IN THE COURT OF APPEALS OF IOWA

No. 6-307 / 95-905

IN RE THE MARRIAGE OF KAREN F. SHUMAKER AND WILLIAM ALAN SHUMAKER, JR.

FILED
NOV 27 1996
CLERK SUPREME COURT

Upon the Petition of
KAREN F. SHUMAKER,

Appellant,

And Concerning
WILLIAM ALAN SHUMAKER, JR.,

Appellee.

Appeal from the Iowa District Court for Polk County, Ray A. Fenton, Judge.

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

Larry M. Blumberg of Roehrick, Hulting, Blumberg & Kirlin, P.C, Des Moines, for appellant.

Jon C. Tack and Kermit L. Dunahoo of Dunahoo Law Firm, Des Moines, for appellee.

Heard by Cady, P.J., Huitink, J., and Streit, JJ.

CADY, P.J.

This appeal is from provisions of a dissolution decree entered by the district court relating to the division of property, alimony, child support, and assessment of costs. We affirm as modified.

William and Karen Shumaker were married in 1988. They had three children, Benjamin, born April 26, 1989; Jo Ann, born June 22, 1991; and Amanda, born September 8, 1993.

Karen was employed as a secretary at the time of the marriage. William worked for the United States Postal Service. Karen quit her job to raise the children, while William continued to work for the postal service during the marriage. Karen graduated from high school and received secretarial training at a community college prior to the marriage. She was thirty-two years of age at the time of trial. William was thirty-eight years old at the time of trial.

William and Karen acquired numerous assets during the marriage, including a house in Johnston, Iowa, and twenty-one acres of undeveloped land near Van Meter. The Van Meter property was purchased in 1989 for $23,000. Karen had the property professionally appraised prior to trial at $84,000. The house in Johnston was purchased in 1988 for $41,000. William used premarital funds of $5000 as a down payment on the house. William also owned property prior to the marriage, including a house in Des Moines, a retirement fund, and an IRA.

Karen filed the petition for dissolution of marriage in March 1993. At various times during the pendency of the dissolution action, William withdrew funds from his IRA to finance a corporation he established to purchase and operate an apartment and tavern. By the time of trial, William had withdrawn all of his IRA funds. He made his last withdrawal of $11,500 shortly before trial.

The trial court valued the marital home at $45,000 and the Van Meter property at $28,500. The marital home had a mortgage of $25,626. The trial court essentially awarded each party the assets they owned at the time of the marriage, and valued the property accumulated during the marriage at $84,795. It then awarded nearly all the accumulated assets to William and granted Karen a cash award of $39,897.

William was ordered to pay bi-weekly child support of $438.25 based on his base net monthly income. William's base net monthly income was $2313, but his regular work shift requires him to work on Sundays. This entitled him to receive an additional $4.79 per hour on Sundays. The trial court did not include William's additional hourly wages for working on Sundays in computing the child support. Additionally, the district court denied Karen's request for alimony. In a supplemental order, the district court assessed Karen one-half of the costs of her deposition taken by William.

Karen appeals. She first claims the property distribution was inequitable due to the trial court's failure to fairly value the real estate, as well as its failure to

consider the value of William's interest in the corporation or, alternatively, the value of the IRA funds used to fund the corporation. Karen next claims the district court erred in failing to award rehabilitative alimony. She also claims the district court erred in failing to consider all William's regular income in determining the child support obligation. Lastly, Karen asserts the district court erred in assessing her one-half of the costs of the deposition taken by William.

*I. **Division of Property.*** Assets are valued in a dissolution proceeding before making a division of property to help assure the award will be equitable for both parties. *In re Marriage of Steele*, 502 N.W.2d 18, 21 (Iowa App. 1993). The district court is typically in the best position to determine the credibility of valuation evidence, and we generally will not disturb the district court's determination of the value of property if it was within the permissible range of evidence. *See In re Marriage of Gaer*, 476 N.W.2d 324, 330 (Iowa 1991). Moreover, we are not bound by the testimony of expert witnesses. *See In re Marriage of Stamp*, 300 N.W.2d 275, 280-81 (Iowa 1980). At the same time, our deference to the trial court does not permit us to abandon our de novo standard of review. Instead, we review all the evidence anew, but give weight to the findings of the trial court, especially as they relate to the credibility of witnesses. Iowa R. App. P. 14(f)(7).

We first consider the value of the Van Meter property. The property is included in the Van Meter City Comprehensive Zoning Plan as a projected site for a

residential housing development. It was professionally appraised just prior to trial at $84,000. William, on the other hand, opined it was only worth $23,500. This was based on the purchase price and his impression of its valuation for purposes of taxation as shown by the records of the county assessor. The district court made no findings for rejecting the expert appraisal.

William testified he "wasn't aware" of the value of the Van Meter property until he paid the property tax on it shortly before trial. He also acknowledged he was not knowledgeable about property values and "assume[d]" the county assessor's records reflected the actual value of the property. These records showed a valuation of $29,330. Furthermore, he testified he was not interested in determining market value because he wanted to keep the land for his children.

We generally value real estate at its fair market value. *See In re Marriage of Higgins*, 507 N.W.2d 725, 726 (Iowa App. 1993). Moreover, the assessed value of real estate does not necessarily reflect its market value. *See In re Marriage of Swartz*, 512 N.W.2d 825, 827 (Iowa App. 1993); *In re Marriage of Johnson*, 499 N.W.2d 326, 328 (Iowa App. 1993) (appraised value of home used over assessed value).

Under the particular circumstances of this case, we believe the expert appraisal is a better indicator of the market value of the Van Meter property than William's opinion or the assessor's records. William's opinion has little weight considering his reasoning and lack of knowledge. There was no competent evidence to explain the assessor's records. On the other hand, the appraised valued the land was based on its

potential for development. Yet, there was no evidence to confirm anyone was interested in purchasing the property in the near future to begin the development. We conclude the Van Meter property should be valued at $70,000, subject to an adjustment for the tax consequences upon liquidation. *See In re Marriage of Hogeland*, 448 N.W.2d 678, 680 (Iowa App. 1989) (property subject to tax upon liquidation could not be valued at face value).

We next consider the value of the home in Johnston. William believed the home had not increased in value since it was purchased in 1988. The only other evidence of value were the records from the county assessor showing a current assessed value of $62,150. William, however, testified he purchased the home for less than its assessed value. Under the circumstances, we conclude the value of $45,000 established by the trial court should not be disturbed. It is within the permissible range of credible evidence.

We next consider the trial court's failure to consider all the IRA funds William withdrew during the pendency of the action to finance the corporation. The trial court did not value the corporation in making the property award, but awarded Karen one-half of the value of the IRA accumulated during the marriage. The district court found the IRA accumulated $11,500 in value during the marriage. William actually withdrew a total of $32,586 from his IRA to fund the corporation. There were no funds in his IRA at the time of trial. The value of the IRA at the time of the marriage was $14,060. Therefore, we believe a fair distribution of property must consider

accumulated IRA funds of $18,526, which were all funneled into the corporation just prior to trial.[1]

In conclusion, we modify the property settlement by increasing Karen's cash award from $39,897 to $54,197. This increase recognizes Karen's interest in the fair market value of the Van Meter property diminished by the tax consequences and costs of a sale, as well as the additional value of William's IRA account transferred to the corporation during the pendency of this proceeding. It also considers Karen receives no alimony. The additional cash property award shall be paid within 6 months of the issuance of the procedendo, without interest.

II. Alimony. Rehabilitative alimony is awarded to enable a spouse to become self-supporting. *In re Marriage of Peterson*, 491 N.W.2d 535, 538 (Iowa App. 1992). It allows a spouse who has not pursued a career outside the home during the marriage the opportunity to develop or redevelop the employment skills necessary to become

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[1] William's financial affidavit introduced at trial listed the value of his IRA at $-0-. It also showed he owned a civil service retirement fund valued at $12,246.29. Yet, William introduced another document at trial (Property Distribution Proposal) which showed his IRA was valued at $11,500. The trial court found William owned an IRA, with a value accumulated during the marriage of $11,500. It awarded Karen one-half of this amount in reaching its property award of $39,897. William argued on appeal we should offset the accumulated value of the IRA against the value of the civil service retirement account, which William accumulated prior to the marriage. The trial court, however, did not consider this pre-marital asset in making its property award to Karen. It only considered the present value of William's Thrift Saving Plan ($37,872) less its value at the time of the marriage ($3575). Thus, it is unnecessary for us to offset our determination of the divisible portion of William's IRA with the civil service retirement account.

self-supporting. *Id.* Thus, it is generally awarded for a limited period of time. *In re Marriage of Francis*, 442 N.W.2d 59, 63 (Iowa 1989).

Karen will require some computer training to become marketable as a secretary. However, this training is available through the local Y.M.C.A. at no cost. Furthermore, the training can be completed in fifteen weeks.

We recognize there is more to rehabilitation than the costs and length of the training or educational courses. Nevertheless, these additional considerations can be adequately addressed in the division of property in this case. We agree with the district court that an award of alimony is not warranted.

III. Child Support. The court must determine a parent's current monthly income before applying the uniform child support guidelines. The level of income should be based on what a parent can actually expect to earn. *In re Marriage of Heinemann*, 309 N.W.2d 151, 152 (Iowa App. 1981). Income which is speculative or uncertain is not considered. *In re Marriage of Brainard*, 523 N.W.2d 611, 616 (Iowa App. 1994).

Karen claims the district court should have included the additional wages William receives for regularly working on Sundays in determining net monthly income. We agree.

William regularly works on Sundays each week. He is paid an additional $4.79 per hour for working on Sundays. Thus, William regularly receives additional earnings of $166.05 each month. The only exception is when he takes vacation or

does not work on Sunday due to illness. He has worked the Sunday shift for more than one year prior to the divorce and does not know when his shift may change. He is eligible to bid for a different shift when it becomes available, subject to seniority and satisfaction of certain job qualifications.

We conclude the additional income William receives for working on Sundays each week should be considered in determining child support. William regularly receives the additional income, and he has done so for a considerable period of time. The possibility he may change his work shift in the future does not make the additional income speculative or uncertain. We conclude William's net monthly income is $2430. We attribute net monthly wages of $800 for Karen based on her expected earnings and modify the decree to increase the monthly child support payment to $967.14, payable under the same arrangements set forth in the decree.

IV. Costs and Attorney Fees. Courts have discretion to award fees and costs in an action for dissolution of marriage. Costs, however, are taxable only to the extent they are provided by statute or rule. *Dole v. Harstad*, 278 N.W.2d 907, 909 (Iowa 1979). Deposition costs may be taxed as costs, but are limited to those "necessarily incurred for testimony offered and admitted upon the trial." *See* Iowa R. Civ. P. 157(a). This means the deposition must be "introduced into evidence in whole or in part at trial." *Woody v. Machin*, 380 N.W.2d 727, 730 (Iowa 1986).

In this case, the deposition taxed as costs by the trial court was not introduced at trial. Thus, the district court was not permitted to tax it as a court cost. *See Coker*

v. Abell-Howe Co., 491 N.W.2d 143, 151 (Iowa 1992). It was an abuse of discretion to do so. We modify the supplemental order of the district court to exclude the costs of Karen's deposition as taxable costs.

We award Karen $1000 for attorney fees on appeal. This is based primarily on Karen's needs and William's ability to contribute to those needs.

Costs are assessed to William.

AFFIRMED AS MODIFIED.