IN THE COURT OF APPEALS OF IOWA

No. 7-788 / 97-1004

IN RE THE MARRIAGE OF JACQUELINE K. EISCHEID AND JAMES J. EISCHEID

Upon the Petition of
JACQUELINE K. EISCHEID,
Appellee,

And Concerning
JAMES J. EISCHEID,
Appellant.

FILED
AUG 28 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Clay County, Joseph J. Straub, Judge.

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

John D. Brown of Berkland & Brown Law Office, Emmetsburg, for appellant.

Gary W. Armstrong of Mack, Hansen, Gadd, Armstrong & Brown, P.C., Storm Lake, for appellee.

Considered by Cady, C.J., Mahan, J., and Perkins, S.J.* Sackett, J., takes no part.

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

PERKINS, S.J.

The respondent appeals various economic provisions of the parties' dissolution decree. Respondent argues: (1) the valuation and inclusion of a sale barn in available marital assets was not equitable because the value assigned by the court does not reflect the market value of the property and the property was sold prior to the decree; and (2) the district court erred in awarding petitioner alimony until death or remarriage since petitioner is educated and capable of becoming self-supporting following an award of rehabilitative alimony.

James and Jacqueline Eischeid were married on August 4, 1979. They have three minor children, Amy, born January 15, 1980, Lance, born May 17, 1982, and Ashley, born June 18, 1985. James was thirty-nine years of age at the time of trial and Jacqueline was thirty-eight.

Prior to the marriage, James became a part owner of Spencer Livestock Sales, a corporation which operated a sale barn on nine acres of land abutting Highway 18 north of Spencer, when James' father's stock passed to him, his two brothers and two sisters. James and his other brother, Joe, ultimately purchased the remaining shares and now each own a fifty-percent share.

Shortly after the marriage, Jacqueline began working at the sale barn. She also enrolled in the Spencer School of Business where she took a secretarial and travel agent course, ultimately obtaining a one-year degree. She worked as a secretary and teller at Home Federal Savings and Loan and then began working part-time at the sale

barn. Jacqueline worked at the sale barn until May 1995, when she obtained a position with AAA travel in Spencer. She left that job in July 1996 when it conflicted with the care of her children. She then enrolled in real estate courses at Iowa Lakes Community College. She subsequently obtained her real estate license and is now affiliated with Realty Professionals in Spencer. She earned $1472 in commissions in 1996.

In 1994, James purchased Joe's interest in the sale barn due to intra-family squabbles. The sale price was $150,000, $7500 paid on the date of closing, and $47,500 paid annually in 1995, 1996, and 1997. Included in the sale was a covenant not to compete, for which James was required to pay $40,000. Following the sale, including accelerated depreciation and expense deductions, James earned between $60,000 and $70,000. However, in 1995, James reduced his salary to $15,000.

On November 1, 1995, James filed a petition for dissolution. In September 1996, during the pendency of the dissolution James sold the sale barn for $85,000 and the assumption of two bills totaling $15,000. This sale included the sale barn, five acres of land, a 1993 Chevrolet diesel pickup, a 1994 Lincoln Continental, a 1992 Nissan, a 1990 Oldsmobile, and a twenty-four foot Kieffer trailer. Also included in a sale was an account receivable in the amount of $15,500. The sale transfer occurred on September 26, 1996.

When Jacqueline learned of the impending sale, she immediately filed an application for writ of attachment, requesting the court enter an order preventing

either party from selling, removing or otherwise appropriating the parties' property during the pendency of the dissolution. The court entered an order directing a writ of attachment, but the sale had already taken place. Shortly thereafter, James and Jacqueline discussed the possibilities of a reconciliation, and James subsequently dismissed the dissolution proceeding. James promised Jacqueline he would be able to repurchase the sale barn.

Despite his promises, James did not attempt to repurchase the sale barn. When Jacqueline learned James was not repurchasing the sale barn, she instituted the present action. Following trial, the court entered its decree. The court awarded Jacqueline physical care of the parties' minor children. The court concluded James voluntarily sold the sale barn for the sole purpose of avoiding paying child and spousal support. The court ruled that had James not transferred the business for less than fair market value, his income would be similar to his income at the time the court entered its temporary decree. The court concluded that James had a net monthly income of $5300. The court concluded Jacqueline had a net monthly income of $700 and ordered James to pay child support in the amount of $1760 per month for three children, $1473 per month for two children, and $1002 per month for one child. The court next ordered James to pay Jacqueline $1000 per month in alimony, to terminate upon her death or remarriage.

The court imputed a value to the sale barn of $275,000. After awarding James a one-fifth interest in the sale barn due to inheritance, the court concluded the

property's remaining value was $220,000 and that it should be included as a marital asset. The court awarded James assets in the amount of $282,782, and Jacqueline $279,879, including the marital home valued at $175,000. The court ordered James to pay one-half the dentist bill for Amy's braces, but ordered Jacqueline to pay the balance of her debts. Each party was ordered to pay their respective attorney fees. James has appealed.

James maintains the district court erred in including the value of the sale barn as a marital asset. He argues the value assigned by the district court does not reflect its actual market value. He maintains the business was always considered his family's asset, and that it was not a marital asset at the time of the present action. James asserts the value of the sale barn is $85,000, calculated from the date of sale. James lastly argues the district court erred in awarding permanent alimony, since Jacqueline could become self-supporting following a reasonable period of rehabilitative alimony.

The appellant, James, presents two issues for our consideration: 1) whether the commercial property and a family business should be valued as marital assets when they have been sold prior to commencement of this action, and 2) whether alimony awarded until death of parties or remarriage is proper.

Standard of Review. The standard of review for the court in an equity action is de novo. Iowa R. App. P. 4; *In re Marriage of Stark*, 542 N.W.2d 260, 262 (Iowa App. 1995). The court has a duty to conduct an examination of the entire record and,

as to properly presented issues, adjudicate the rights of the parties anew. *Id., citing, In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). However, the appellate court gives considerable weight to the sound judgment of the trial court as the trial court has had the benefit of hearing and observing the parties first hand. *In re Marriage of Kleist*, 538 N.W.2d 273, 278 (Iowa 1995).

Ruling. The trial court in lengthy findings of fact and conclusions of law made an exhaustive examination of the matters the appellant now argues in his appeal.

After considering all the various ways to value the business, the trial court found the actual worth of the business to be approximately $275,000. There is substantial evidence in the record to support this decision and after reviewing the facts, we adopt the trial court's finding.

The trial court concluded, "that Jim voluntarily sold the sale barn business to Leon Farrow for the sole purpose of avoiding his fair share of child support and also to avoid paying spousal support." The trial court also concluded if James had not transferred the business for less than fair market value, his income would be approximately the same as his income was at the time the court entered its order for temporary child support and spousal support in Case No. 2409. The court imputed net monthly income at the rate of $5300 to James. In reviewing the facts anew, we reach the same result and adopt the trial court's decision as to child support.

James was ordered to pay Jacqueline alimony at the rate of $1000 per month. The trial court justifies this amount by its computation as to James' imputed earnings and Jacqueline's earning experience. The trial court gave consideration to those factors contained in section 598.21(3) of the Code. *See In re Marriage of Estlund*, 344 N.W.2d 276, 281 (Iowa App. 1983). After our review, we reach the same result and adopt the trial court's decision as to the amount of monthly alimony.

However, Jacqueline, who is thirty-nine years old, in good health, and who is a licensed real estate salesperson, has an earning capacity which should permit her to become self-supporting after a reasonable period of rehabilitative alimony. The children are ages thirteen, sixteen, and eighteen. Her hours as a realtor are somewhat flexible. She should be able to work full time and, with experience, her earnings should increase substantially. Under these facts, we conclude rehabilitative alimony of $1000 a month for a period of six years is equitable. We modify the dissolution decree to make this change.

The decision of the trial court is affirmed as modified. Costs of this appeal are assessed one-half to each party.

AFFIRMED AS MODIFIED.