IN THE COURT OF APPEALS OF IOWA

No. 3-007 / 91-1748

FILED
OCT 28 1993
CLERK SUPREME COURT

IN RE MARRIAGE OF WARREN H. MEYER AND ELAINE D. MEYER

Upon the Petition of

000319

WARREN H. MEYER,

Petitioner-Appellee/Cross-Appellant,

And Concerning

ELAINE D. MEYER,

Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Scott County, Margaret S. Briles, Judge.

The wife appeals and the husband cross-appeals various economic provisions of the decree dissolving the parties' marriage. **AFFIRMED IN PART; REVERSED IN PART.**

Harold J. DeLange, II, Davenport, for appellant.

Steve H. Jacobs and Vicki L. Seeck of Betty, Neuman & McMahon, Davenport, for appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ. Donielson, J., takes no part.

SACKETT, J. 000320

Respondent-appellant Elaine D. Meyer appeals and petitioner-appellee Warren H. Meyer cross-appeals challenging the property division in a decree dissolving their long-term marriage.

Warren and Elaine were married in 1944. They have three children, now adults. At the time of the decree, Warren and Elaine were sixty-seven-year-old farmers who devoted their efforts during their marriage to their family and their farming operation. Warren and Elaine both inherited farmland and they purchased other farmland. In 1965, they ceased materially participating in the farming operation and in 1976, for estate planning purposes, they transferred their farmland to a closely held family farm corporation. They commenced to gift shares of stock in the family farm corporation to their children.

The trial court valued the parties' total assets at about $1,100,000. The court found approximately $300,000 of these assets represented property Warren had inherited and approximately $100,000 represented property Elaine had inherited and set the inherited property aside to each. The trial court divided the remaining approximately $700,000 in assets one-half to each. Warren was also ordered to pay Elaine $650 per month alimony.

Elaine challenges the property division and alimony as inadequate. Warren contends he should have been awarded other property and the alimony award is excessive and the

lien it creates too restrictive. We affirm in part and reverse in part.

Our review of this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992).

The property distributed to Warren included the parties' stock in the family farm corporation. Elaine contends this distribution is not equitable. She does not in her brief advance the dollar amount attributed to the stock is not correct, rather, her position is because the allocation results in Warren having the majority of the voting stock in the corporation, that gives him "virtually unlimited use" of all the corporate assets.

Elaine's position on this issue is not well taken. The corporation has substantial liabilities. And the other stockholders have interests which cannot be ignored. See Holi-Rest, Inc. v. Treloar, 217 N.W.2d 517, 525 (Iowa 1974); Holden v. Construction Mach. Co., 202 N.W.2d 348, 358 (Iowa 1972).

We reject Elaine's argument on this issue.

The trial court set off to Warren what it valued as $300,000 in inherited property and to Elaine $100,000. Elaine contends Warren's inherited property is undervalued and a portion of his inherited property should have been

given to her. She points out that the parties were married for forty-seven years and she contributed to the care and preservation of the property.

Iowa Code section 598.21(1) (1991) states, "the court shall divide all property, except inherited property or gifts received by one party, equitably between the parties . . . ." Section 598.21(2) also provides "property inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage." There are a number of factors the courts look to in determining whether inherited property should be divided. See In re Marriage of Thomas, 319 N.W.2d 209, 211 (Iowa 1982).

There were substantial assets accumulated during the marriage and Elaine has received one-half of those. We consider all the economic provisions of a decree together in assessing their sufficiency. See In re Marriage of Whelchel, 476 N.W.2d 104, 110 (Iowa App. 1991).

We find no inequity in the refusal to grant Elaine a portion of Warren's inherited property. We find the value placed on Warren's inherited property by the trial court to be within permissible range. See In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984). We will not disturb it on appeal.

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Elaine contends that after Warren thought the marriage was failing but before he filed a petition for dissolution, he loaned or gave money to the parties' children and he should be charged with these amounts. The couple has throughout the marriage been generous to their children, and they have both participated in gifting. We will not charge Warren with gifts made to the children before the dissolution petition was filed.

Elaine contends Warren should be charged with $11,000 that was transferred from a joint checking account to an account in his own name after the petition for dissolution was filed. Warren testified that in the fourteen months between the filing of the petition and the decree, he used the money to pay income taxes, insurance, repairs, and Elaine's temporary support of $450 a month. We reject Elaine's contention Warren should be charged with $11,000.

Warren claims the district court considered a roto-tiller and a roll-top desk assets of the parties when the desk belonged to the corporation and the roto-tiller belonged to a daughter. Neither the corporation or the daughter are a party to this litigation and any finding of ownership is not preclusive on them. Warren also claims he should have been awarded Kruggerands which had belonged to his family. The trial court equitably allocated over one million dollars in assets. We find the property distribution as set forth by the district court is equitable.

Elaine contends the award of alimony is inadequate and should be increased. Warren contends the award of alimony is excessive and should be decreased. He also argues the trial court impermissibly encumbered his assets by the alimony charge.

The parties are in their retirement years and dependent on income from accumulated assets and social security for support. Warren receives social security of $729 a month and Elaine receives social security of about $300 a month. They both have received substantial property. We strike the award of alimony.

Warren contends the language of the decree securing the payment of alimony is too restrictive. We need not address this issue.

Warren contends he should not be required to contribute to Elaine's trial attorney fees. The court found Warren should pay a portion of Elaine's trial attorney fees. The court awarded her a money market account valued at $3615 which represented Warren's contribution to Elaine's attorney fees. Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Hunt, 476 N.W.2d 99, 103 (Iowa App. 1991). We affirm the award of trial attorney fees to Elaine.

Elaine asks for attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. Id. at 103. We determine each party should be

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responsible for his or her own attorney fees for this appeal and costs on appeal are taxed one-half to each party.

AFFIRMED IN PART; REVERSED IN PART.