

IN THE COURT OF APPEALS OF IOWA

No. 5-553 / 94-1624

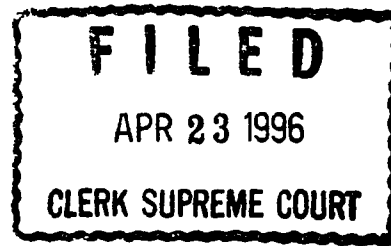
**IN RE THE MARRIAGE OF WILLIAM C. CONNELLY
AND JANICE E. CONNELLY**

Upon the Petition of
WILLIAM C. CONNELLY,

Appellee.

And Concerning
JANICE E. CONNELLY,

Appellant.



Appeal from the Iowa District Court for Polk County, George Bergeson, Judge.

Appeal from property distribution provisions of dissolution decree.

AFFIRMED AS MODIFIED.

Roger J. Hudson and Stacey Bell of Smith, Schneider, Stiles, Hudson,
Serangeli, Mallaney, Shindler, & Scalise, P.C., Des Moines, for appellant.

Michael M. Sellers, and then Scott Hunter, West Des Moines, for appellee.

Considered by Sackett, P.J., and Habhab and Streit, JJ. Huitink, J., takes no
part.

HABHAB, J.

This is an appeal from the economic provisions of a dissolution decree. Appellant claims the trial court did not properly value and equitably distribute the parties' property. In an equity action, our review is de novo, and we have a duty to examine the entire record and adjudicate anew the issues properly presented. *In re Marriage of Brauer*, 511 N.W.2d 645, 646 (Iowa App. 1993). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. *Id.* Upon our de novo review of the record, we modify the trial court's amended and substituted judgment and decree.

William and Janice Connelly were married in April 1971 and separated in March 1992. A decree of dissolution was filed November 24, 1993. Following the filing of Janice's rule 179(b) motion, an amended and substituted judgment and decree was filed September 1, 1994. After dividing the parties' assets and liabilities, the trial court awarded Janice a net value of \$100,377.96 and William received \$50,527.28. To equalize the \$49,850.68 difference, the trial court awarded William a \$24,925.34 lien against the real estate and mobile home. The lien bears a seven percent *per annum* interest rate and is payable upon the occurrence of one of several events listed in the decree. On appeal, Janice challenges the trial court's valuation of the parties' property and its failure to account for all of her debts in its accounting and distribution of the parties' assets and liabilities.

The distribution of property in a dissolution action should be equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(1). *In re Marriage of Wertz*, 492 N.W.2d 711, 713 (Iowa App. 1992). What constitutes an equitable division of marital property must be determined under the specific facts of each case. *In re Marriage of Byall*, 353 N.W.2d 103, 106 (Iowa App. 1984).

Janice challenges the trial court's valuation of the parties' real estate. The parties owned a mobile home located on thirty-four acres. The parties stipulated to the admission of real estate valuations in lieu of live testimony. William introduced a realtor's written estimate of \$85,500 for the real estate and mobile home, and Janice offered a written estimate of \$64,900. The trial court valued the land and home at \$85,500.

Janice argues the trial court should have valued the property at \$75,000. At trial, William was asked if he thought it would be fair if the court were to value the property at an amount somewhere between the two parties' estimates. William responded, "That's fine. I would agree with that."

Neither of the parties' estimates were actual appraisals and it is equitable to average the estimates and value the property at \$75,000. This reduction in value decreases the total value of the property awarded to Janice from \$100,377.96 to \$89,877.96. Accordingly, the difference between the net value of the property

awarded to Janice and William is reduced to \$39,350.68 and William's lien is reduced to \$19,675.34.

Janice objects to the valuation and distribution of the parties' vehicles. William testified his valuations were based on Blue Book information from a credit union. We find this to be reasonable and note, with the exception of the pick-up, the parties' valuations of the vehicles did not differ significantly. Janice claims she did not want the 1985 Tempo and 1980 Luv pick-up. Given the prior use of the pick-up to haul water on the parties' property, and the placement of the minor children in Janice's care, it was equitable for the court to award the additional vehicles to Janice and we will not modify the award.

Janice objects to the \$5000 value the court assigned to the furniture and miscellaneous items. This valuation was well within the permissible range of the evidence and will not be disturbed on appeal. *See In re Marriage of Huisman*, 532 N.W.2d 157, 160 (Iowa App. 1995). She further objects to the inclusion of gifts William gave her and the family in the value of the property awarded to her. From our review of the record, we conclude it would be inequitable to William to set aside the items which Janice claims are gifts. *See Iowa Code § 598.21 (2) (1993)*. They are properly included in the total valuation of the property awarded to Janice, and we see no reason to modify the division of furniture, the household goods, or the miscellaneous items.

Finally, Janice claims the trial court should have included the debts she owed her mother in its division of debts. Janice's financial affidavit indicated she owed her mother \$4000 she borrowed for the down payment on a car and \$1000 borrowed to cover additional expenses. These debts were incurred following the parties' separation. In its amended decree, the trial court specifically listed these debts and William's legal fee obligations among those it was not including in its final recapitulation of the parties' assets and debts. We find exclusion of the post-separation debts was within the trial court's discretion and should not be modified.

Both William and Janice request an award of attorney fees. An award of appellate attorney fees is not a matter of right but rests within our discretion. *In re Marriage of Scheppele*, 524 N.W.2d 678, 680 (Iowa App. 1994). In determining whether to award appellate attorney fees, 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 decision of the trial court on appeal. *Id.* Given the relative circumstances of the parties in this action, we find equity does not warrant an award of appellate attorney fees to either party. The costs of this appeal are assessed to William.

AFFIRMED AS MODIFIED.