

IN THE COURT OF APPEALS OF IOWA

No. 8-362 / 97-1626

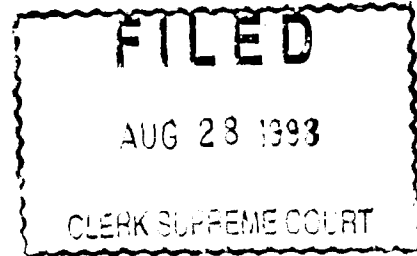
IN RE THE MARRIAGE OF JOLENE Q.
MARKMAN AND ROBERT N. MARKMAN

Upon the Petition of
JOLENE Q. MARKMAN,

Petitioner-Appellant,

And Concerning
ROBERT N. MARKMAN,

Respondent-Appellee.



Appeal from the Iowa District Court for Scott County, David J. Sohr, Judge.

Petitioner appeals various economic provisions of the parties' dissolution decree. **AFFIRMED.**

Dennis D. Jasper of Stafne, Lewis, Jasper, Preacher & Rowe, Bettendorf, for appellant.

William R. Stengel, Jr., Rock Island, Illinois, for appellee.

Considered by Sackett, P.J., and Huitink and Streit, JJ.

SACKETT, P.J.

Petitioner-appellant Jolene Markman appeals the economic provisions of a decree dissolving her marriage to respondent-appellee Robert Markman. We affirm.

Jolene and Robert were married in 1980. At the time, Jolene was educated and certified as a court reporter. She had been doing free lance reporting. She brought few assets to the marriage. Robert was engaged in and held ownership interest in a number of corporations, some family-owned, that sold potting soils to hardware stores and K-Mart. Robert had engaged in the businesses since 1960. He had a substantial net worth.

No children were born to the marriage. Robert continued to engage in the business of selling potting soils during the marriage. Jolene worked about one year as a court reporter and for a short time in sales before she began working for one of Robert's businesses. She was first paid an annual salary which left her, after deductions for F.I.C.A. and income taxes, \$24,000. Her salary was later increased to \$36,000 after deductions. Since the mid-1980's, Jolene's work for the salary has been limited to typing invoices one-half to one day a week.

The parties separated in 1990, though the petition for dissolution was not filed until 1996. The parties own a house and a condominium. After they separated, Robert lived in the house and Jolene lived in the condominium. During the separation, Jolene continued as a salaried employee, and her expenses for the condominium were paid by Robert.

The parties had a substantial net worth at the time of the dissolution. We first attempt to reconstruct what we find to be the disposition of property made by the trial court.

The parties stipulated to the values of some assets. The trial court valued other assets. Using the parties' stipulated values, together with the values established by the trial court on items of disputed value, we determine the division fashioned by the trial court was as follows: Jolene received approximately \$1,099,802 in property, plus a car and some unvalued personal property; Robert received \$2,833,193 in property, plus a checking and savings account¹, unvalued personal property, and Robert's Soil. Robert's Soil was not valued.² Of the \$2,833,193 set aside to Robert, \$540,000 represents property he owned at the time of marriage. He additionally owned Robert's Soil at the time of marriage. The trial court found Jolene had accumulated debts of \$63,855.22 which were ordered to be paid one-half by Robert and one-half by Jolene.

Jolene contends: (1) she should have been awarded an interest in Robert's Soil; (2) the trial court did not properly value Markman Enterprises and Robert's Soil; (3) the trial court did not give proper consideration to money Robert paid his sister as an employee allowing him to cover her under medical insurance for fifteen years; and

¹ Robert noted the value of the checking and savings account as zero, and Jolene noted the value of the account as "unknown."

² Robert valued Robert's Soil at \$773,101, while Jolene valued the business at \$1,546,500.

(4) the trial court did not properly consider Robert's insurance policies. Jolene contends she should receive another two million dollars.

Our review is de novo. Iowa R. App. P. 4. We examine the record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

We first address Jolene's challenge to the values of the corporations fixed by the trial court. The general rule is stock should be valued at market value if it can reasonably be ascertained. However, market value for the stock in a close corporation can rarely be ascertained. In valuing it, one can look to the assets and liabilities of the corporation, the dividends paid, the character and permanency of the business, the control of the stock, the management, and the markets for articles produced, if a manufacturing concern, among other things. The courts need not arrive at an exact value. *In re Marriage of Moffatt*, 279 N.W.2d 15, 19 (Iowa 1979). Rather, a value is to assist the court in making equitable property awards and allowances. *Id.* This can be done without putting a precise value on the stock of a closely-held corporation. *See Riemenschneider v. Riemenschneider*, 239 Iowa 617, 629, 30 N.W.2d 769, 775 (1948). The valuations established by the trial court are within a permissible range based on the evidence. We find no reason to disagree with the values assigned to

these corporations by the trial court. *See In re Marriage of Dennis*, 467 N.W.2d 806, 808 (Iowa App. 1991).

The other challenges made by Jolene go to whether the trial court's final disposition of the parties' assets was equitable.

Iowa is an equitable distribution state. There are no fixed percentages as to allocations of assets; rather, the partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *See In re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989); *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). In cases where spouses have accumulated property through joint efforts, it is generally the goal to make the division of property approximately equal. *See In re Marriage of Conley*, 284 N.W.2d 220, 223 (Iowa 1979). But, this does not mean the assets are necessarily divided equally; rather, the question is what is fair and equitable in each circumstance. *See id.* In allocating assets and liabilities, we need to give consideration to the criteria set forth by the legislature in Iowa Code section 598.21(1) (1997). *See In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983). We consider not only the specific factors in section 598.21(1), *see In re Marriage of Miller*, 552 N.W.2d 460, 463 (Iowa App. 1996); we also consider any other relevant factors. Iowa Code § 598.21(1)(m). Precise percentage divisions are not favored because the question is always what is an equitable and just award in a given set of circumstances. *See In re Marriage of Cooper*, 225 N.W.2d 915, 919 (Iowa 1975).

Two factors negate against an equal distribution in this case. The first factor is Robert entered the marriage with substantial assets and the increase in value of those specific assets are a substantial portion of his increased net worth.

Property brought into a marriage is a factor to consider in making an equitable division. Iowa Code § 598.21(1)(b); *see also In re Marriage of Earsa*, 480 N.W.2d 84, 85 (Iowa App. 1991). In some instances, this factor may justify a full credit for the property, but it does not require it. Rather, it is a factor to consider, together with all the other circumstances, in making an overall division. In considering accumulations to assets brought into the marriage, we consider both the nature of the asset and the reason the asset or assets appreciated in value, including any contribution to the increase made by either spouse.

The second factor is effort expended. Robert advances the accumulation of assets during the marriage was due almost solely to his efforts. This is an argument we generally give little consideration, recognizing in a marriage both partners contribute but in different ways. Even where one partner is the substantial wage earner, we frequently divide assets of spouses who have lived in the same household nearly equally recognizing the other partner contributes to the relationship in a number of other ways. *In re Marriage of Bethke*, 484 N.W.2d 604, 608 (Iowa App. 1992). We consider responsibilities assumed by the husband for the home and children in assessing equities of economic provisions of the dissolution decree. *See Conley*, 284 N.W.2d at 223 (giving credit for the contribution of a homemaker and/or

a spouse who makes career sacrifices to raise children); *see also In re Marriage of Huffman*, 453 N.W.2d 246, 248 (Iowa App. 1990).

However, in this case, the parties physically separated in 1990, six years before the sixteen-year marriage was dissolved. There are no children. During the period of separation, Robert paid Jolene a salary that netted her \$36,000 a year after he had paid her payroll taxes. We note this included F.I.C.A., providing her an account of her own -- a factor considered in analyzing equities of financial aspects of a dissolution. *In re Marriage of Schissel*, 292 N.W.2d 421, 427 (Iowa 1980); *Locke v. Locke*, 263 N.W.2d 694, 696 (Iowa 1978).

Jolene lived in a condominium owned by the parties on which Robert paid all expenses. So while the parties remained legally married, it is difficult to find Jolene made any contribution to Robert's efforts to improve the financial picture or to contribute to the increase in his assets during the last six years of the marriage.

In looking at the equities of the property division, we do look at the value of the property at the actual time of the dissolution. The fact assets were acquired subsequent to the breakdown of a marriage does not preclude their consideration. The net worth of the parties at the time of trial is relevant in adjusting their property rights. *Locke v. Locke*, 246 N.W.2d 246, 252 (Iowa 1976). While the net worth is relative in assessing the equities of a division, the fact property is valued at the date of dissolution does not necessarily dictate its division.

In *In re Marriage of Muelhaupt*, 439 N.W.2d 656 (Iowa 1989), the husband advanced stock he purchased with borrowed money after the parties separated should not be divided with his wife. *Id.* at 661. The court recognized the net worth of the parties at the time of trial is what is relevant in adjusting their property rights, but then considered the fact the wife contributed little to the asset justified giving her only a portion of it. *Id.* In *In re Marriage of Helmle*, 514 N.W.2d 461 (Iowa App. 1994), this court considered the fact the husband acquired assets after the couple separated justified affirming an allocation of less than twenty-five percent of their value to the wife. *Id.* at 463. In *In re Marriage of Tzortzoudakis*, 507 N.W.2d 183 (Iowa App. 1993), this court found awarding the wife about \$67,000 in assets and the husband about \$120,000 equitable where the parties had separated for thirty years before dissolution, though the wife had assumed most of the responsibility for raising the parties' two children. *Id.* at 186. This court has further given consideration in dividing property to the fact the wife did not help preserve property. *In re Marriage of Liebich*, 547 N.W.2d 844, 850 (Iowa App. 1996).

The trial court found Robert owned Robert's Soil and Markman Enterprises at the time of marriage. The trial court went on to find any increase in the value of the corporations was not because Jolene did anything to either increase or maintain their value. The trial court instead found if these corporations increased in value, it was through the efforts of Robert and other economic factors. Our review of the record

causes us to agree with this assessment. These findings and this record justify the allocation, and we affirm it on appeal.

Jolene asks that she be allocated one-half of the \$170,000 Robert paid his sister in salary over ten years. She contends in making these payments he decreased the assets in which she should share.

There are cases where a spouse's transfer or waste of assets has been considered in making an equitable division. See *In re Marriage of Johnson*, 350 N.W.2d 199, 202 (Iowa 1984); *In re Marriage of Williams*, 421 N.W.2d 160, 164-65 (Iowa App. 1988). We do not put the salary Robert paid his sister in that category. Robert experienced success, at least in part, because his parents assisted him in building his business. He had a major portion of the current assets before he married Jolene. Jolene did not and does not have her financial security jeopardized by Robert's payments to his sister. Robert's father made substantial gifts of stock to Robert and also gifted stock to Jolene. We find no inequity in the trial court's decision not to consider money paid to Robert's sister in allocating assets. We affirm on this issue.

We find no basis to Jolene's argument the trial court did not correctly consider life insurance policies.

We award no attorney fees on appeal.

AFFIRMED.