IN THE COURT OF APPEALS OF IOWA

No. 8-566 / 97-2190

IN RE THE MARRIAGE OF DEAN W. HOLST AND MOLLY J. HOLST

Upon the Petition of
DEAN W. HOLST,

Petitioner-Appellee\Cross-Appellant,

And Concerning
MOLLY J. HOLST,

Respondent-Appellant\Cross-Appellee.

Appeal from the Iowa District Court for Scott County, Edward B. DeSilva, Judge.

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

Maria Mihalakis Waterman of Lane & Waterman, Davenport, for appellant.

Michael C. Walker of Goebel, Koury & Walker, Davenport, for appellee.

Considered by Huitink, P.J., and Vogel, and Zimmer, JJ. Sackett, C.J., takes no part.

ZIMMER, J.

Respondent-appellant, Molly Holst, appeals and petitioner-cross-appellant, Dean Holst cross-appeals the economic provisions of their decree of dissolution and the court's ruling on their rule 179(b) motions. Molly claims the court (1) incorrectly valued their ownership in a family corporate farm, (2) divided that ownership inequitably, (3) failed to impute the value in-kind benefits to Dean when calculating his net monthly income for child support, (4) awarded grossly insufficient alimony, and (5) erred in its award of attorney fees. Dean cross-claims the court (1) failed to divide family debt equitably, (2) failed to set aside to him premarital assets and gifts from his parents, (3) incorrectly computed the parties' net monthly incomes for child support, and (4) inequitably divided the marital homestead. We affirm as modified.

Dean and Molly Holst married in September 1973. They have four children: Brian, born in 1976, Greg, born in 1981, Paul, born in 1986, and Carolyn, born in 1989. Brian is a college student. The other children reside in the family home. Dean was forty-five years of age at the time of trial, and Molly was forty-four.

Throughout the marriage, Dean farmed Holst Farms, Inc., his parents' farm corporation. He also sells for Mycogen Seed Company and operates a low-tillage equipment company called Low-Till Designs, Inc. Early in the marriage, Molly worked as a secretary, but quit her employment upon the birth of their first child. Molly helped with farm errands and book work, and helped wherever she was needed in the various family business interests. She was responsible for all household duties.

Dean filed a petition for dissolution of marriage in 1995. At trial, the major dispute centered on the appropriate value of Holst Farms, Inc. Three separate appraisers provided their opinion regarding the value of Holst Farms. The court determined the net value of Holst Farms, Inc. was $1,299,169. At the time of trial, Dean owned 51 percent of the stock, Molly owned 22 percent, and Deans parents owned the remaining 27 percent. The court took the parties combined 73 percent ownership and divided it equally. The court then applied a thirty percent minority interest deduction to Molly's stock, thereby reducing her interest to 25.62 percent. The court awarded Molly the marital residence and acreage, ordering Dean to pay the mortgage on the property. Dean was awarded title to Holst Farms, subject to all indebtedness. The court found Low-Till Designs had no value. It found Dean had an average yearly income of $34,000 and Molly $7200. The court ordered Dean to pay Molly $860 monthly in child support. Molly was awarded rehabilitative alimony of $250 monthly for five years to allow her to return to school to facilitate future employment.

Dean and Molly filed rule 179(b) motions. Molly disputed the court's valuation of Holst Farms. Molly also maintained Dean earned over $47,000 per year from Holst Farms. She claimed the only reason Dean's salary appears lower is because the corporation pays for almost all his living expenses. She requested her alimony be increased to $750 per month. Molly requested numerous other financial modifications on the decree. Dean also sought financial modifications of the decree.

Our review is de novo. Iowa R. App. P. 4. The partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991).

A. Corporate Farm stock

Dean's parents owned the farm. Before he married, they gave him 11% of the stock. Within 2 years of his marriage, they gave him another 18%. They then began gifting stock equally to Dean and Molly, giving each 22% more over the years, so that Dean's parents owned 27%, Dean 51%, and Molly 22% at the time of dissolution. The court had before it several appraisals of the net value of the corporation. It chose the lowest valuation. Then the court took the parties' total ownership of 73%, split it in half, then reduced the value of Molly's "minority" interest by 30% and awarded her the net cash value. All the parties' stock went to Dean in exchange for a payment of just over $201,000.

In calculating the net value of the corporation, the court did not include the value of a bean planter nor account for the value of the parties' pension accounts loaned to the corporation. It also subtracted over $95,000 in potential income taxes which would result from the sale of corporate assets.

The trial court has great discretion in valuing a closely-held corporation. *In re Marriage of Dennis*, 467 N.W.2d 806, 808 (Iowa App. 1991); *In re Marriage of Martin*, 436 N.W.2d 374, 375-76 (Iowa App. 1988). Molly argues the court erred in using the valuation of John Sherrick because "the only credible" valuation was made by Gary Penningroth. Sherrick's produced the lowest valuation. Penningroth's produced the highest valuation. Penningroth explained his approach at trial. The other appraisers did not testify because the parties agreed to omit them to save time. Molly cannot now argue Penningroth's is better because he *did* testify. All the appraisals came into evidence without objection.

It appears from the record the court did not figure in the approximately $6,400 Dean and Molly loaned the corporation from their pension accounts. Dean testified a bean planter was left out of the appraisal, valued at $3,500. Dean and his family clearly want to keep the farm in the family. We find it unlikely he would sell the corporation, so the costs related to a sale should not be a factor in valuing the corporation. Even though the court chose the lowest value appraisal, the value placed on the assets by the trial court is within the permissible range of evidence and we will not disturb it on appeal, except to make the modifications warranted by the evidence already discussed. *See In re Marriage of Bare*, 203 N.W.2d 551, 554 (Iowa 1973); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa App. 1984).

Dean argues the corporate stock owned by the parties should not have been aggregated and then divided equally because his premarital and early marital gifts from his parents should be set off to him. His parents did not begin giving stock to Molly until several years into the marriage. Then they gave Dean and Molly equal amounts of stock. If there are wide disparities between the assets of the parties at the time of the marriage, or if one of the parties is the recipient of a substantial gift or inheritance, the length of the marriage is a major factor in determining what the respective rights of the parties with respect to such property are at the time of its dissolution. Our obligation to respect and give effect to the wishes of those who convey gifts and bequeath inheritances demands of us that those wishes not be rendered nugatory by the mere fact that the intended recipient happens to be married. *See In re Marriage of Beeh*, 214 N.W.2d 170 (Iowa 1974). The intent of Dean's parents in gifting stock was to reduce their estate to avoid taxes and to pass the family farm on to their child, Dean. Iowa Code section 598.21(2) provides gifts normally are set aside to the donee unless injustice would result. The length of the marriage suggests the court's aggregation and division of the stock gifted during the marriage is the proper approach. Because Molly received only the cash value of the shares, while the shares themselves went to Dean, the court protected the intent of the donors.

Molly argues the court erred in applying a minority shareholder discount to the value of her shares. The court cited *In re Marriage of Muelhaupt*, 439 N.W.2d 656, 660 (Iowa 1989) to support its application of a minority discount to Molly's shares. *Muelhaupt* differs from this case because the court in *Muelhaupt* had testimony of two expert witnesses concerning the proper minority discount to apply. *Id.* We find the court erred in applying a minority discount without any expert testimony or other basis in the record for determining the proper amount of discount to apply.

We modify the valuation of the corporation to include the bean planter, to subtract the pension account loans, and to omit the potential income tax from the sale of the corporation. We modify the division of the stock to set aside to Gary the 11 percent he received before the marriage and we do not apply any minority discount to Molly's shares. We affirm the valuation and division of the farm corporation assets in all other respects.

B. Value of nonmonetary benefits

Dean lives in a home provided by the corporation. The corporation provides utilities. His vehicle is provided by and serviced by the corporation. His health insurance is paid. As majority owner and operator of the family farm corporation, Dean determines what salary he receives. Dean also works as a seed salesman. His income from sales is paid in reduced seed costs to the family farm corporation, rather than as paid commissions.

In calculating child support, the court did not impute to Dean any income from the non-monetary benefits he receives from the farm corporation. The court also did not deduct the alimony obligation from his net monthly income, nor add the payments to Molly's net monthly income. The court found Dean's average income to be $34,000 and Molly's to be $7,200 for purposes of child support.

Molly asserts the court should have included the value of benefits Dean receives from the corporation in determining his net monthly income for child support purposes. We have recognized salary packages can be substantially enhanced by non-monetary items and, in some cases, nontaxable employer payments. *See In re Marriage of Anderson*, 400 N.W.2d 84, 85 (Iowa App. 1986). We also said the court should look at these factors in assessing a child support award. *Id.* The benefits in a salary package can support a discretionary call by the trial court to depart from the guideline amount. *In re Marriage of Huisman*, 532 N.W.2d 157, 159 (Iowa App. 1995). Molly values the monthly benefits Dean receives at $2,175.

To justify a departure from the guidelines, the court must furnish written findings that the scheduled amount would be "unjust or inappropriate" under criteria developed by the supreme court. Iowa Code § 598.21(4)(a) (1997). The guidelines authorize variation when:

> (1) Substantial injustice would result to the payor, payee, or child;
>
> (2) Adjustments are necessary to provide for the needs of the child and to do justice between the parties, payor, or payee under the special circumstances of the case; and
>
> (3) Circumstances contemplated in Iowa Code section 234.39.

In re Marriage of Bergfeld, 465 N.W.2d 865, 869 (Iowa 1991). The trial court made no such findings.

Dean claims his alimony obligation should be subtracted from his net monthly income when calculating his child support obligation. The guidelines provide for a deduction for "*prior* obligation of . . . spouse support actually paid pursuant to court or administrative order." Child Support Guidelines (9) (Emphasis added). Molly argues her alimony is not a "prior" obligation. Our supreme court addressed this issue, stating:

> Consideration of the amount of alimony paid under the present decree, while not provided by our guidelines as a deduction from income, may

> nevertheless be considered by the court in an attempt to "do justice between the parties."

In re Marriage of Lalone, 469 N.W.2d 695, 697 (Iowa 1991); *In re Marriage of Russell*, 511 N.W.2d 890, 892 (Iowa App. 1993).

In our de novo review, we find the non-monetary benefits Dean receives from the family farm corporation justify deviating from the child support guidelines. *In re Marriage of Russell*, 511 N.W.2d 890, 893 (Iowa App. 1993) (holding all income that is not anomalous, uncertain, or speculative should be included when determining a party's child support obligation); *see also In re Marriage of Lee*, 486 N.W.2d 302, 305 (Iowa 1992) ("The guidelines do not limit the definition of gross income to that income reportable for federal income tax purposes"). This non-monetary income is not speculative. We set Dean's monthly child support obligation at $1,000.

C. Low-Till corporation

The parties started a family business. Each owns 50% of the stock. There is a bank loan personally guaranteed by Dean. The corporation has never made a profit. There is inventory to cover the majority of the loan principal. The court found the corporation had no value. The court did not allocate the debt in its property division.

Dean argues the court erred in not dividing the corporate debt, since each party owns half the corporation. At the time of trial, there was corporate debt of approximately $110,000, personally secured by Dean.[1] The corporate tax return showed inventory of $88,000. There was sufficient cash flow to pay employees.

---

[1] Dean's notice of appeal sets the corporate debt at $97,764.

Because Dean has the greater income, he can benefit more from using corporate losses to offset income. We find Dean should be awarded all the Low-Till corporate stock and assets subject to the debts thereon. We find Dean's argument Molly should be assessed $55,000 in corporate debt without merit.

D. Homestead

Molly received the marital home and the adjoining land, approximately 43 acres. The court ordered Dean to make the mortgage payments ($44,000 principal balance). Some of the down payment on the homestead came from premarital wages owed to Dean by his parents. The court awarded Molly the homestead and adjoining acreage, but ordered Dean to pay the $44,000 mortgage and rent the acreage. Dean argues the court divided the total value of the homestead, rather than the net value, thus giving Molly $22,000 more. We find the court used the gross value of the homestead when subtracting its value from the value of Molly's interest in Holst Farms. We also find the net value should be adjusted so that the mortgage debt is divided between the parties, but Molly is responsible to make the payments.

E. Appellate attorney fees

Molly asks for appellate attorney fees. An award of appellate attorney fees is not a matter of right, but such fees are allowable when the relative financial condition of the parties justifies it. From our review of the parties' financial situation, we find it appropriate for Dean to pay $2,000 of Molly's appellate attorney fees.

Summary

The district court calculated the net value of Holst Farms, Inc. to be $1,299,169. We adjust that value by adding $3,500 for the planter, $95,019 for projected taxes from the sale of the corporation, and subtracting $6,400 for the parties' pension account loan to the corporation, giving a new net value of $1,391,288. We set aside to Dean the 11 percent he received prior to marriage and divide the stock gifted during the marriage equally between the parties. The net value of Molly's 31 percent of the stock is $431,299

The court used a value of $262,750 for the value of the homestead and adjoining acreage. We reduce that value by the outstanding mortgage of $44,000, for a net value of $218,750. Dean's half interest in the equity is $109,375. Subtracting Dean's equity in the homestead from the value of Molly's stock in Holst Farms results in an equalizing payment from Dean to Molly of $321,924 . Adding in Dean's one-half of the homestead mortgage debt increases the payment to $343,924. Molly shall be responsible for paying the mortgage and shall hold Dean harmless thereon.

We have considered all the claims of the parties. Other than the modifications set forth above, we affirm the district court's decree in all respects. We order Dean to pay Molly the sum of $343,924 in the manner set forth in the decree. We increase Dean's monthly child support obligation to $1,000. We also order Dean to pay Molly $2,000 for appellate attorney fees within ninety days of the date procedendo issues. *In re Marriage of Hansen*, 514 N.W.2d 109, 112 (Iowa App. 1994). Costs of this appeal are divided equally between the parties.

AFFIRMED AS MODIFIED.

No. 97-2190. [8-566] IN RE MARRIAGE OF HOLST

Appeal from the Iowa District Court for Scott County, Edward B. DeSilva, Judge. **AFFIRMED AS MODIFIED.** Considered by Huitink, P.J., and Vogel, and Zimmer, JJ. Sackett, C.J., takes no part. Opinion by Zimmer, J. (11 pages $4.40)

Respondent-appellant, Molly Holst, appeals and petitioner-cross-appellant, Dean Holst cross-appeals the economic provisions of their decree of dissolution and the court's ruling on their rule 179(b) motions. Molly claims the court (1) incorrectly valued their ownership in a family corporate farm, (2) divided that ownership inequitably, (3) failed to impute the value in-kind benefits to Dean when calculating his net monthly income for child support, (4) awarded grossly insufficient alimony, and (5) erred in its award of attorney fees. Dean cross-claims the court (1) failed to divide family debt equitably, (2) failed to set aside to him premarital assets and gifts from his

No. 97-2190. [8-566] IN RE MARRIAGE OF HOLST (continued)

parents, (3) incorrectly computed the parties' net monthly incomes for child support, and (4) inequitably divided the marital homestead. Dean and Molly Holst married in September 1973. They have four children. Throughout the marriage, Dean farmed Holst Farms, Inc., his parents' farm corporation. The major dispute in the dissolution was the appropriate value of Holst Farms, Inc. The court took the parties combined 73 percent ownership and divided it equally. The court then applied a thirty percent minority interest deduction to Molly's stock, thereby reducing her interest to 25.62 percent. The court awarded Molly the marital residence and acreage, ordering Dean to pay the mortgage on the property. Dean was awarded title to Holst Farms, Inc. subject to all indebtedness. The court found Low-Till Designs had no value. It found Dean had an average yearly income of $34,000 and Molly $7200. The court ordered Dean to pay Molly $860 monthly in child support. Molly was awarded rehabilitative alimony of $250 monthly for five years to allow her to return to school to facilitate future employment. **OPINION HOLDS:** (1) We modify the valuation of the corporation to include a bean planter, to subtract pension account loans, and to omit potential income tax from the sale of the corporation. We modify the division of the stock to set aside to Gary the 11 percent he received before the marriage and we do not apply any minority discount to Molly's shares. (2) We find an adjustment to child support for non-monetary benefits Dean receives appropriate. (3) We find Dean should be awarded all the Low-Till corporate stock and assets subject to the debts thereon. We find Dean's argument Molly should be assessed $55,000 in corporate debt without merit. (4) We use the net value of the homestead when subtracting its value from the value of Molly's interest in Holst Farms. We also find the net value should be adjusted so that the mortgage debt is divided between the parties, but Molly is responsible to make the payments instead of Dean. (5) We find it appropriate for Dean to pay $2,000 of Molly's appellate attorney fees. Other than the modifications set forth above, we affirm the district court's decree in all respects. Costs of this appeal are divided equally between the parties.