FILED
OCT 05 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

9-400 / 88-1831

IN RE THE MARRIAGE OF MAVIS E. HARMS AND LOGEN M. HARMS

Upon the Petition of

MAVIS E. HARMS,

Appellee,

And Concerning

LOGEN M. HARMS,

Appellant.

Appeal from the Iowa District Court for Bremer County, Jack W. Frye, Judge.

The husband appeals a dissolution decree, challenging the division of property and debts. **AFFIRMED.**

Kevin J. Kennedy of Kennedy & Kennedy, New Hampton, for the appellant.

Frances Gohlke of Carney & Gohlke, Waverly, for the appellee.

Considered by Donielson, P.J., and Schlegel and Hayden, JJ.

SCHLEGEL, J. 175

The husband appeals a dissolution decree, challenging the division of property and debts. We affirm the trial court.

The parties, Mavis and Logen Harms, were married in 1975. They have one child, a daughter born in 1976. The dissolution decree placed this child in joint legal custody and in Mavis' physical care; these custody provisions are not challenged in this appeal.

Logen, 38 years old at trial time, owns and operates a sanitation business. The value of this business is not clear from the record. Logen purchased the business for $120,000 but has recently been trying to sell it for $65,000. The business is beset by substantial debts, including a $47,000 judgment debt owed to its previous owner. In a recent year the business generated gross receipts of over $63,000 but showed expenses of nearly $50,000.

Mavis was 35 years old at trial time. She operates a beauty shop at a loss, works part-time as a licensed practical nurse, and is attending college to become a registered nurse.

In addition to Logen's business, the parties' primary asset was a house valued at $35,000 to $40,000 and subject to a mortgage debt of $13,500.

The dissolution decree awarded Logen his business, subject to all its debts. The decree awarded the house to Mavis, subject to its debt; the decree directed Mavis to pay Logen $5,000 in the event she sells the house before the child support obligation terminates.

Each party was awarded a $5,700 IRA, a vehicle subject to a debt, and various household goods. Logen was awarded some real estate lots of small value.

Logen was directed to pay Mavis $50 per month in child support and $500 toward Mavis' attorney's fees. No alimony was awarded.

Mavis requests attorney fees for this appeal.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). 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).

Logen contends the trial court erred in its division of the assets and debts. We find the value placed on the assets by the trial court to be well within the permissible range of evidence and will not disturb them on appeal. 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). It is apparent the court did as good a job dividing the assets as was possible considering the limited assets that were available. Each partner in the marriage is "entitled to a just and equitable share of the property accumulated through their joint efforts." In re Marriage of Havran, 406 N.W.2d 450, 452 (Iowa App. 1987). The trial court provided each party with an equitable share of the property.

Mavis requests attorney fees on appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to 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 trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). The financial positions of the parties will not allow us to award attorney fees on this appeal.

AFFIRMED.