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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF BARBARA B. GOSLAR AND RALPH H. GOSLAR, II, a/k/a NICK GOSLAR

Upon the Petition of)

BARBARA B. GOSLAR,)

Petitioner-Appellant,)

And Concerning)

RALPH H. GOSLAR, II, a/k/a NICK GOSLAR,)

Respondent/Cross-Appellant.)

Filed August 30, 1983

3-145
2-68987

Appeal from Monona District Court - Lawrence W. McCormick, Judge.

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

Russell S. Wunschel and Gary L. McMinimee of Wunschel, Eich & McMinimee, Wall Lake, Iowa, for petitioner-appellant.

Maurice B. Nieland of Kindig, Beebe, Rawlings, Nieland & Killinger, Sioux City, Iowa, for respondent/cross-appellant.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel and Hayden, JJ.

SCHLEGEL, J.

The petitioner, Barbara B. Goslar, appeals and the respondent, Ralph H. Goslar II, cross-appeals from the economic provisions of the parties' dissolution decree. Petitioner-wife asserts that the property division was inequitable because it was based on an erroneous undervaluation of certain assets of a farming partnership. The respondent-husband asserts that the property division was inequitable because it was based on an erroneous overvaluation of certain farm property, that certain farm property should have been considered an asset of the parties' farming partnership rather than of the parties individually, and that the interest rate awarded on the unpaid balance of the property settlement was excessive. We affirm as modified.

The petitioner, age 35, and respondent, age 38, were married in 1964. There are four children as a result of the marriage, aged ten, eight, four and three years at the time of trial. The petitioner was awarded custody of the children with respondent being awarded visitation at reasonable times and places. The parties and the children are all in good health.

Neither party brought any property to the marriage. The primary asset of the marriage is their interest in a family farm partnership formed between respondent and petitioner and the respondent's parents. Although the trial court found the respondent and his father to be the legal partners in this partnership, the evidence shows the petitioner participated actively in performing manual labor for the partnership when called upon to do so and the petitioner and the respondent's mother were equally liable for the debts and obligations of the partnership.

The marriage took place before the petitioner's last year of high school and she has not graduated from high school or received other special training. The petitioner has never been employed at anything other than within the family farm partnership or as a homemaker and mother. The respondent had completed his

high school education at the time of marriage. He was initially employed during the marriage as a salaried employee by his father before he entered the Army. After 10 months in the Army he was discharged and the parties formed the family farm partnership in 1966 with the respondent's parents.

Our review of this equitable proceeding is **de novo.** In re Marriage of Castle, 312 N.W.2d 147, 148 (Iowa Ct. App. 1981). We review the facts as well as the law and determine rights anew from the credible evidence on properly presented and preserved issues. In re Marriage of Full, 255 N.W.2d 153, 158 (Iowa 1977). While we give weight to the findings of the trial court, especially where the credibility of witnesses is involved, we are not bound by them. Iowa R. App. P. 14(f)(7).

I. Property Division and Alimony. Initially the parties contest the trial court's decision as to which property is properly includible as marital assets and the trial court's determination as to valuation of certain farmland included therein. The parties have numerous assets in partnership with the respondent's parents which the trial court was required to value and determine what portion constituted marital property subject to distribution in this action. The trial court found the parties had accumulated net assets of $625,379.48. The parties have made numerous challenges on appeal to the trial court's valuation and classification of property. We have reviewed the record and adopt the trial court's able determinations except as provided below.

The trial court found the parties' personal property to have a gross value of $375,000. This primarily consisted of the parties' 50% interest in the partnership property. The trial court reduced the gross value of the parties' personal property by $122,655 which was 50% of the partnership's indebtedness. (The court also reduced the parties' overall net equity by a business debt and a "buy in" note.) This amount included 50% of a $125,000 promissory note entered into after the initiation of this proceeding. The petitioner contends the trial court erred in reducing their share of the equity in the partnership's personal property by $62,500

because the other members of the partnership had agreed to indemnify her. The agreement was necessary for the farming partnership, Goslar Farms, to secure operating funds.

Petitioner received $12,000 from the proceeds of the loan plus $3,000 for attorney fees for this action. The remaining amount went to the partnership for operating funds. The remaining partners were to receive the profits from the crops and other farm income for the 1982 crop year. We agree with the petitioner that, in this case, the loan secured after commencement of this dissolution action in order to continue the operation of the family business should not affect the parties' net worth determination at trial where she did not share in the profits of the business. See Iowa Code § 598.21(1) (1981) (the court shall divide all property equitably between the parties); In re Marriage of Callenius, 309 N.W.2d 510, 514 (Iowa 1981) (the property division and alimony provisions of a dissolution decree must be equitable to both parties); but cf. Locke v. Locke, 246 N.W.2d 246, 252 (Iowa 1976) (the net worth of the parties as it is relevant to the economic provisions of a divorce decree is determined at time of trial). The parties' personal assets should be reduced, however, by the amount which went directly to the petitioner and her attorney from the proceeds of the loan. The parties' debts which reduce the value of the parties' equity in personal property is $104,395.52 (50% of the total of the partnership debt minus the parties' share of the promissory note, the amount petitioner received from the note, the G M Trucking Debts, and the balance of the partnership "buy in" note). After reducing the parties' equity in personal property by their share of the partnership debt and other personal debts, their net equity in personal property is $270,604.48. We further increase this by $7,500 to include the equity in the parties' household contents. Their total equity in personal property is $278,104.48.

The trial court found the parties' net equity in real property to be $92,555 in the Johnson farm, $69,720 in the Aaby farm, and $240,000 in the Mapleton farm.

The Johnson and Aaby farms are owned by the partnership. The Mapleton farm is held in joint tenancy by the petitioner and respondent.

Both parties contest the trial court's valuation of the Mapleton farm at $1,000 per acre. Both presented experts who testified that due to improvements made and appreciation in farm values, the Mapleton farm had increased in value since it was purchased. Respondent's experts found the value to be between $700 to $800 per acre and petitioner's expert valued the land at $1,170 per acre. Although our review is **de novo** and we make fact findings anew, when considering the credibility of witnesses, we give considerable weight to the findings of the trial court. Iowa R. App. P. 14(f)(7). After reviewing the record we agree with the trial court that the value of the Mapleton farm should be set at $1,000 per acre.

Respondent further contends the trial court erroneously considered the full value of the Mapleton farm as marital property. Although the property is in the parties' names alone, there was testimony which indicated the respondent's parents did not have their name included on the title for estate planning purposes only. Furthermore, the partnership has made all payments on the farm, paid for all improvements, and operated the farm as its own. We agree with respondent that the property should, in equity, be considered partnership property. Only 50% or $120,000 of the partnership equity in the Mapleton farm should have been considered to be marital equity subject to equitable division. See In re Marriage of Callenius, 309 N.W.2d 510, 512-14 (Iowa 1981) (analysis in determining the net worth of the parties in order to make a determination of equitable division); In re Marriage of Sparks, 323 N.W.2d 264, 266-67 (Iowa Ct. App. 1982) (determination of marital equity where inherited property constitutes part of the parties' assets).

These calculations result in a total net equity in real estate of $282,275 and a total net equity in personal property of $270,604.48. Total net equity in the parties' marital assets is $552,879.48. The trial court awarded the petitioner

$156,345 of the parties' net equity payable at $15,000 per year for nine years, together with interest on that sum at 10% per annum. The petitioner was also awarded $500 per month alimony and $125 per child per month child support. Further, the petitioner and the children were to remain in the family home located on respondent's parents farm land "as long as circumstances will reasonably allow."

Petitioner asserts that this property settlement was inequitable under Iowa Code § 598.21 (1981). She asks this court to divide the property and award her property instead of requiring her to sell out her interests to the respondent.

Our analysis begins with Iowa Code § 598.21 (1981), which codified many aspects of our prior case law. A justified property division is one that is equitable under the circumstances. Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976); In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975). Although frequently an equal division of assets is made, there is no mechanical rule that dictates this result. In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980); In re Marriage of Conley, 284 N.W.2d 220, 223 (Iowa 1979). When asked to review an individual economic provision of a 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).

The partnership which was formed in 1966 with respondent's parents has been successful. The parties had been married 18 years at the date of trial and had a substantial net worth accumulated. Neither party had brought any assets into the marriage, but both worked industriously to achieve a farming success.

Petitioner, in addition to performing her duties as a homemaker and mother, has assisted actively in the farming operations of the partnership during the marriage. The court recognizes the contribution of the wife as a homemaker and mother even though a husband contributes more financially. The contribution of the wife and mother allows them an equitable share of the marital property. In re

Marriage of Lattig, 318 N.W.2d 811, 815 (Iowa Ct. App. 1982). The respondent has worked full time for the partnership during the marriage since 1966. He, along with his father, has made the business decisions for the partnership. We find that both parties have put forth considerable effort to assure the success of the family farming partnership. Moreover, neither party has developed any employment skills outside their participation in the farming partnership. They are each dependent upon the continued success of the farming partnership for their support. An equitable division of property, under these circumstances, is particularly difficult to achieve.

The trial court, in weighing the factors which are used to guide the court in making an equitable division of property, believed this marriage to be similar to the marriage in In re Marriage of Callenius, 309 N.W.2d 510 (Iowa 1981). The trial court sought to award the assets of the family business to the respondent so he could continue successful operations of the business and provide for his increased obligations. See also In re Marriage of Anderson, 243 N.W.2d 562, 564 (Iowa 1976); In re Marriage of Briggs, 225 N.W.2d 911, 913 (Iowa 1975). In recognition of the petitioner's contribution to the marriage, the trial court awarded her 25% of the parties' equity plus alimony of $500 per month. Although alimony on one hand and allocation of property rights on the other are distinguishable and have different purposes in marriage dissolution proceedings, they are still closely related in the matter of determining the amount to be allowed. In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975). Under this arrangement the respondent could maintain the family farming operation and retire the debt obligations as they come due. In re Marriage of Callenius, 309 N.W.2d at 515.

We agree with the trial court that respondent should be awarded all the parties' equity in farmland. Respondent is engaged in an ongoing farming partnership with his father. The farmland is encumbered and it will take "energetic" farming practices to pay off the debts of the parties and to meet the

obligations imposed under the dissolution decree. While petitioner had participated in farming during the marriage, it is evident from the facts that respondent is in a better position to successfully continue the farming operation. It is necessary to preserve the family farming operation as one unit so that it can retain its economic viability. See In re Marriage of Callenius, 309 N.W.2d 510, 515 (Iowa 1981); In re Marriage of Anderson, 243 N.W.2d 562, 564 (Iowa 1976); In re Marriage of Briggs, 225 N.W.2d 911, 913 (Iowa 1975).

We do believe, however, that the trial court's property division failed to take into account the contributions of the petitioner to the marriage. Barbara, unlike the wife in Callenius, made substantial contributions to the economic success of the marriage. We, therefore, increase the property award to her to $230,000. This is to be payable over a period of 15 years in equal payments. The petitioner is also awarded a lien against the parties' equity in farmland for the full amount of the property settlement.

The trial court awarded petitioner alimony of $500 per month. An award of alimony depends upon the circumstances of each particular case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). Although an award of alimony and allocation of property have different purposes, the distribution of property is relevant in making an award of alimony. See In re Marriage of Callenius, 309 N.W.2d at 413; Iowa Code § 598.21(3)(c) (1981). Petitioner's limited earning capacity outside the family farming partnership and her responsibilities in caring for the parties' young children indicates the necessity for alimony. We affirm the trial court's award of alimony.

At the time of trial, petitioner and the parties' children continued to reside in the family home. The home, constructed on land owned by respondent's parents, was built with partnership funds in 1976 for $80,000. The trial court urged the parties to continue the present living arrangement for petitioner and the parties' children. Such a continuation cannot be wholly regulated or controlled by

the parties. Respondent's parents, as owners of the land, and as owners of a one-half interest in the house, if it is included as a partnership asset, certainly have an interest in its future occupancy and use. We hold that petitioner is awarded whatever interest petitioner and respondent own in the home, and that she shall have the right to occupy it so long as she desires to do so, and respondent's parents permit. Should petitioner elect to remove herself and the children from the home, or should such a move be made necessary by respondent's parents or their successors in the title to the real estate upon which said home is located, respondent shall pay to petitioner the sum of $40,000 in a lump sum, within 90 days of such removal, in exchange for all petitioner's interest in said home.

We affirm the other property provisions of the trial court's decree. The award of custody of the parties' children and child support of $125 per child per month to the petitioner is also affirmed.

II. Interest. The allowance of interest on property settlements is a factor which the court may consider in determining how much a party will receive. In re Marriage of Briggs, 225 N.W.2d 911, 913 (Iowa 1975). The trial court allowed 10% per annum interest on the unpaid balance of the property award. The trial court's decree also allowed 12% per annum interest on delinquent payments. We set the rate of interest on the unpaid balance of the property settlement, considering the increased property award, at 10% per annum on the entire unpaid balance of the property distribution until paid.

AFFIRMED AS MODIFIED.