IN THE COURT OF APPEALS OF IOWA

No. 6-440 / 95-0738

IN RE THE MARRIAGE OF CAROLE ANN SCHULER AND ROBERT WAYNE SCHULER

Upon the Petition of
CAROLE ANN SCHULER,

Petitioner-Appellant/Cross-Appellee,

And Concerning
ROBERT WAYNE SCHULER,

Respondent-Appellee/Cross-Appellant.

FILED
APR 30 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Cass County, Charles L. Smith, Judge.

Petitioner appeals, and respondent cross-appeals, from various economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

J. C. Salvo and Richard C. Schenck of Salvo, Deren, Schenck & Lauterbach, P.C., Harlan, for appellant.

Roger L. Sawatzke, Council Bluffs, for appellee.

Heard by Habhab, C.J., and Sackett and Cady, JJ.

SACKETT, J.

Petitioner-appellant Carole Ann Schuler appeals and respondent-appellee Robert Wayne Schuler cross-appeals challenging the provisions of the decree dissolving their twenty-six year marriage. Carole contends (1) she was not awarded sufficient alimony; and (2) the trial court undervalued stock in an insurance agency awarded to Robert. Robert, on cross-appeal, contends the stock was overvalued and his alimony obligation should be decreased. Both parties seek attorney fees for this appeal. We affirm as modified.

Robert and Carole Schuler, married in 1969, were forty-eight and forty-six at the time of trial. They have four children. Only twins Jon and Sara, born in 1977, are not adults. They were placed in Robert's primary care. Their custody is not an issue on appeal.

The parties moved to Atlantic, Iowa, in 1971 and Robert began working in insurance sales. At the time of the dissolution, he was the majority stockholder in an agency known as McCauley Insurance Agency, Inc.

The trial court entered an order dissolving the marriage in March 1995 allocating property and debt and fixing alimony and child support obligations. The trial court allocated the assets so Robert and Carole each received values of about $155,000 according to the trial court's valuations. Robert was ordered to pay Carole alimony. Carole was ordered to pay Robert child support.

Both parties challenge the valuation put by the trial court on Robert's stock in McCauley Insurance Agency, Inc. The trial court found Robert's stock had a market value of $220,000. The trial court further found Robert had a cost basis in the stock of approximately $50,000. The trial court determined if Robert sold the stock he would owe federal and state income tax of approximately $68,000 and would have sale expenses of $2000. In allocating the assets between Robert and Carole, the trial court considered the value of Robert's stock at $150,000.

Robert first purchased stock in the agency in 1979. In 1989, the corporation purchased the majority stock interest for $220,000. The purchase price was payable in installments over seven years. Robert then sold forty-five percent of his stock to Marlene Hummel and Gary Cooper. He retained a fifty-five percent interest in the corporation. The corporation is taxed as a subchapter S corporation. In 1993, after paying the three principal stockholders' annual salaries of approximately $30,000, the corporation had ordinary income of approximately $75,000. At trial, one of the other owners testified the corporate profits had decreased somewhat, partly due to the stress caused by the divorce. She maintained she and the third owner were willing to purchase Robert's shares for $220,000 but would not keep him on as a salaried employee.

Robert maintained the value of his stock was $112,000, the value established by Emmett Vaughan, a University of Iowa professor of insurance.

Carole complains the stock should be valued at $220,000 and the trial court should not have reduced that valuation by its computation of tax owed on the sale of the agency stock in assessing the value of Robert's interest. She relies on *In re Marriage of Friedman*, 466 N.W.2d 689 (Iowa 1991), to support her position the trial court incorrectly considered the tax aspects of a sale in reaching its valuation.

This case is distinguishable from *Friedman* where the court refused to reduce the value of stock by the tax due should there be a sale. In *Friedman*, the parties' joint expert testified as to the fair market value of the stock and there was no evidence the stock would be sold. Here, the fair market value is disputed. There was evidence of an offer to purchase the stock for $220,000. However, an offer to purchase is a value fixed by sale, and a sale would result in the imposition of the income taxes and sale expenses computed by the trial court.

Robert's job is tied to his ownership in the agency. Corporate income and value is tied to the production of the agents and the good will of the agency. We consider evidence there have been problems in the agency. All of these factors make valuation difficult. *See In re Marriage of Hogeland*, 448 N.W.2d 678, 681 (Iowa App. 1989). We find no reason to disturb the valuation established by the trial court. *See In re Marriage of Steele*, 502 N.W.2d 18 (Iowa App. 1993); *In re Marriage of Dennis*, 467 N.W.2d 806 (Iowa App. 1991). We affirm on this issue.

Carole was awarded alimony of $500 a month for thirty-six months. She contends this alimony award is insufficient in amount and duration. She argues she

is forty-six years of age and has never held a full-time job. She notes even if she received extensive training and education over the next several years, she would be nearly fifty years old. Carole also contends the district court did not include as income to Robert his benefits provided by the insurance company.

Robert contends the alimony award is too much if this court increases the value of his stock. We have not. Therefore, we only address Carole's contention she did not receive sufficient alimony.

Robert is paid a salary of $28,290 per year. His employee benefits include health insurance, an automobile (including oil, gas, and insurance), and country club dues. The corporation has elected to be taxed as a subchapter S corporation and profits are taxed to shareholders. In 1993, Robert was taxed on $41,313 in ordinary income and $1234 in interest from the corporation. The actual cash distribution to him was about $20,000 as the corporation uses profits to pay for purchased corporate stock.

During the marriage, Carole assumed primary responsibility for the care of the children and the home. When all the children were in school, Carole started working as a receptionist. At the time of trial, she was employed two days a week. She is capable of full-time employment, but made no effort to seek it.

The trial court awarded Carole $155,000 in property, including about $103,000 cash. This money can be invested to enhance her earnings. The assets Robert received were almost entirely tied to his business and earnings. Carole has been

ordered to pay Robert child support in the amount of $158.37 per month. This child support obligation was fixed on her earnings from part-time employment and fails to factor in the income she should earn on her property settlement.

We look to the entire economic consequences of the decree in evaluating the alimony award. The issue is whether Carole was treated equitably. *In re Marriage of Byall*, 353 N.W.2d 103, 106 (Iowa App. 1984). We consider property division and alimony together in evaluating their sufficiency. *In re Marriage of Griffen*, 356 N.W.2d 606, 608 (Iowa App. 1984). We look to the income Carole can realize by investing her cash settlement. We consider the income Carole can generate from full-time employment. The day-to-day responsibilities of the children will be with Robert. *See In re Marriage of Anderson*, 509 N.W.2d 138 (Iowa App. 1993). Robert's earning capacity was a factor in the valuation of the stock in the agency. *See In re Marriage of Hogeland*, 448 N.W.2d 678 (Iowa App. 1989). The alimony award is modified by extending it for an additional twenty-four months to give Carole a total of sixty months of alimony.

Both parties request attorney fees on appeal. We award no attorney fees. Costs on appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.

Habhab, C.J., concurs; Cady, J., dissents.

CADY, J. (dissenting)

I respectfully dissent.

The majority has distinguished this case from *Friedman* to reduce the value of Robert's majority interest in the corporation by the tax consequences which would occur if Robert's interest was sold. I do not find the distinctions persuasive. It is simply not relevant that the evidence of the market value of the stock in this case was disputed. Furthermore, while there was evidence of an offer to purchase Robert's interest in the corporation, Robert indicated he had no intention of selling his stock. As in *Friedman*, I believe it would be inappropriate to consider the tax consequences of an illusory future sale of stock. *See In re Marriage of Friedman*, 466 N.W.2d at 691.