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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF BEVERLY A. MILLAGE AND LARRY E. MILLAGE

Upon the Petition of	)	201
BEVERLY A. MILLAGE,	)	Filed November 26, 1986
Petitioner/Appellee/ Cross-Appellant,	)	
And Concerning	)	6-341 / 86-178
LARRY E. MILLAGE,	)	
Respondent/Appellant/ Cross-Appellee.	)	

Appeal from the Iowa District Court for Scott County (No. 34837) - J. L. Burns, Judge.

Respondent husband appeals and petitioner wife cross-appeals from the decree dissolving the parties' marriage. **AFFIRMED.**

Thomas H. Preacher of Alexander & Preacher, Davenport, for appellant.

Theresa M. Semel of Buzzell, Semel & Vesole, Davenport, for appellee.

Heard by Snell, P.J., Schlegel and Hayden, JJ.

HAYDEN, J. 202

The parties were married on September 27, 1975 in Davenport, Iowa. They have two children, Stephanie, born in 1976 and Sara, born in 1979. (Both parties are in their mid-thirties). Petitioner commenced this action on February 7, 1984.

The trial was held before the district court for Scott County, the Honorable J. L. Burns, presiding, on February 6-7, 1985 and reconvened on April 26, 1986. The district court handed down its finding of facts and conclusions of law on July 30, 1985.

Prior to trial, respondent filed a Motion for Protective Order or Motion in Limine in an attempt to preclude the testimony of a Mr. Damos as an expert, since he was a witness not listed in any original or supplemental answer to interrogatories. The motion was eventually overruled and Mr. Damos testified at trial.

Pursuant to the dissolution decree joint custody was awarded and Petitioner was granted sole physical care. Regarding valuation the court found that a condominium acquired by the parties during their marriage had a fair market value of $135,000 and stock in a closely held corporation was worth $1,452 per share. The court considered as marital assets the respondent's stock in this closely-held corporation, stock which respondent had attempted to transfer to his father in a sham transfer. The court awarded the homestead to petitioner and other assets, all totaling approximately $181,000.00. Respondent was awarded certain shares of closely-held stock and other assets totaling approximately $222,000. Respondent was ordered to pay child support of $650 per month and alimony of $600 per month for six years.

On August 7, 1985, respondent filed a Motion to Enlarge or Amend. Petitioner resisted and in an order dated October 23, 1985, the court denied the

motion. The court filed the Decree of Dissolution of Marriage on December 5, 1985. Respondent appealed and petitioner cross appealed.

On appeal, respondent asserts that (1) the trial court incorrectly valuated the parties' assets, (2) the property division is inequitable, (3) petitioner wife's alimony award is excessive, and (4) the trial court should have awarded him rather than petitioner wife physical care of the parties' children in its joint custody arrangement. On cross-appeal, petitioner wife asserts the trial court should have directed respondent husband to pay her attorney fees and all rather than half of the expert witness fees.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. Our responsibility is to review the facts as well as the law and to determine rights anew from the credible evidence on properly presented and preserved issues. In re Marriage of Deck, 342 N.W.2d 892, 894 (Iowa Ct. App. 1983). While we give weight to the findings of the trial court, especially where credibility of witnesses is involved, we are not bound by them. Iowa R. App. P. 14(f)(7).

I.

Initially respondent contends the court erred in admitting and considering evidence as to the assessed valuation of the Park View Condominiums in that the testimony of Craig Damos should have been excluded as a discovery sanction.

Respondent points to a court order of November 8, 1984, in which the court ordered all depositions of witnesses known at the time should be taken before December 20, 1984, and all answers to interrogatories be supplemented by January 3, 1985. Sanctions included prohibiting any party from submitting testimony from witnesses other than those listed in the original or supplemented answers to interrogatories. On February 5, 1985, respondent filed a Motion for Protective Order or Motion in Limine alleging petitioner had violated the

court order of November 8 by waiting until February 1, 1985 to notify respondent of an expert witnesses. At trial a Mr. Craig Damos testified to the assessed value of the Park View Condominiums. Respondent asserts it was an abuse of discretion for the court not to exclude such testimony. We disagree.

Respondent contends interrogatory number fifteen which provided: "List the name and address of any individual who, since the date of marriage has acted (or currently acts) as your personal, as well as your business: a. Accountant(s). b. Stock Broker(s). c. Financial Planner(s) or Financial Advisor(s)", was broad enough to include Mr. Damos. Mr. Damos was called upon as an expert witness to testify to the valuation of the marital assets. Iowa Rule of Civil Procedure 125(a) provides:

> A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:
>
> (a) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to
>
> (1) The identity and location of persons having knowledge of discoverable matters, and
>
> (2) The identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

Respondent's interrogatory number fifteen failed to directly address the identity of expert witnesses. Further we note the imposition of discovery sanctions is discretionary and will not be reversed unless there has been an abuse of discretion. Sullivan v. Chicago and Northwestern Transportation Co., 326 N.W.2d 320, 324 (Iowa 1982). We find no abuse of discretion.

Among these same lines respondent asserts the testimony regarding the assessed valuation of the Park View Condos constituted hearsay on the issue

of the fair market value of the property. Assessed valuation, when offered as substantive evidence of market value, is obviously hearsay. Vine Street Corporation v. Council Bluffs, 220 N.W.2d 860, 863 (Iowa 1974). This objection was not properly preserved for appeal.

During the trial, petitioner's counsel offered into evidence exhibits one through eight and thirteen and fourteen. To all of these exhibits respondent's counsel objected, generally stating hearsay with no foundation, counsel did specify grounds for objection regarding a few of the exhibits. The court allowed the exhibits in, subject to objection. Petitioner's counsel then proceeded to ask petitioner about the information in the documents relating specifically to the $170,100 assessed value on the Plain View Condos. No objection was made. Petitioner later sought to introduce exhibit sixteen, which listed the parties marital estate. Again respondents objected based upon hearsay and no proper foundation, it was allowed subject to objection. Later petitioner's counsel specifically referred to exhibits sixteen and the assessed value of the Plain View Condos. Petitioner's expert replied with no objection being made.

In attempting to exclude evidence, whether the attempted exclusion is by objection or motion, counsel has a duty to indicate the specific grounds to the court so as to alert it to the question raised and enable counsel to take proper corrective measures to remedy that defect, if possible. State v. Perlock, 215 N.W.2d 344, 348 (Iowa 1974).

In the present case there was initially a general standing objection regarding some ten documents, all comprised of ledgers and multiple figures. Respondent's counsel could have made an objection regarding the use of the assessed value figure at this time and requested a specific ruling, he did neither. Moreover, petitioner's counsel specifically questioned both petitioner and Mr. Damos regarding this figure and the fact it came from the assessor, respondent's counsel

completely failed to form any objection. In a complex dissolution action, such as this, where many figures are bantered about it is up to counsel to direct the court's attention to excludable evidence. Merely alleging that a ledger sheet contains hearsay evidence with no further explanation is not sufficient to preserve such error.

Parenthetically we note, after a careful review of the trial court's order, any mistake regarding the court's consideration of this evidence was harmless error pursuant to Iowa Rule of Evidence 103(a).

II.

Respondent next asserts the trial court erred in its property division. Specifically, the property division does not do what it is purported to do. He claims the trial court incorrectly valued the stocks brought into the marriage by respondent at their purchase price and the property division was inequitable.

Pursuant to Iowa Code section 598.21(1)(1985) the trial court shall divide the property of the parties "except inherited property or gifts received by one party, equitably between the parties". A justified property division is one that is equitable under the circumstances. Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976); In Re Marriage of Stewart, 356 N.W.2d 611, 612 (Iowa Ct. App. 1984). We reject any rule based on a specific percentage division of the assets, and recognize that we must determine what is equitable under the facts of each case. In Re Marriage of Callenius, 309 N.W.2d 510, 514 (Iowa 1981).

Respondent asserts that the district court's property division does not do what it purports to do. Specifically the respondent finds error in the court's statement:

> Based on the values stipulated by the parties and the other values found by the Court, Petitioner has been awarded marital assets in the total sum of approximately $181,000. Respondent has been awarded assets with an approximate value of $222,000. This takes into account

> the fact that the Respondent brought more assets into the marriage and also takes into account the fact that he paid no support for his children during the time of the separation, which required the Petitioner to diminish marital assets for their support and maintenance.

Respondent contends, upon using the court's figures, only $206,000 can be shown to have been awarded to him. We admit the district court's final figure ($222,000) and the method of calculation are hazy. We are concerned with the lower court's calculation only if they render the distribution inequitable. Here the issue of valuation was hotly disputed, the court's and respondent's valuation obviously varied.

Respondent also asserts the district court failed to consider the assets he brought into the marriage. As stated in the cited paragraph the court's approximation considered assets brought into the marriage, the fact respondent had paid no support, and while separated he had failed to accumulate any income. We find the trial court correctly considered respondent's assets brought into the marriage and reached and equitable resolution.

Regarding respondent's complaints about the district court's method of valuation we note that when the trial court's valuation is well within the permissible range of evidence we generally are not inclined to disturb it. In Re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973). Here we find the court's methods reasonable and therefore disregard respondent's contentions regarding valuation.

III.

Respondent contends the rehabilitative alimony ordered by the court is excessive. We disagree.

The criteria to be considered in awarding alimony have been codified in Iowa Code section 598.21(3)(1985). While payment of alimony is not an absolute right, it is awarded out of fairness, according to the peculiar circumstances of each case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976).

Alimony is awarded based on the earning capacity of the parties and present standards of living balanced against the relative needs of the parties. In re Marriage of Hitchcock, 309 N.W.2d 432, 436-37 (Iowa 1981). The spouse with the lesser earning capacity is entitled to be supported, for a reasonable time, in a manner as closely resembling the standards existing during the marriage as possible. In re Marriage of Hayne, 334 N.W.2d 347, 351 (Iowa Ct. App. 1983). Two of the factors to be given great weight in such a determination are the duration of the marriage and the ability of the supported spouse to engage in gainful employment. In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972). In addition, where a spouse has sacrificed her earning ability in order to make a home for the family and the other spouse has profited thereby, alimony is justified. In re Marriage of Sanders, 255 N.W.2d 109, 111 (Iowa 1977). However, once the dependent spouse's standard of living is assured, there is no reason, in equity for the supporting spouse to provide still more. In re Marriage of Hayne, 334 N.W. at 351.

Considering the length of marriage, that upon marriage petitioner left the job market, her license in nursing had lapsed and she is now studying to receive her degree in nursing, we conclude $600.00 per month for six years is reasonable.

IV.

The last assertion of respondent is the court erred in awarding physical care of the children to petitioner. Beyond a mere conclusory assertion of this error, respondent points to no fact to show physical care with respondent would be in the children's best interest. We therefore conclude it would not be and affirm.

Finally, petitioner on cross-appeal contends that the court's allocation to each party of one-half of the cost of psychological evaluations and of each party's attorney fees was erroneous.

Trial courts have considerable discretion in granting attorney's fees in dissolution cases. In re Marriage of Lochmiller, 229 N.W.2d 228, 229 (Iowa 1975); In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa Ct. App. 1983). This discretion further extends to the award and division of expert witness fees. Trial court did not abuse its discretion.

AFFIRMED.