IN THE COURT OF APPEALS OF IOWA

No. 8-562 / 97-2128

IN RE THE MARRIAGE OF KRISTINE ANN SOMA AND DONALD RAY SOMA

Upon the Petition of KRISTINE ANN SOMA,

Petitioner-Appellee/Cross-Appellant,

And Concerning DONALD RAY SOMA,

Respondent-Appellant/Cross-Appellee.

DEC 29 1998

Appeal from the Iowa District Court for Hamilton County, Ronald H. Schechtman, Judge.

Respondent appeals various economic provisions of the parties' dissolution decree. **AFFIRMED.**

Scott L. Hippen of Hippen Law Office, Ames, for appellant.

Jere C. Maddux of Newbrough, Johnston, Brewer, Maddux & Krauth, L.L.P., Ames, for appellee.

Heard by Streit, P.J., and Vogel and Mahan, JJ.

MAHAN, J.

Donald Soma appeals various economic provisions of the parties' dissolution decree. Donald contends the property division is inequitable because the district court: (1) incorrectly valued the parties' assets and liabilities; and (2) assigned all of the risky assets and liabilities to Donald. Kristine Soma cross-appeals the district court's denial of interest on Kristine's equity lien against the marital home. We affirm.

Kristine and Donald Soma were married in 1974. They have three children: Jennifer, Jody, and Jaime. Kristine works as a secretary at Iowa State University. Donald is a carpenter and works as a general contractor through Soma Construction, which Donald owns as a sole proprietorship.

Donald was awarded (1) the marital home, subject to existing indebtedness and an equitable lien securing Kristine's share of the marital assets; (2) Soma Construction, including all assets and liabilities; and (3) the right to collect the $12,000 loan made to Donald's brother. Kristine was awarded her TIAA/CREF retirement benefits. Any additional tax liability determined during the audit of the parties' joint tax returns was assigned to Donald. However, any net carryover loss would be divided evenly between Kristine and Donald.

I. STANDARD OF REVIEW. Our review of challenges to the economic provisions of a divorce decree is de novo. *In re Marriage of Clinton*, 579 N.W.2d 835, 838 (Iowa App. 1998). We give the trial court's factual findings weight in considering the credibility of witnesses, although we are not bound by them. *Id.*

II. THE PROPERTY DIVISION. The partners to a marriage are entitled to a just and equitable share of property accumulated through their joint efforts. *See In re Marriage of Gonzalez*, 561 N.W.2d 94, 98 (Iowa App. 1997); *see also In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). The Iowa courts do not require an equal division or a percentage division in determining a just and equitable share of property. *Gonzalez*, 561 N.W.2d at 98. Instead, each particular circumstance determines what is fair and equitable. *Id.*

Donald contends the property division is inequitable because the district court incorrectly valued the parties' assets and liabilities and assigned all of the risky assets and liabilities to Donald. Specifically, Donald objects to the value placed on the marital home, Soma Construction, the loan made to Donald's brother, and Kristine's retirement benefits. Donald also disputes the equity of the tax liability assignment.

A. Value of the Home. Donald estimated the home needed $25,000 in repairs before it could be sold. Donald also estimated the real estate agent's commission would be $19,000. Donald argues these amounts should have been subtracted from the appraisal value submitted by the parties. The district court found, absent any evidence to the contrary, the appraisal reflected the market value of the home "as-is." Donald testified he intended to keep the home and, thus, the realtor's commission was a speculative, future expense. We find the use of the appraisal value, without adjustments, to be within the permissible range of the evidence. We will not disturb it on appeal. *See In re Marriage of Brainard*, 523 N.W.2d 611, 616 (Iowa App. 1994).

B. Value of Donald's Sole Proprietorship. Donald asserts the proprietorship has a negative net value of $6000 based on assets of approximately $15,000 and liabilities of $21,000. The district court valued the business at $5000 based on the determination the business had additional value as a going concern and the accounts receivable. Both parties testified Donald has a good reputation for quality work. Evidence was also presented on the potential value of specific accounts. Therefore, we find the district court's valuation is within the permissible range of the evidence and we will not disturb it on appeal.

C. Value of Loan to Donald's Brother. Donald contends the loan he made to his brother is uncollectible and should not have been considered an asset. Alternatively, Donald argues the asset should be evenly divided between himself and Kristine. The district court looked upon the transaction "with a shaded eye" because the loan had been made without Kristine's consent about one year before the dissolution hearing. Furthermore, Donald did not have his brother sign a promissory note. It is not inequitable under these circumstances to consider the loan an asset and assign it to Donald. *See In re Marriage of Bell*, 576 N.W.2d 618, 624 (Iowa App. 1998).

D. Value of Kristine's Retirement Benefits. Donald objects to the discounted value assigned to Kristine's TIAA/CREF account based on deferred tax liability. Donald argues it is unfair to assign a discounted value to Kristine's asset while not discounting the value of any of the assets assigned to him. The district court indicated there was no reason to vary from the usual practice of discounting this

type of tax-deferred asset. This finding is within the permissible range of the evidence and we will not disturb it on appeal. *See Brainard*, 523 N.W.2d at 616.

E. Allocation of Tax Liability and Benefits. Finally, Donald objects to being allocated all of the potential tax liability resulting from an audit of Donald and Kristine's 1995 tax return, while any net carryover loss would be divided equally between the parties. The district court indicated Donald should be responsible for any tax liability because the audit seems to be a result of Donald's construction business, Donald prepared the return, and Donald testified it was unlikely there would be any additional tax liability. The district court also found the equities required any net carryover loss to be split with Kristine. The district court's findings are within the permissible range of the evidence. We will not disturb them on appeal. *Id.*

III. KRISTINE'S LIEN ON THE REAL ESTATE. Kristine cross-appealed the denial of interest on her equitable lien. Interest was actually only denied for the period between the date of the decree and August 1, 1998, which is the date the payment became due. Donald was assigned responsibility for all expenses related to the marital home and the home was to be the residence of one of the children for whom Kristine would not be paying child support during that time period. We find the district court's denial of interest on the lien was equitable.

IV. APPELLATE ATTORNEY FEES. An award of appellate attorney fees is not a matter of right, but rests in our discretion. *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa App. 1997). In determining whether to award appellate attorney fees, we 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 decision of the trial court on appeal. *Id.*

The testimony suggests the parties are similarly able to pay. Therefore, we will not award appellate attorney fees.

For these reasons, we affirm the dissolution decree.

AFFIRMED.