted to account for $6030 in 1992 State and Federal taxes Rodney overpaid. The tax returns indicate Agri owed no taxes for 1992;[1] therefore any amount Rodney had prepaid should have been added to current net equity. Second, Rodney arranged corporate repayment of a $50,600 long-term obligation owed him by the corporation. This extraordinary expenditure clearly conflicted with the terms of the decree. These amounts should be added to the district court's $110,567.03 calculation. We find Agri's correct adjusted net current equity as of December 31, 1992, was $167,197.03.

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[1]At oral argument Rodney's attorney confirmed Agri's status as a subchapter S corporation. Accordingly, any taxable income resulting from corporate profits is the obligation of the shareholder and not the corporation. *See* I.R.C. § 1366(a).

The decree provided for corporate payment of the parties' attorneys' and audit fees, resulting in a reduction of Agri's net current equity to $160,016.56. The net current equity due Patricia is $80,008.28. The decision of the district court is therefore modified to award Patricia an additional $24,724.67.

Each party shall be personally responsible for payment of his or her own appellate attorney fees. Costs of this appeal are assessed to Rodney.

AFFIRMED AS MODIFIED.