FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

11

IN RE THE MARRIAGE OF DOLORES M. BADJE AND JOSEPH A. BADJE

UPON THE PETITION OF DOLORES M. BADJE,	)	
Petitioner-appellant,	)	Filed February 26, 1986
AND CONCERNING JOSEPH A. BADJE,	)	5-590 / 85-193
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Winnebago County (No. 13243), B C. Sullivan, Judge.

The economic provisions of the parties' divorce decree appealed by petitioner. **AFFIRMED AS MODIFIED.**

Rolf Aronsen, Mason City, for petitioner-appellant.

Francis Fitzgibbons of Fitzgibbons Brothers, Estherville, for respondent-appellee.

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

OXBERGER, C.J.

The economic provisions of the parties' divorce decree are the subject of this appeal. We affirm as modified.

The parties, appellant Dolores Badje and appellee Joseph Badje, were married for twenty-eight years when they separated in 1982. Their divorce decree was handed down in January 1985. Both parties are fifty years old and have no children. Dolores has a high school education and has worked part time during the marriage outside the home. Joseph has an eighth grade education and is a farmer. He is a tenant-in-common with his brother, operating the Badje Brothers partnership. Together Joseph and his brother farm over 400 acres of land. The court awarded all the farm land and equipment to Joseph along with its debts. It awarded Dolores the house she purchased after the petition was filed along with its debt, a car, checking account, and household goods in her possession. She was given a cash property award of $5000 per year for ten years, with no interest. Dolores will also receive $5000 per year in alimony under the decree, to end if she remarries or cohabits with another unrelated adult male. Joseph was also required to contribute $1000 towards Dolores's attorneys fees.

According to petitioner, the court erred in accepting the valuations of the property by Joseph's expert without question, in not awarding her more property and dividing the property rather than giving her a cash award. She also says the alimony award is too low and should be a debt upon Joseph's estate in the event of his death.

Dolores points out a mathematical error in the financial statement presented by Joseph to the court, and says his statement also erroneously included as Joseph's debts a drainage assessment which has not yet been assessed, property

taxes not due, and several other liabilities which should not have been included. However, the decree reflects that the court did not accept Joseph's financial statements as he presented them. With the exception of including some property taxes Dolores said should not have been included, the court revised the financial statement to reflect the changes she requested.

Further, petitioner says the court should have accepted the value placed upon the land given by her expert instead of the value placed by Joseph's expert. Although not entirely clear from the decree, it appears the court used the values presented by Joseph's expert. These values were twenty percent lower than those originally given by Joseph and the values were accordingly reduced. Dolores points out her expert considered more information than did Joseph's and used a different formula to reach his result. She says her expert's method is better. Both reflect the declining farm land values. The decision of the trial court as to which expert to believe involved a determination of the credibility of the witnesses. While we review the facts anew in our de novo examination of the record, we accord deference to the trial court's findings regarding credibility of the witnesses. Iowa R. App. P. 14(f)(7). We find this decision was best left to the trial court and find no reason to reject its determination of the land values.

In the decree the court referred to two newspaper articles regarding land values. Neither of these newspaper articles were represented as evidence by the parties, nor was the court asked to take judicial notice of these articles. Dolores says this is error. Other evidence was properly admitted regarding declining farm land values. While we find no basis for the court considering this evidence, we also find upon an examination of the decree that it had little, if any impact upon the court's decision. The court decided to accept the land

values given by the testimony of Joseph's expert. The articles appear to have been used by the court to bolster its statement, based on admitted evidence, that land values are declining. Since the articles had no impact upon the court's valuation of the land, we find in our de novo review there was no reversible error in its actions.

Dolores also says she should have gotten a larger portion of the property She asks this court to divide the one-half partnership property that Joseph owns between herself and Joseph. The record supports Joseph's statements that Dolores has never gotten along well with Joseph's brother and that a division of his one-half of the property would be disruptive to the ongoing business. As pointed out in In re Marriage of Callenius, 309 N.W.2d 510, 515 (Iowa 1981), income-producing property such as this should be left with the person using the land, requiring them to make cash payments to the other. To divide the land would have the same impact as condemned in Callenius, where "Awarding the home eighty acres and another eighty acres to Donna would take away from Ronald an important source of income and his only obvious source of refinancing. It would sever a farming unit embraced in one contract." Id. We agree with the trial court that instead Dolores should receive a cash property settlement.

The petitioner wishes to include among her debts mortgage payments due on a house she bought after the divorce petition was filed and against Joseph's advice. We agree with the trial court this is a debt voluntarily assumed by Dolores with her own financing and is not a marital debt.

The property award results in petitioner receiving twelve percent of the total marital assets, according to Dolores. We find that in reviewing the figures, the award is closer to thirteen percent.

The trial court and Joseph rely upon In re Marriage of Lattig, 318 N.W.2d 811, 815 (Iowa Ct. app. 1982) in which we held that the wife was entitled to a property award only in proportion to her small contribution to the marital property. There we stated that, "Where the accumulated property is not the product of the joint efforts of both parties or where, as here, one party brings property into the marriage, there need not necessarily be a division. This is especially true where the marriage was of short duration." Id.

There is a significant difference between this and the case we consider today. There the marriage lasted only seven years, and the parties separated for nearly two of those years. Id. We considered the short duration of the marriage significant. Id.

Dolores and Joseph, on the other hand, have been married for over thirty years at the time of the decree, and separated for three years. Joseph says Dolores contributed little to the farm property. In addition to maintaining the house, she occasionally walked beans, helped with putting up hay and worked in the field in the fall cutting stalks. She kept a part-time job for all but three years of the marriage, but her income was about $6000 per year. We must balance the limited financial contribution made to improving the farm land with the length of the marriage and other contributions made. We feel this is best achieved by providing for a cash award to Dolores equal to one-third of the marital property. This results in a cash award to Dolores of $100,000. We hold Joseph shall pay this amount in ten installments over ten years. The first payment of $10,000 shall be due on December 31, 1986. Remaining payments of $10,000 will be due December 31 of 1987 and through 1996. We modify the award to provide for payment of interest at ten percent.

The alimony award is also disputed by Dolores. She says it should be increased and charged to her husband's estate. The record shows Joseph's income has been as follows:

Year		Annual Income
1980		$15,710
1981		$14,087
1982		$18,858
1983	(as adjusted)	$28,096
1984	(estimated if bills paid)	$15,550

At trial it appeared the debts will eliminate the $25,000 profit which would otherwise have been seen from the partnership and the partnership will operate on borrowed capital. Dolores has been able to earn $6000 per year with her part-time job. Joseph testified that Dolores was offered a full-time job at the place she now works, but she declined it. Further, Dolores indicated she was living comfortably on $13,800, the amount available to her from her work and temporary alimony. With the property and current alimony award, she will receive over $16,000 per year. Considering the resources of each party and other factors set out at section 598.21(3) of the Code, we find the alimony award to be equitable and uphold all aspects of this award.

Dolores requests attorneys fees on appeal. Considering the needs of the requesting party, the resources of the other party, and the results on appeal, we hold the parties shall be responsible for their own attorneys fees. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981).

AFFIRMED AS MODIFIED.