IN THE COURT OF APPEALS OF IOWA

No. 1999-144 (9-360) / 98-1818
Filed September 29, 1999

IN RE THE MARRIAGE OF DORIE DENICE FUNKE AND ROCKY LEE FUNKE

FILED
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CLERK SUPREME COURT

Upon the Petition of
DORIE DENICE FUNKE,
Petitioner-Appellant,

And Concerning
ROCKY LEE FUNKE,
Respondent-Appellee.

Appeal from the Iowa District Court for Madison County, Richard D. Morr, Judge.

The petitioner appeals from various economic provisions of the parties' dissolution decree. **AFFIRMED.**

Arnold O. Kenyon III of Law Office of Kenyon & Nielsen, P.C., Creston, for appellant.

A. Zane Blessum of Blessum Law Office, Winterset, for appellee.

Heard by Sackett, C.J., and Huitink and Mahan, JJ.

HUITINK, J.

I. Background Facts and Proceedings.

Rocky and Dorie Funke were married on April 14, 1984. They have one child, Amanda May Funke, born May 29, 1985, whose welfare is not implicated in this appeal. Dorie Funke is forty-three years old, and Rocky Funke is forty-five years old.

Dorie's dissolution petition was filed on January 8, 1998. The disputed issues at trial included valuation and division of the parties' eighty-three-acre farm, homestead, and $12,300 workers' compensation award Rocky received after Dorie's petition was filed. The district court determined the fair market value of the farm and homestead was $75,000. This value was then adjusted by subtracting $15,000 for estimated capital gains taxes and sale expense. Rocky was awarded the farm and homestead worth an adjusted value of $60,000. Rocky's $12,300 workers' compensation award was set off to him and excluded from assets divided by the court. The district court's property division was computed as follows:

> As the court indicated, the marital assets of the parties were $78,507. The marital liabilities are $9,986. The marital net worth of the parties then is $68,521. The court finds that the husband received in June of 1998 a workmen's comp benefit based upon a permanent disability. Those funds should be set off to him as his own and separate property. That should be removed then from the marital net worth of the parties and restored to the husband. By reducing the marital net worth of $68,521 by the $12,300, the adjusted marital net worth of the parties is $56,221. The court finds that these parties accumulated all of their property during the marriage and the property should be regarded equally owned by the parties.
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> The husband's share of the marital net worth is $28,110. The wife's marital net worth is $28,111. The husband's share of the marital

> net worth of $28,110 is added to the workmen's comp benefit of $12,300. The husband then is entitled to property and assets after payment of the debt in this marriage of $40,410. As indicated, the husband is receiving assets of $54,440. He's paying debts of $9,986. He thus is receiving, before adjustment for payment to the wife of, the sum of $44,454. The husband has thus received $4,044 in assets over and above that sum to which he's entitled to.
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> . . .
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> It will be the order of the court then that the respondent-husband shall pay to the petitioner-wife the sum of $4,044 prior to September 1, 1998.

Dorie contends the district court erred in deducting $15,000 from the value of the farm since there was no evidence of a pending sale. She requests the court restore $15,000 to the value of the farm and award her in cash one-half the value. Dorie additionally contends the district court erred in awarding Rocky the balance of his workers' compensation award. Dorie asserts $2300 of that award should be set aside as a marital asset and that she should be awarded $1150. Dorie lastly requests an award of appellate attorney fees and costs.

II. Standard of Review.

Our review of the economic provisions of a divorce decree is de novo. Iowa R. App. P. 4. We examine the entire record and adjudicate anew the issues properly presented on appeal. *In re Marriage of Grady-Woods*, 577 N.W.2d 851, 852 (Iowa App. 1998). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

III. Property Division.

The parties 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). Iowa courts do not require an equal division or percentage distribution. *Id.* The determining factor is what is fair and equitable in each circumstance. *Id.* When distributing property, we take into account the criteria codified in Iowa Code section 598.21(1) (1997). *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983). Property brought into the marriage by one party need not necessarily be divided. *In re Marriage of Oakes*, 462 N.W.2d 730, 731 (Iowa App. 1990) (citations omitted). Property brought to the marriage by each party is but one factor of many we are to consider. Iowa Code § 598.21(1).

A. Family Farm.

In the absence of an impending sale, reduction of asset values for estimated capital gains taxes and sale expenses is disallowed. *See In re Marriage of Friedman*, 466 N.W.2d 689, 691 (Iowa 1991). Because there is no evidence of an impending sale, there are no tax consequences to consider in the division of the parties' farmland. The district court erred in concluding otherwise.

The undisputed fair market value of the farm is $75,000. The parties' net equity after subtracting the unpaid $41,000 contract balance is $34,000. Dorie demands one-half of this amount in cash.

As noted earlier, equity does not require an equal property division. *In re Marriage of Russell*, 473 N.W.2d at 246. We emphatically reject any notion that the foregoing determination compels an award of one-half of the increased farm equity to Dorie.

Rocky was awarded the farm subject to payment of the unpaid contract balance. The record indicates the unpaid balance is $41,000 payable in monthly installments of $423.93. The contract interest rate is eleven percent. In addition to the contract balance, Rocky was ordered to pay all of the parties' remaining $9986 debts. These debts include obligations for crop, feed, and marketing expenses incurred prior to the parties' separation. Although Dorie received $5200 in cattle sale proceeds while this case was pending, none of those proceeds were used to repay the parties' debts for farm operating expenses.

According to the district court's decree, Dorie is entitled to an immediate cash payment of $4400. Rocky will either borrow additional money or sell other assets to satisfy this obligation. Under these circumstances, we do not believe equity requires an equal division of the increased equity resulting from the adjustment of the value placed on the farm.

We find Dorie's receipt of $5200 in cattle sale proceeds and $4400 cash from Rocky is sufficient to accomplish an equitable division of the parties' farm equity. With the exception of the adjustments made to the value of the farm, the district court's division of the farm equity is affirmed.

B. Worker's Compensation.

Dorie demands division of a portion of Rocky's $12,300 workers' compensation award for an industrial disability. Lump sum workers' compensation awards are treated as income to the recipient. *In re Marriage of Swan*, 526 N.W.2d 320, 325 (Iowa 1995). Consideration of the award is accordingly limited to Rocky's ability to pay child support. The district court did not err in declining to include any portion of Rocky's workers' compensation award in the property division.

IV. Attorney Fees.

Both parties request attorney fees on appeal. 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 circumstances of the parties in this action, we find each party should pay his or her own attorney fees. Costs of this appeal are taxed to the appellant.

AFFIRMED.