FILED
OCT 28 1993
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-242 / 92-0974

IN RE THE MARRIAGE OF RONDA M. TeSLAA AND GARY A. TeSLAA

Upon the Petition of
RONDA M. TeSLAA,

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Appellee,

And Concerning
GARY A. TeSLAA,

Appellant.

Appeal from the Iowa District Court for Lyon County, Terry L. Huitink, Judge.

The respondent husband appeals visitation and economic provisions of the district court's decree dissolving the parties' marriage. **AFFIRMED.**

G. Daniel Gildmeister and Kelly S. May of Margolin, Gildmeister, Willia, Mugan & Keane, Sioux City, for appellant.

Joseph M. Feller of Koopman, Kennedy & Feller, Sibley, for appellee.

Considered by Oxberger, C.J., and Hayden and Habhab, JJ. Donielson, J., takes no part.

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HAYDEN, J.

Gary and Ronda TeSlaa were married on June 18, 1977. Ronda filed a petition for dissolution of the marriage on May 2, 1991. At the time of trial in February 1992 the parties had three minor children. Gary was thirty-five years old, and Ronda was thirty-four years old. Gary had no formal education beyond high school. Ronda had completed a one-year program and had obtained an associate degree in accounting.

During the marriage Gary worked for his father, Alfred TeSlaa, doing farm labor. Ronda was a homemaker, taking care of the children and homestead. Ronda often did laundry and other household chores for her family as well as Gary's father and brother. Ronda also did the bookkeeping for the farming operation.

In 1987 Gary formed a partnership with his brother, Loren. The partnership was entitled GLAD Enterprises. Pursuant to the terms of the partnership, Gary and Loren would use their father's equipment to farm rented property in Minnesota. Gary and Loren would each receive one-third of the profits based on their labors, and Alfred would receive one-third for use of the machinery. The partnership acquired a large amount of acreage, totaling over 1600 acres. In addition, Gary and Ronda also farmed a 156-acre farm belonging to Ronda's parents and a 118-acre farm belonging to Ronda's great-uncle.

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On April 18, 1991, Ronda left Gary and the children. Prior to her leaving, Ronda sold grain and received $19,386. Ronda then began living with her new boyfriend, Gary Anderson, a convicted felon.

At trial Ronda claimed problems in the marriage began when she joined the Apostolic Church in 1979. She claimed Gary became abusive toward her and spent little time with her or the children. Ronda alleged she suffered heart palpitations and anxiety attacks throughout the marriage.

The district court awarded custody of the three minor children to Gary. Ronda was awarded liberal visitation, including three weeks of summer visitation. The court ordered Ronda to pay child support in the amount of $300 per month.

The court concluded the parties' net worth equaled $300,000. This figure was based on the parties' real and personal property, including unsold crops and livestock. After deducting the $19,000 Ronda received from her sale of grain, the district court concluded the parties had a net worth of $281,000. Ronda was awarded $100,000 of the marital assets. The court awarded Ronda $25,000 in rehabilitative alimony, payable in sixty monthly installments of $416.67. Ronda was also awarded the baby books, china, dishes, hutch, piano, spoon collection, and her personal effects left at the family residence. The court awarded much of the remaining property to Gary. Gary was ordered to pay $2500 toward Ronda's trial attorney fees.

On May 4, 1992, Gary filed a motion for new trial and a rule 179(b) motion. The court denied both motions. Gary appeals.

Our scope of review in dissolution cases is de novo. In re Marriage of Craig, 462 N.W.2d 692, 693 (Iowa App. 1990).

I. Visitation. Gary argues Ronda's visitations should be restricted. Specifically, Gary requests Ronda's visitations be exercised outside the presence of her boyfriend. Gary contends Ronda's boyfriend is a bad influence on the children and has used physical violence against one of the children in the past. The district court found the evidence did not support a restriction on Ronda's visitations. After a review of the record, we adopt this finding as our own. We will not impose the requested restriction upon Ronda's visitations. We affirm the district court decision on the issue of visitation.

Gary also argues the district court erred in ordering him to pick up the children after Ronda's visitations. This issue was not raised in the trial court proceedings and was not properly preserved for appeal. It is a basic rule of appellate practice a question not presented to and not passed on by the trial court cannot be raised or reviewed on appeal. Tri-State Refining & Inv. v. Opdahl, 481 N.W.2d 710, 713 (Iowa App. 1991) (citing Shill v. Careage Corp., 353 N.W.2d 416, 420 (Iowa 1984)). We do not address the issue of transportation on appeal.

II. Net Worth. The district court determined the parties' net worth equaled $281,000. Gary claims the district court erred in its valuation of marital assets. He argues the district court's valuation is greatly inflated. On appeal Gary contends the parties' actual net worth is $131,405 and Ronda should be awarded only $56,702.

The district court stated several reasons for its finding Ronda's testimony regarding financial matters to be more credible than Gary's testimony. At trial Ronda had contended the parties' net worth equaled $300,288. Although this court is not bound by the fact findings of the trial court, we give them weight, especially when considering the credibility of witnesses. In re Marriage of Lux, 489 N.W.2d 28, 30 (Iowa App. 1992) (citation omitted); Iowa R. App. 14(f)(7). The district court "'is greatly helped in making a wise decision about the parties by listening to them and watching them in person.'" In re Marriage of Vrban, 359 N.W.2d 420, 423 (Iowa 1984) (quoting In re Marriage of Callahan, 214 N.W.2d 133, 136 (Iowa 1974)). The trial court is in the best position to judge the credibility of witnesses. In re Marriage of Hanson, 475 N.W.2d 660, 662 (Iowa App. 1991).

The district court refused to rely upon a financial statement filed by Gary in January 1992. The statement listed the parties' net worth at only $114,225. We note the concern expressed by the district court regarding

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Gary's lack of credibility. The district court concluded "the most reliable and recent evidence of the parties net worth is the financial statement filed with the Rock Rapids State Bank in January 1991." The 1991 statement fixed the parties' net worth at $220,994. In order to reach an accurate net worth of the parties at the time of trial, the court adjusted the 1991 net worth figure for changes which occurred in the parties' financial condition during 1991. The adjustments included unsold 1991 crops, 1991 income, and changes in the amounts of liabilities. The values placed on the assets by the trial court are well within the permissible range of evidence. In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984) (citing In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973)). The district court determined the parties' net worth equaled $300,000.

We similarly adopt the 1991 net worth figure from the January 3, 1991, financial statement filed with the Rock Rapids State Bank. We then adjust the figure of $220,944 for 1991 crops, livestock, and income. We determine the net worth of the parties at the time of trial equaled approximately $300,000. We, as did the trial court, reduce the net worth figure of $300,000 by the $19,000 Ronda received from the sale of grain. The resulting net worth of the parties is $281,000.

We conclude sufficient evidence supports the valuations relied upon in determining the parties' net worth. We affirm the district court's valuation of the parties' assets and determination of their net worth.

III. Property Distribution. Gary contends the property distribution as set forth by the district court is inequitable and financially detrimental to the children.

Gary argues the district court failed to give credit for property each party brought into the marriage. Gary entered the marriage with $15,000 in savings and an automobile valued at $3000 to $4000. Ronda owned a $2000 automobile and had $1000 in savings. Iowa Code section 598.21(1)(b) provides, in pertinent part: "The court shall divide all property, except inherited property or gifts received by one party, equitably between the parties after considering all of the following: . . . [t]he property each brought into the marriage by each party." Iowa Code § 598.21(1)(b) (1991). The concept of marital property does not automatically exclude property brought into the marriage by one spouse and set it aside as that spouse's separate property; rather, our case law directs the trial court to consider such property in making an equitable distribution of marital property. Whelchel, 476 N.W.2d at 108 (citation omitted). In its order the court specifically recognized these automobiles and savings accounts as property brought into the marriage. There is no evidence the trial court failed to consider this property in distributing the marital property. We determine the property distribution as set forth by the district court is equitable. The district court awarded Ronda $100,000 of the parties' net worth of $281,000. The

court also awarded Gary approximately $13,610 in household and machinery items and awarded Ronda approximately $4750 of household items. We affirm the district court's distribution of property.

IV. Alimony. Gary claims Ronda should not receive rehabilitative alimony. He contends Ronda has considerable skills as an accountant and could easily find employment.

We consider the property distribution and alimony together in evaluating their individual sufficiency. In re Marriage of Van Ryswyk, 492 N.W.2d 728, 730 (Iowa App. 1992) (citations omitted). Alimony is not an absolute right; an award depends upon the circumstances of each particular case. In re Marriage of Whelchel, 476 N.W.2d 104, 110 (Iowa App. 1991). Rehabilitative alimony is a way of assisting an economically dependent spouse through a period of education or redevelopment of previous skills following divorce. In re Marriage of Peterson, 491 N.W.2d 535, 538 (Iowa App. 1992). The district court awarded Ronda $25,000 in alimony, payable over sixty months in monthly amounts of $416.67.

Gary's earning capacity and income is substantially more than Ronda's earning capacity. Ronda is awarded only $100,000 of the parties' net worth of $281,000. Ronda has expressed a desire to pursue a career in accounting and obtain her CPA. We believe Ronda should receive this opportunity. The award of alimony should allow her to improve her employment skills so she may become

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self-supporting. We affirm the award of rehabilitative alimony to Ronda.

V. Trial Attorney Fees. Gary contends the district court erred in awarding trial attorney fees to Ronda. Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Hunt, 476 N.W.2d 99, 103 (Iowa App. 1991) (citation omitted). We determine the district court did not abuse its discretion in awarding $2500 in trial attorney fees to Ronda. We affirm on this issue.

VI. Appellate Attorney Fees. Ronda requests appellate attorney fees. An award of attorney fees is not a matter of right but rests within the court's discretion and the parties' financial positions. In re Marriage of Van Zee, 488 N.W.2d 721, 725 (Iowa App. 1992) (citation omitted). 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 trial court's decision on appeal. Id. (citation omitted).

We deny Ronda's request for appellate attorney fees. Each party shall be responsible for his or her own attorney fees on appeal.

Costs of this appeal are assessed to Gary TeSlaa.

AFFIRMED.