



IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF ALLISON E. LANNOM & T. W. LANNOM

Upon the Petition of) Filed April 21, 1981

ALLISON E. LANNOM,)

Petitioner-Appellant,)

0-405
2-64593

And Concerning)

T. W. LANNOM,)

Respondent-Appellee.)

Appeal from Poweshiek District Court. Phillip R. Collett, Judge.

Petitioner-wife appeals and respondent-husband cross-appeals economic provisions of dissolution of marriage decree. AFFIRMED AS MODIFIED.

C. M. Manly and Charles M. Manly, III of Manly Law Firm, Grinnell, Ia., for petitioner-appellant.

W. T. Barnes, Charles M. Kiple, and Allan Orsborn, of Barnes & Walter, Ottumwa, Ia., for respondent-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, and Carter, JJ.

Johnson, J. takes no part.

SNELL, J.

Petitioner-wife, Allison E. Lannom, appeals the property division, alimony, child support, and attorney fees provisions of a dissolution of marriage decree. Allison also appeals the trial court's failure to impose sanctions on the testimony of one of respondent's expert witnesses. Respondent-husband, T. W. Lannom, cross-appeals property division, alimony, child support, and attorney fees provisions of the decree. We modify certain of the decree's provisions and affirm as modified.

T. W. and Allison Lannom were married June 5, 1966. Their two sons, Thomas and Douglas, were ages 12 and 9 respectively as of the time of trial. Allison had completed two years of college and T. W. had completed college when the parties married. After attending graduate school for a semester, working on different construction jobs, and serving with the Navy for four and one-half years, T. W. commenced working for a Lannom family corporation in 1971. T. W. is currently a farm manager for the Lannom Company and receives a yearly gross salary of approximately \$21,000 plus rent-free use of a home, free utilities, free beef, use of the company vehicle, and health insurance. T. W. can and does use a cabin rent-free located near Ely, Minnesota. Until the last few years T.W. received regular salary increases and bonuses. After the parties separated in 1976, T.W. ceased receiving salary increases or bonuses. Sharp Lannom, T.W.'s brother, who determines T.W.'s salary, testified that T.W. has been doing a "fine job" as farm manager. In 1978, T.W. received \$3,700 in income from the Lannom Brothers Partnership. Over the last few years T.W. has received annual gifts of \$3,000 from his mother. Allison never worked outside the home until the parties' separation in 1976, and then she became a secretary in the athletic department of Grinnell College, where she earns approximately \$4,400 annually.

The trial court dissolved the thirteen-year-old marriage on December 12, 1979. Custody of the two children was given to Allison. T.W. was ordered to pay child support of \$50 per week per child. The trial court found that the parties owned net assets with a value of \$620,879.75. T.W. was ordered to make alimony payments to Allison of \$200 per month for two years. Allison was also awarded a \$100,000 property settlement, to be paid by T.W. in ten annual installments with interest thereon at the rate of 9%. The trial court ordered T.W. to pay \$7,300 of Allison's attorney fees.

Our review is de novo. Iowa R. App. P. 4. We are not bound by the trial court's

findings of fact, but we give weight to them, especially regarding the credibility of witnesses. Iowa R. App. P. 14(f)(7).

I. Lynn Reinmund was called to the stand as an expert witness for T.W. Prior to trial Allison had submitted an interrogatory that reads:

Interrogatory No. 16: Please give the name, address and telephone number of each person who you expect to call as expert witness at trial and for each such person supply the following information:

- a. The subject matter on which the expert is expected to testify.
- b. The substance of the facts and opinions to which the expert is expected to testify.
- c. A summary of the grounds for each opinion held by said expert.

T.W. answered by saying that Reinmund would testify concerning the value and marketability of T.W.'s stock. T.W. said nothing about Reinmund's testifying about tax matters. Over Allison's repeated objection and insistence that sanctions be imposed on Reinmund's testimony, Reinmund testified concerning the tax consequences to T.W. of different possible transfers of his property. Allison asserts that sanctions should have been imposed to bar Reinmund's testimony as to stock valuations and income tax consequences. Although a close question, we find the trial court was within its discretionary prerogative in this equity matter to consider this evidence. We do not discern that the trial court accorded undue weight to this testimony, nor do we.

II. Allison contends that the property and alimony awards made to her by the trial court were unfairly low, and T.W. contends they were unfairly high. In reviewing the property and alimony provisions of a dissolution decree, we consider the factors articulated in Schantz v. Schantz, 163 N.W. 2d 398, 405 (Iowa 1972). Although alimony on the one hand and allocation of property rights on the other have different purposes, they are still closely related in the matter of determining the amount to be allowed. Schantz, 163 N.W.2d at 405.

T.W. and his three brothers each own a 25% interest in the Lannom family corporations. The corporations' operations include manufacturing, a cattle business, and a retail store. The trial court found T.W.'s interest in the Lannom Company and the Ina G. Williams trust amounts to \$260,000, his interest in Lancroft Farms amounts to \$325,000, and his interest in the Lannom Brothers partnership amounts to \$5,000. T.W. and Allison stipulated that the net value of their family home is \$23,854, the value of

their household goods is \$6,500, the value of a 1973 Buick is \$1,575, the value of a 1972 Datsun is \$2,950, and the value of stock in the Miracle Equipment Company is \$1,750. Although the trial court found that these assets aggregate \$620,879, based on the above facts, we conclude the sum is \$626,629.

Allison contends that the trial court should have valued the net assets of the parties at \$840,187. T.W. computes the valuation at \$421,700. Valuing these assets is complicated because most of the assets are in closely held corporations for which there is no ready market for the stock and T.W. does not control any corporation as majority stockholder. Experts offered divergent views as to values and as to the appropriate application of revenue rules concerning discounting for lack of marketability. Considering the large amount of conflicting testimony, we are satisfied the trial court properly weighed all of the evidence concerning value and arrived at a fair amount. We find the parties' net asset have a reasonable valuation of \$626,629.

The trial court awarded Allison the family residence, household goods valued at \$5,500, and the 1973 Buick in addition to the installment payments, leaving Allison with net assets worth approximately \$130,929 out of the parties' total net assets of \$626,629. Although frequently an equal division of assets is made, there is no requirement that this be done. In re Marriage of Conley, 284 N.W.2d 220, 223 (Iowa 1979). The test for an acceptable division of assets is to ask what would constitute an equitable and just award under the circumstances. Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976). Viewing the circumstances in the instant case in light of the Schantz criteria, we conclude that the division of assets unfairly favored T.W. In order to provide a more equitable distribution of assets we hereby increase the \$100,000 property settlement awarded Allison to \$180,000 payable \$15,000 each year for twelve years with interest accumulating at 9% from the date of the trial court's decree. This settlement in addition to the other assets awarded Allison equals \$210,929.

III. The trial court awarded alimony in the amount of \$200 per month for two years. Allison married T.W. two years before she graduated from college but after T.W. received his undergraduate degree. She wants to complete the requirements for an undergraduate degree and plans to attend Drake University or the University of Iowa. Although she now earns \$4,400 per year as a secretary it is unlikely that she will receive that income while working to complete her undergraduate degree. Also, her needs are

substantially greater than her present earning abilities can satisfy. Although T.W.'s earnings have not increased in recent years we are unpersuaded the reason for this is disassociated from this dissolution litigation. Accordingly we find that T.W. presently has the ability to pay. The trial court's decree is modified so as to provide Allison with alimony of \$400 per month for five years from the date of the trial court's decree.

IV. Allison contends that the child support ordered by the trial court was too low and T.W. contends that it was too high. In reviewing the child support provisions of a dissolution decree, we consider factors articulated in In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974). We note that in reviewing each individual economic provision of the dissolution decree, we consider all the provisions together as an integrated whole. See In re Marriage of McFarland, 239 N.W. 2d 175, 179 (Iowa 1976). In light of the criteria articulated in Zoellner as applied to the circumstances of this case, the trial court's child support award is reasonable, and we therefore affirm it in amount. However, in addition to providing hospital and medical insurance coverage for the children, T.W. shall also pay one-half of their medical and dental expenses, including expenses for orthodontia services, as needed.

V. Allison contends that the \$7,300 in attorney fees awarded her at trial is unfairly low and T.W. contends that it is unfairly high. In support of the contention that the \$7,300 amount is inadequate, Allison points out that \$5,700.11 was disbursed by her in obtaining expert testimony. Attorney fees are not allowable as a matter of right but depend on the financial conditions of the parties and their respective abilities to pay. In re Marriage of Willecoxson, 250 N.W.2d 425, 427 (Iowa 1977). T.W. is able to pay and his ability to do so significantly exceeds that of Allison. In addition to the \$7,300 fee, T.W. shall reimburse Allison in the amount of \$5,700.11 for expenses incurred in the trial of this matter.

Allison asks for attorney fees incurred by this appeal and T.W. asks that she be awarded none. In evaluating a request for attorney fees incurred on appeal 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. In re Marriage of Burham, 283 N.W.2d 269, 278 (Iowa 1979); In re Marriage of Erickson. 228 N.W.2d 57, 59 (Iowa 1975). Applying these factors to the case at bar, we

hereby order T.W. to pay \$2,500 of Allison's attorney fees on appeal.

VI. Allison requests that we compel the Lannom businesses to loan money to T.W. or that we direct the sale of his interest in those businesses so that the property settlement payments may be made. This is a dissolution action with only Allison and T.W. as parties. Allison has alleged no cause of action against the Lannom businesses. Accordingly, this relief is not within our jurisdiction to determine.

Costs are assessed against T.W.

AFFIRMED AS MODIFIED.

Carter, J. concurs.

Oxberger, C.J., specially concurs, joined by Snell, J.

Donielson, J., dissents.

Johnson, J., takes no part.

OXBERGER, C.J.

I specially concur.

I would also extend the alimony for an indefinite period of time. I do not believe the law should discourage women from seeking a lifetime career of homemaking. In this case Allison dropped out of college after 2 years to support T.W.'s efforts to further his college education. Allison remained at home for nearly 14 years to provide for the family. Now the majority expects that Allison will recover her lost earning capacity within 5 years while she continues to serve as a single parent for two young children. I find the goal is unrealistic in this case.

Snell, J. concurs in this special concurrence.

DONIELSON, J. (dissenting)

I dissent from the majority's decision because it ignores the realities of the distinction between cash flow and high value assets. The fact is that although the respondent has valuable interests tied up in the family business, he simply does not have the cash flow to meet the heavy obligations this court now proposes to impose on him. While acknowledging that the respondent's assets are in closely held corporations, that there is no ready market for the stock, and that the respondent does not control any of the corporations as a major stockholder, the majority proceeds to restructure the decree to require the respondent to pay his ex-wife approximately \$41,100 to \$49,350 during the first year¹ when his salary is only \$21,000 (the amount of respondent's yearly salary is relatively undisputed). Surely the law does not favor a total dissolution of assets where such a result would be so impractical as to be virtually inachievable. Moreover, although past cases have held that inherited property is a factor to be considered in adjudicating the property rights of parties to a dissolution, e.g., In re Marriage of Conley, 284 N.W.2d 220, 222 (Iowa 1979), a recent amendment to the Code limits the extent to which inherited property may be included as assets for property division. § 598.21, The Code 1979, as amended by 1980 Session, 68th G.A., ch. 1175 § 3. The result reached by the majority today violates both the spirit and the letter of this amendment.

Although I am willing to give serious consideration to the possibility of extending alimony over a longer period of time, I cannot approve the remedy fashioned by this court because it creates more problems than it solves. In my view, the trial court's approach to this situation was more realistic and I would affirm the decree.

¹This first-year figure is comprised of: \$15,000 installment payment on property settlement; \$4800 alimony; \$4800 child support; and (should the respondent decide to pay off the property settlement at once) \$16,500 to \$24,750 in interest at the rate of 10 to 15% on the unpaid property settlement balance of \$165,000. Should the respondent decide not to pay off the property settlement at once, interest on the unpaid balance would be at the rate of 9%, which would amount to \$14,850 in interest; the first-year total figure would then be \$39,450.