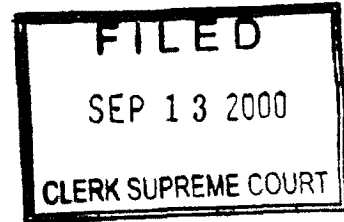


IN THE COURT OF APPEALS OF IOWA

No. 0-345 / 99-1495
Filed September 13, 2000

**IN RE THE MARRIAGE OF LARRY L. DARLING
AND MARY DARLING**

Upon the Petition of
LARRY L. DARLING,
Petitioner-Appellee,



And Concerning
MARY DARLING,
Respondent-Appellant.

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

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

Bethany J. Brands, Spirit Lake, for appellant.

Joseph L. Fitzgibbons of Fitzgibbons Law Firm, Estherville, for appellee.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

HUITINK, P.J.

I. Background Facts and Proceedings.

Mary and Larry Darling were married August 19, 1977. The petition for dissolution of their marriage was filed July 24, 1998. The decree dissolving their marriage was filed on August 17, 1999.

The disputed issues at trial included property division, valuation of 120 acres of farmland, the credibility of Larry's financial statements, and Mary's entitlement to alimony. All custodial issues concerning the parties' children, Heather (age sixteen) and Megan (age fourteen), were resolved by agreement.

The district court awarded Larry assets, including farmland, valued at \$423,724 and liabilities totaling \$371,189 for a net award of \$54,545. Mary received assets valued at \$37,563 and a \$15,000 cash payment from Larry resulting in a \$52,563 net award. The court set aside an automobile valued at \$15,000 to Heather and a \$9024 IPEX investment fund to be held in trust for the children's college expenses.

On appeal Mary challenges the equity of the district court's property division. She cites the court's undervaluation of farmland, exclusion of assets set aside to the children, and Larry's incomplete and inaccurate financial disclosures as factors necessitating an increase in her property award. Mary also seeks additional alimony and attorney's fees.

II. Scope of Review

Our review is de novo. *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996). We are obliged to examine the entire record and adjudicate rights

anew on the issues properly presented. *In re Marriage of Geit*, 509 N.W.2d 738, 740 (Iowa 1993).

III. Property Division.

The partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). Iowa courts do not require an equal division or percentage distribution. *Id.* The determining factor is what is fair and equitable in each circumstance. *Id.* The distribution of the property should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1999). *In re Marriage Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983). We reject precise percentage divisions because “[t]he question is always what is an equitable and just award in a given set of circumstances.” *In re Marriage of Cooper*, 225 N.W.2d 915, 919 (Iowa 1975). When asked to review individual economic provisions of a dissolution decree we consider all the provisions together as an integrated whole. *In re Marriage of Lattig*, 318 N.W.2d 811, 815 (Iowa App. 1982). No hard and fast rules govern the economic provision in a dissolution action; each decision turns on its own uniquely relevant facts. *In re Marriage of Gaer*, 476 N.W.2d 324, 326 (Iowa 1991). We accord the trial court considerable latitude in resolving disputed claims and will disturb the ruling only when there has been a failure to do equity. *Benson*, 545 N.W.2d at 257.

A. Farmland Value.

The district court valued the Darlings' 120-acre farm at \$228,188. The court, in arriving at this value, initially determined eighty of these acres were worth \$172,696. The remaining forty acres were valued at \$65,000. The

resulting \$237,696 gross value was discounted by four percent to accommodate a decline in area land values since the effective date of the relevant appraisals.

The record indicates these values were based on testimony by Mary's expert who valued the eighty-acre tract at \$2237 per acre ($\2237×77.2 tillable acres = \$172,696). The four-percent discount was based on testimony from Larry's expert who identified a general decline in area farmland values from January 1, 1999, to the June 1999 trial date.

Mary's contention is that the four-percent discount should not have been applied because her expert's calculations of per-acre values were based on sales that had occurred "since January and had closed since January." In other words, Mary argues the data used included the sales in 1999 up to the date of trial and, thus, if there was a four-percent downturn in sale prices since January 1999, the appraisal relied on by the court already reflected this downturn.

Our review of the record indicates the comparable sales cited by Mary's expert reflected 1998 sales that closed in 1999. We accordingly reject her claim that the prediscount values used by the court were the value of the eighty-acre tract as of the June 1999 trial date. In any event, the values determined by the district court fall well within the range of permissible evidence, and we are not inclined to disturb them. See *In re Marriage of Bare*, 203 N.W.2d 551, 554 (Iowa 1973); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa App. 1984).

B. Property Set Aside to the Children.

Mary claims the reduction in her property award resulting from the set aside of the IPEX fund was inequitable. She cites the absence of any justification for establishing a separate educational fund for the children. Iowa

Code section 598.21(1) provides for the set aside of property to secure the children's educational needs if circumstances indicate the parents are unable or unwilling to meet these needs. See *In re Marriage of Richards*, 439 N.W.2d 876, 878-79 (Iowa App. 1989) (citations omitted). Contrary to Mary's claims, the record provides more than adequate justification for such a set aside. Although Larry's assets are considerable, they are nevertheless highly leveraged. Neither Larry's or Mary's income is substantial enough to defer the costs of higher education without resorting to supplemental resources. Moreover, both parties testified they intended to send their children to college and the IPEX fund was established for that purpose in the first instance. We, like the district court, conclude that set aside of the IPEX fund is necessary to protect the children's educational interests.

We also fail to see any inequity in the trial court's exclusion of Heather's automobile from the property division. Larry purchased the car for Heather and assumed any loan obligation incident to its acquisition. In the absence of evidence indicating the use of any other family assets to make this acquisition, we are not inclined to interfere.

C. Credibility of Larry's Financial Disclosures.

The gist of Mary's claim is that the trial court's property division is premised on a false and incomplete history of Larry's financial practices. She argues the court should consider "the constant and chronic deceptiveness used by Larry in valuing his assets and liabilities, particularly once the dissolution petition was filed." Mary cites Larry's acquisition and financing of a new pickup, failure to disclose a \$55,000 note owed to his mother until the eve of trial,

conflicting net worth statements made in various financial statements, and failure to disclose rental income on his required statement of financial condition.

Parties to a dissolution are required to disclose their financial status. Iowa Code § 598.13; *In re Marriage of Mueller*, 400 N.W.2d 86, 88 (Iowa App. 1986). A party who has not been fair and accountable with property under his or her control during the dissolution process must be charged accordingly. *In re Marriage of Williams*, 421 N.W.2d 160, 164 (Iowa App. 1988). Failure to disclose, sequestration of assets, or transfer of assets during the dissolution process must be dealt with harshly. *Id.* Otherwise the process becomes an uncivilized procedure, and the issues become not ones of fairness and justice but of which party can outmaneuver the other. *Id.*

Parties to a dissolution are not required, however, to freeze their assets while they await the termination of the dissolution process. Courts will not sanction parties for expenditures that are a “reasonable and expected aspect of the particular marriage.” *In re Marriage of Burgess*, 568 N.W.2d 827, 829 (Iowa App. 1997).

Our review of the record indicates the trial court considered all of these issues and resolved them against Mary. In doing so, the court at least implicitly found Larry’s version of these transactions more credible than Mary’s. Despite any alleged obfuscation, we find the record sufficient to ascertain the true financial condition of the parties and decline to increase Mary’s property award based on her allegations of Larry’s deceit.

IV. Rehabilitative Alimony.

Finally, Mary requests the amount of rehabilitative alimony awarded to her be increased. The district court awarded rehabilitative alimony to Mary at a rate of \$250 per month for twenty-four months. First, Mary argues an award of \$250 is insufficient and she will require \$350 per month to cover the cost of tuition and books. Second, because she has to work full-time to pay her bills and child support obligations, she will only be able to attend school part-time. Thus, she argues the duration of the alimony should be extended to three years to cover the full period of her schooling.

Rehabilitative alimony was conceived as a way of supporting an economically dependent spouse through a limited period of further education or retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting. *In re Marriage of Francis*, 442 N.W.2d 59, 63 (Iowa 1989). Because self-sufficiency is the goal of rehabilitative alimony, the duration of such an award may be limited or extended depending on the realistic needs of the economically dependent spouse, tempered by the goal of facilitating the economic independence of the ex-spouses. *Id.* at 64.

We find it adequate to note the insufficiency of Mary's alimony award to accomplish its intended purpose. The district court's award is accordingly increased to \$350 per month for three years.

V. Attorney's Fees.

Mary requests both trial and appellate attorney fees. An award of attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Garst*, 573 N.W.2d 604, 608 (Iowa App. 1997). In considering the request for

appellate attorney fees, we must 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 district court's decision on appeal. *Id.*

From our review of the record, it appears the trial court did not abuse its discretion in denying Mary's request for trial attorney fees. We award Mary \$1000 appellate attorney's fees. The costs of this appeal are taxed to Larry.

The judgment of the district court is affirmed as modified.

AFFIRMED AS MODIFIED.