IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

IN RE THE MARRIAGE OF JUDITH M. WIEDEMANN AND MARTIN F. WIEDEMANN, JR.

Upon the Petition of
JUDITH M. WIEDEMANN,

Petitioner-Appellee,

And Concerning
MARTIN F. WIEDEMANN, JR.,

Respondent-Appellant.

Filed October 22, 1986

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Appeal from the Iowa District Court for Muscatine County (No. 2805-882) - James E. Kelley, Judge.

Respondent appeals from his dissolution decree challenging the property and alimony awards made by the trial court. **AFFIRMED AS MODIFIED.**

Patrick J. Madden, of Stanley, Lande, Coulter & Pearce, Muscatine, for appellant.

John C. Stevens, of Lewis & Stevens, Muscatine, for appellee.

Heard by Oxberger, C.J., and Snell and Sackett, JJ.

SACKETT, J. 515

Respondent Martin F. Wiedemann, Jr., appeals from the decree dissolving the parties' marriage. He challenges the property and alimony awards made by the trial court. We affirm as modified.

Martin Wiedemann and Judith Wiedemann were married in 1945. They have four children who are now adults. Through the parties' joint efforts they developed a company called Wiedemann Industries (Wiedemann). The company builds baptistries and spires for churches. Both parties worked in the business until 1976, when the parties separated and Judith was terminated from employment with the company. Martin currently is president and earns $100,000 annually. Judith works part-time for another business for $4.25 per hour.

The land and building from which Wiedemann operates is owned by M. J. Management Enterprises (M.J.). The parties own 94 percent of the stock in Wiedemann and 100 percent of the stock in M.J.

The trial court valued the parties' stock in Wiedemann at $419,994 and the parties' stock in M.J. at $851,982.

The trial court awarded Judith certain assets, including one-half of the M.J. stock. The value the trial court placed on the assets awarded to Judith was $695,551.

The trial court awarded Martin certain assets including all the parties' stock in Wiedemann and one-half the stock of M.J. The value the trial court placed on assets awarded to Martin was $1,095,995. The trial court ordered Martin to pay Judith $200,222 with $150,000 in cash and the balance in 72 monthly installments at 10 percent interest. Additionally, Martin was ordered to vote for a plan to redeem Judith's stock (48 percent) in M.J. for $408,951 payable in six months. Martin also was ordered to pay Judith alimony of $1,050 per

month. The alimony was ordered payable until Judith's death or remarriage or Martin's death.

VALUATION OF CORPORATE STOCK

Martin contends the trial court incorrectly valued the two closely-held family corporations. Because Martin received Wiedemann at the trial court's value and was ordered to purchase Judith's shares in M.J. at the trial court's value, he contends the property award was inequitable.

Wiedemann, an outgrowth of a partnership Martin had with his father, came into existence in about 1960. The company builds and sells the baptistries to churches. Martin has been and currently is the central force behind the business. In 1962, Martin and Judith purchased land and built a plant for the business. In 1970, they transferred these interests to M.J. and M.J. currently owns the real estate and buildings housing Wiedemann. Wiedemann pays rent to M.J., however, there is no formal rent agreement between the corporations.

The trial court determined there were two corporations and specifically found each corporation should be valued separately. To value Wiedemann the trial court capitalized the past 10 years' earnings at a rate varying from 10 to 14 percent. The trial court added a 10 percent increase for majority ownership and a 20 percent decrease for lack of marketability and arrived at a value of $279,210. The trial court gave the capitalization value a weight of 2 and the book value a weight of 3 to value Wiedemann at $446,800 and the parties' 94 percent share at $419,994.

The trial court valued M.J. by determining a Vangard appraisal, made at the county's direction in 1983 for the purpose of ascertaining values for property taxes, was the fair market value of the property. This appraisal was $868,500, which the trial court then reduced by 20 percent because of Muscatine's

poor economy, added an account payable from Wiedemann of $148,182 and accrued rents of $9,000. The net result was M.J. was valued at $851,982.

Both parties provided evidence as to valuation of the stock. Corporate balance sheets and tax records were entered as exhibits.

Our review is de novo. Iowa R. App. P. 4. We give weight to the findings of facts made by the trial court but are not bound by them. Iowa R. App. P. 14(f)(7). We do not abdicate our function as trier de novo on appeal. See In re Marriage of Ballinger, 222 N.W.2d 738, 740 (Iowa 1974).

The value of stock in a closely-held corporation is at best difficult to determine. In re Marriage of Conley, 284 N.W.2d 220, 221 (Iowa 1979). We need not arrive at an exact value. The purpose of determining value is to assist the trial court in making equitable property awards and allowances. In re Marriage of Moffatt, 279 N.W.2d 15, 19 (Iowa 1979). A valuation cannot be determined by any exact mathematical computation and no one formula or figure is binding or conclusive. The valuation is a matter of judgment based on all material evidence and consideration of all relevant factors which may influence the valuations. See Woodward v. Quigley, 133 N.W.2d 38, 53 (Iowa 1965). With these principles in mind, we address Martin's specific complaints.

Martin claims the trial court should have considered the relationship of the two businesses in arriving at its valuation. We determine the two corporations have been operated as an integral part of each other for over 20 years. The M.J. properties were specifically designed for the manufacture of baptistries and its building is basically a special purpose building. Wiedemann is dependent on the facilities of M.J. to operate. These are among the relevant factors which should be considered in reviewing the valuation. See Woodward 133 N.W.2d at 53.

Martin further asks that a realistic rent be factored into the valuation of each corporation. The trial court determined the rent paid by Wiedemann to M.J. was inadequate and did not consider the rents received as a criteria for valuing M.J. The rent Wiedemann had paid was the rent expense used by the trial court in determining the earnings of Wiedemann. The trial court then capitalized the earnings and used them to value Wiedemann.

Wiedemann had been paying rents of $35,000 annually plus real estate taxes in 1982 and 1983 of a little over $6,000 annually. As a result of the Vangard appraisal, the real estate taxes will increase to $22,000 annually. Martin argues if Wiedemann is forced to pay M.J. a fair rental based on the trial court's valuation, Wiedemann will suffer operating losses rather than profits. He contends if M.J. has a fair market value of $694,800, as the trial court determined, it should net $6,948 per month (1 percent) for an annual rent of $83,376. Had Wiedemann paid such a rent in the combined years the trial court used to capitalize earnings, Wiedemann would have suffered a loss.

Martin also argues in essence the trial court put too much weight on the Vangard appraisal in valuing M.J. He contends the Vangard appraisal was excessive. He testified he intended to appeal the appraisal but through some mix-up with the assessor's office failed to do so. Martin argues a value based solely on the Vangard appraisal ignores other factors which should be considered in valuing the property. He points out in January, 1982, the property was assessed for tax purposes at only $149,525 and the 1983 assessment was nearly a 600 percent increase. He contends the trial court should also have considered an income analysis and functional obsolescence factor.

We note M.J.'s tax return for fiscal year ending November 30, 1983, showed the building with a cost of $234,581, less accumulated depreciation of $97,716, for a value of $136,865 and land at a cost of $11,885.

LOANS TO CHILDREN

Martin complains because in valuing Wiedemann the trial court valued at face value loans made by Wiedemann to the parties' children. The trial court determined the loans were not collectible, but sought to charge them all against Martin in the property division because they were made during the term Martin was in control of the business. We too find the loans are uncollectible.

Several principles are appropriate in analyzing Martin's contention the uncollectible loans should not be chargeable to him. A division of marital property is generally made on a determination of the assets of the marriage at time of trial. See Locke v. Locke, 246 N.W.2d 246, 252 (Iowa 1976); In re Marriage of Byall, 353 N.W.2d 103, 107 (Iowa App. 1984).

During their lifetime a married person may generally make such disposition of his or her personal property as he or she sees fit unless there is a determination there was a sham transfer or fraud in law. See Gunsaulis v. Tingler, 218 N.W.2d 575, 577-79 (Iowa 1974); Lunning v. Lunning, 168 N.W. 140 (Iowa 1918). At the time the loans were made Martin owned 330 of the 350 outstanding shares of Wiedemann. The parties' four children each owned 5 shares. The Iowa courts have in some instances considered the value of personal property transferred during the marriage in reviewing property settlements and assessing the ability to pay alimony. See In re Marriage of Cerven, 335 N.W.2d 143, 144-45 (Iowa 1983) (transfer by husband of his assets to children of first marriage after second wife entered nursing home and he became obligated for her care considered by the court in review of property division and alimony issue); Davis v. Davis, 187 Iowa 407, 422 (1919) (court found evidence supported finding that transfer to husband's mother of certain stock was part of a scheme to protect husband from claims of alimony that might be urged by his wife who had a rightful asser-

tion to alimony from his property); In re Marriage of Johnson, 350 N.W.2d 199, 202 (Iowa 1984) (where steps taken by parties to implement an oral settlement agreement made it possible for husband to obtain control and dispose of assets that should have been preserved for equitable division, trial court was justified in considering husband's post-separation disposition of marital assets).

The facts here do not justify considering the value of these uncollectible loans to the parties' children in assessing the property and alimony awards. In making this determination we have considered the following:

(1) At both the time the transfer was made and now the parties had more than sufficient assets to meet their needs;

(2) Judith suggested the children go to their father for money;

(3) The children are the children of both Judith and Martin, unlike Cerven (transfer made by husband to son of prior marriage) and Davis (transfer made by husband to his mother);

(4) A desire that property pass to one's children is neither unnatural nor improper, particularly when considered in relation to these parties who have accumulated considerable wealth, have been generous with their children during the children's minority, and have reached the later term of life, see Christians v. Christians, 241 Iowa 1017, 44 N.W.2d 431 (1950); In re Estate of Parish, 236 Iowa 822, 20 N.W.2d 32 (1945);

(5) There is no evidence the transfers were made to defeat Judith's right to property or for the purpose of allowing Martin to escape present and further support obligations;

(6) When Judith left Martin remaining in control of the business which he managed well, Judith took certain bank accounts and retained possession of the family's home. Judith is benefiting from the good business judgments made during the separation.

After reviewing the factors of this case, we determine the uncollectible notes of the parties' children should not be considered in assessing the property division and alimony award.

In valuing the stock we have considered, in addition to the factors mentioned earlier, the fact this is a highly competitive business, the risks of the business, the uniqueness of the building, functional obsolescence, the difficulty in obtaining a willing buyer, the analysis made by Judith's expert, the favorable cash position and the fact Martin draws a large salary. We also look carefully at the following. The corporations have generated sufficient income to pay Martin a $100,000 annual salary. Additionally, M.J. has shown an income of $20,000 and Wiedemann an income of $35,000. Martin draws $100,000 salary from Wiedemann. The trial court determined this amount to be fair. We too consider this is fair because the corporation is not readily saleable or available to be managed by Judith. Also, we consider the salary Martin earns in assessing his overall financial condition including his ability to pay alimony.

The business has been well-managed. It is a specialty business which is very dependent upon the specialty experience and expertise of Martin. The trial court valued the parties' interests in both corporations at $1,271,976. Martin claims they should be valued at $494,127. Judith claims the $1,271,976 value placed on the corporations by the trial court is too low. We ultimately make our judgment based on the evidence and relevant factors and consider the value of the two corporations to be $800,000 in assessing the property division. See Woodward, 133 N.W.2d at 53.

TITHING

Martin claims the trial court failed to consider the parties' history of religious contributions in arriving at the property division. Shortly after marriage

Martin and Judith adopted a pattern of tithing and second tithing to their church. As a result they gave 20 percent of their income to their church. To utilize the charitable deduction, 5 percent came from the corporation and 15 percent came from their personal income. Apparently Martin's claim is we should consider income after tithing in assessing his and the corporation's financial situation. He supplies no authority for his position. We determine Martin's future tithing is a personal decision he makes about the future allocation of his money. We do not determine his tithing to be a factor to consider in arriving at an equitable property division and alimony award.

PROPERTY DIVISION

With regard to the property division, Judith raises as an argument the fact Martin wanted out of the marriage and says (we quote) one is tempted to say to him, "Thou wicked and slothful servant," and to her "Well done, Thou good and faithful."

The record clearly reflects both parties to be extremely hard working. They raised four children. They both contributed to the children's economic and social well being and both helped with their physical care. The parties are religious. They have paid their debts, contributed to their community, contributed generously to their church and have accumulated sufficient assets for them to both live very comfortably.

In July, 1970, the Iowa Legislature removed fault from the divorce process. Since that time the Iowa courts have made it clear fault must not be used as a factor in awarding property or alimony. See Locke, 246 N.W.2d at 251; In re Marriage of Peterson, 227 N.W.2d 142, 149 (Iowa 1975); In re Marriage of Zoellner, 219 N.W.2d 517, 524 (Iowa 1974); In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972).

An attempt to interject fault in this record is not proper.

Judith contends we should find Martin has not been fair in reporting assets. We find, as did the trial court, there is no reason to determine he has not been credible with the court. The corporations' records have been presented to the court in an orderly fashion. We have carefully examined all the evidence and records including tax returns for both corporations before and after the parties' separation and find them consistent.

We must finally assess the property division guidelines of Iowa Code §598.21(1) (1985). See also Locke, 246 N.W.2d at 251. We reject any rule based on percentage division of assets. In re Marriage of Lattig, 318 N.W.2d 811, 814 (Iowa App. 1984).

We modify the decree and award all of the M.J. stock to Martin and order the sum of $200,222 payable by Martin to Judith to be increased to $300,000. We determine that amount be payable in case to Judith now. This division will result in each party receiving approximately one-half of the parties' assets.

ALIMONY

Martin claims the alimony award is too high. In assessing Judith's alimony award we consider the factors enumerated in Iowa Code §598.21(3) (1985). We further consider the alimony and property award together. See In re Marriage of Bevers, 326 N.W.2d 896, 900 (Iowa 1982). Judith has received substantial property to assist with her support. See In re Marriage of Stewart, 356 N.W.2d 611, 613 (Iowa App. 1983); Williams, 199 N.W.2d at 346. Though there is a substantially equal property division, we consider Martin's income is far in excess of Judith's. We recognize at this stage in life Judith is not available to obtain remunerative employment. We also look at the fact the parties are reaching retirement age and Martin professes a desire to become less involved in business.

Judith was 60 and Martin was 62 at the time of trial. Considering the age of the parties and the fact Martin will be scaling down the business in the near future, we modify alimony to provide that it decrease to $500 a month after five years.

Each party shall be responsible for their own appellate attorney fees. Costs on appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.

Snell, J., concurs; Oxberger, C.J., dissents.

OXBERGER, C.J. (dissenting)

I would affirm the trial court.