



IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE TRUDY JOAN SEARS AND JAMES D. SEARS

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Upon the Petition of)

TRUDY JOAN SEARS,)

Petitioner-Appellant,)

Filed September 24, 1985

And Concerning)

JAMES D. SEARS,)

5-365
84-1149

Respondent-Appellee.)

Appeal from the Iowa District Court for Wayne County - M. C. Herrick,
Judge.

Petitioner wife appeals from the decree dissolving the parties' marriage.
AFFIRMED.

William L. Shelton and Bruce Graham of Shelton, P.C., Chariton, for peti-
tioner-appellant.

L. P. Van Werden of Reynoldson, Van Werden, Kimes, Reynoldson & Lloyd,
Osceola, for respondent-appellee.

Considered by Donielson, P.J., and Schlegel and Hayden, JJ.

DONIELSON, P.J.

Petitioner wife appeals from the decree dissolving the parties' marriage. She asserts (1) that the trial court should have based the property division on the facts which existed at the parties' separation rather than on the facts which existed at trial; (2) that the trial court incorrectly valued the parties' real property; (3) that the property division is inequitable in various respects; and (4) that the trial court should have awarded her attorney fees. Petitioner wife also requests attorney fees on appeal. We affirm.

Petitioner Trudy Joan Sears and respondent James D. Sears were married in September 1964. They have two children, Amber, born in September 1966, and Trice, born in December 1975. During the marriage the parties operated a rodeo business. After the parties separated in October 1982, James continued the business and Trudy went to beautician school. Trial was held in May 1984.

The trial court gave the parties joint custody of their children; Amber (who was almost eighteen years old) was to choose which parent she would live with, and Trice was to live with Trudy. The trial court directed James to pay Trudy child support of \$150 per month for Trice and \$150 per month for Amber if she chose to live with Trudy. The trial court did not award any alimony or attorney fees.

The trial court awarded Trudy a 1979 Thunderbird, an equitable share of the parties' photographs, the household goods in her possession, the bank accounts and stock in her name, her life insurance, and a \$7,500 property settlement. The trial court directed her to pay a \$2,260 debt. The trial court awarded James all the parties' other property, including the parties' real estate, valued at \$116,500 as of the time of trial, and the rodeo business. The trial court directed James to pay all the parties' other debts, which totalled \$233,719 at

the time of trial, which was apparently about \$25,000 more than at the time of the parties' separation.

I. Time of Property Valuation

Petitioner maintains that the property subject to dissolution should be valued at the time of separation and not at the time of trial. She complains that the decrease in value of the assets and increase in indebtedness by the time of trial was unfair.

Iowa's approach to valuation issues was espoused in In re Marriage of Hitchcock, 309 N.W.2d 432, 434 (Iowa 1981), where the court stated it was not "appropriate for this court to develop a general rule concerning valuation dates in disjointed dissolution proceedings, when property settlements are within the court's equitable jurisdiction." Hitchcock dealt with valuation at either the time of the original trial or the remanded trial, not with valuation at the time of separation or the original trial. We think it unwise, under these facts, to adopt a policy favoring valuation of assets at the time of separation. We see no reason, due to the formidable task of valuing assets at the time of separation, to depart from our practice of valuing assets at the time of the hearing. Thus, equity and logic dictate that the trial date was the appropriate time to value the assets in this case.

A principal reason Trudy seeks valuation at the time of separation is that the family rodeo business, entirely under James's control, incurred debts after the parties separated. James's business maneuvers after the separation were well within the ordinary course of business and we see no reason to think otherwise. Self-serving transactions, entered into solely to decrease a party's assets pending a dissolution, should be brought to the court's attention; but this is not the situation here. Under these facts, valuing the assets at the time of the hearing was justified.

II. Realty Valuation

Petitioner maintains that the trial court erred by attaching a valuation of \$116,500 on the property owned by the parties. The Sears' real estate holdings consisted of approximately 200 acres of land. The values for such property offered in evidence ranged from \$128,000 to \$104,563. James submits the figure the trial court arrived at was the average of each party's professional appraiser. We find no reason to disturb the trial court's valuing of this property.

III. Inequitable Decree

Trudy contends the court erred by not allocating the equity in the real property separately from the business. Trudy then takes the position that the decree, in general, is inequitable. We cannot agree on either point.

First, the parties owned two primary assets: real property and a rodeo business. Trudy argues on appeal that the real property should have been divided separately from the rodeo business. We reject this approach. The trial court made the property division pursuant to the parties' net worth. We find no error in valuing both assets and their encumbrances together to arrive at overall net worth.

Second, the trial court found the parties' assets totalled \$241,305 and their debts were \$235,979, leaving a net worth of \$5,326. The parties agreed Trudy should get one-half of the net worth. Trudy was awarded a \$3,500 car and \$7,500 in cash; she was directed to pay a \$2,260 loan to her sister. James was awarded the real property and rodeo valued at approximately \$227,000 with an indebtedness of \$233,719. James was to hold Trudy harmless for this debt.

This order is not inequitable. James assumed more debt than the assets he received; albeit, such assets can generate income to pay off loan obligations.

Additionally, the parties' combined net worth was \$5,326 and Trudy received over \$8,700 in net assets. We find the trial court's decree is more than justified.

IV. Attorney Fees

Trudy finally seeks attorney fees for the trial court and appellate proceedings. The primary consideration in awarding attorney fees in dissolution proceedings is the resources of the parties. In re Marriage of Lattig, 318 N.W.2d 811 (Iowa Ct. App. 1982). The court considers the resources of the party requesting such fees, the ability of the other party to pay, and whether the requesting party was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981).

Trudy was awarded \$7,500 in cash, while James had negligible net worth. Moreover, Trudy is a beautician and gainful employment shall provide her with a steady source of income. For these reasons, we deny Trudy's claim.

AFFIRMED¹.

¹We refer appellant's counsel to Iowa Rule of Appellate Procedure 16(a) which provides: "The appendix and brief shall be printed or duplicated on both sides of the sheet." This rule shall be followed in all future submissions counsel makes to this forum.