IN THE COURT OF APPEALS OF IOWA

No. 7-581 / 96-1899

FILED
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CLERK SUPREME COURT

IN RE THE MARRIAGE OF EDWARD J. CASPERS AND LAURIE RAE CASPERS

Upon the Petition of
EDWARD J. CASPERS,

Petitioner-Appellee,

And Concerning
LAURIE RAE WAGNER f/k/a
LAURIE RAE CASPERS,

Respondent-Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Bryan H. McKinley, Judge.

Laurie Caspers appeals from the provisions of the parties' dissolution decree.

AFFIRMED AS MODIFIED.

J. Mathew Anderson of Laird, Heiny, McManigal, Winga, Duffy & Stambaugh, P.L.C., Mason City, for appellant.

Jay M. Shriver of Pappajohn, Shriver, Eide, & Nicholas, P.C., Mason City, for appellee.

Considered by Sackett, P.J., and Streit and Mahan, JJ.

MAHAN, J.

Laurie Caspers appeals the terms of the decree dissolving her marriage to Edward Caspers. Laurie challenges (1) the property division; (2) the district court's refusal to award alimony; and (3) the district court's refusal to award Laurie attorney fees. We affirm as modified.

Laurie and Edward married in August 1991. Edward is thirty-eight years old and Laurie is forty-three. No children were born to this marriage; however, Laurie's two children lived with the parties. Edward attended two years at a community college without attaining a degree. Laurie has a cosmetology license and is a registered cosmetology instructor. She also has a degree from the University of Iowa in general science.

Prior to the marriage, Edward received gifts of shares in a closely-held farm corporation totaling 424 shares. At the age of six, Edward received a cash gift which was invested and had a value of $8846 at the date of the marriage. The district court determined Edward's net worth prior to the marriage was in excess of $745,000. The district court was unable to determine the value of Laurie's assets at the time of marriage, but Laurie claims she had a net worth of approximately $30,000. At the time of the marriage, Laurie worked as Director of Hamilton Business College in Mason City, earning in excess of $32,000 per year.

Hamilton Business College terminated Laurie in November 1991, approximately three months into the marriage. Laurie contends she then began

helping Edward with the farming operation until she began working part-time in 1994. Edward argues Laurie did not put much work into the farming operation. He claims Laurie was an active mom and was constantly involved with school activities and being a mother. Edward does admit Laurie would occasionally help with farm work when requested.

Edward and Laurie kept their finances separate, even though one checking account had both names on it. Laurie deposited her income into this joint account and used the money to purchase most of the groceries and household supplies, as well as tuition for her children at a private school, and personal expenses such as clothing and transportation. Edward never used this account. Edward maintained a separate checking account for his farm and livestock operation. Edward paid for the maintenance of the family home, including taxes, utilities, insurance, and repairs. Edward also provided insurance for Laurie and her children. Throughout the marriage, only Edward was liable on the farm real estate notes, farm operating line of credit, farm equipment loans, and other farm indebtedness and expenses. Laurie did sign a mortgage when Edward refinanced the farm ground, but she did not sign the note.

In its decree, the district court found (1) the parties kept their financial affairs separate; (2) Laurie's activities concerning the farm did not directly attribute or add to the farming operation; (3) the increase in the value of the farm land was due to market conditions and was in no way caused by the parties' marriage or any

contribution by Laurie; (4) Laurie did not contribute to the appreciation of the gifted property Edward brought with him into the marriage; (5) due to the short length of the marriage and lack of equal contributions, an equal division of the marital assets is not appropriate; (6) due to the length of the marriage, Laurie's education, and her earning capacity, Laurie was not entitled to alimony; and (7) in view of the property settlement, Laurie had ample ability to pay her own attorney fees.

I. STANDARD OF REVIEW. Our review of this equitable proceeding 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. 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).

II. PROPERTY DIVISION. Laurie contends the district court inequitably divided the parties' property. 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 Gonzalez*, 561 N.W.2d 94, 98 (Iowa App. 1997). The courts are not bound to achieve a precisely equal division in awards of marital property. *In re Marriage of Kurtt*, 561 N.W.2d 385, 388 (Iowa App. 1997). The determining factor is what is fair and equitable in each circumstance. *Id.* The distribution should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1995). *Id* Gifts received prior to the marriage are the property of that party and are not

subject to a property division unless the court finds a failure to do so would be inequitable to the other party. Iowa Code § 598.21(2) (1995).

Ordinarily, if a marriage lasts a very short time, the claim of either party to gifted property is minimal at best. *See In re Marriage of Liebich*, 547 N.W.2d 844, 850 (Iowa App. 1996) (marriage was of short duration, five years and four months). In this instance, the marriage lasted approximately five years. Given the very short duration of this marriage, we find the district court correctly determined the gifted property should not be included in the marital assets.

The district court noted the existence of a dispute between the parties regarding the amount of work Laurie contributed to the farming operation and the marriage. The court found Laurie's activities did not directly contribute or add to the farming operation. The district court also determined between January 1994 and the separation in 1995 Laurie spent a majority of her time away from the farm. It also determined Edward did his own laundry and Laurie usually only prepared supper; Edward either ate lunch at his parent's home or made it himself.

A premarital asset is not set aside like gifted and inherited property. *In re Marriage of Miller*, 552 N.W.2d 460, 465 (Iowa App. 1996). Instead, it is a factor to consider, together with all the other circumstances, in making an overall division. *Id.* In some instances, this factor may justify a full credit, but not require it. *Id.* Its impact on the ultimate distribution will vary with the particular circumstance of each case. *Id.* When looking at the accumulations to the premarital assets, we do not look

solely at the direct contributions to the increase; we look broadly at the parties' overall contributions to the marriage, as well as other factors. *Id.*

The district court noted the dispute and made a decision as to credibility regarding contributions. The district court obviously believed Laurie's contributions to the farm were minimal and her contributions to the home were also limited. We give weight to this determination. However, in making the property distribution, the district court stated it was taking into account Laurie's contributions as a part-time homemaker and found Laurie was entitled to thirty-three percent of the marital estate. The district court then created a list of assets and determined Laurie was entitled to share in the increases in their value. We find the district court correctly determined the marital estate and Laurie's share in it.

Laurie next argues the district court improperly valued the marital assets. The date of the dissolution is the only reasonable time when an assessment of the parties' net worth should be undertaken. *In re Marriage of McLaughlin*, 526 N.W.2d 342, 344 (Iowa App. 1994) (even though parties separated for eighteen months prior to decree, value assets at time of dissolution). We value property for division purposes at its value at the time of the dissolution. *Id.* It is the net worth of the parties at the time of trial which is relevant in adjusting property rights. *Id.*; *but see In re Marriage of Richards*, 439 N.W.2d 876, 882 (Iowa App. 1989) (since wife left home without making any further contributions to house payments, trial court was correct in using equity value as of date of separation).

In this case the district court determined Laurie was not entitled to any increases in the value of the marital assets after separation. While there may be times where equity would demand using time of separation for valuation, we find this should only be done in rare instances and this is not one of those instances. The district court should have valued the property at the time of dissolution. We adopt the district court's valuation of Edward's assets to be used in the equitable property division. At the time of marriage the assets had a value of $294,683, and at the time of dissolution they had a value of $518,369. After reducing the value at the time of dissolution by $41,555 for the current debt, we find the marital assets have a value of $182,131. Thus, we award Laurie $60,103. The difference between this award and the district court's award is $17,675. Edward shall pay Laurie $17,675 within sixty days of the date of the filing of this opinion.

III. ALIMONY. Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Eastman*, 538 N.W.2d 874, 876 (Iowa App. 1995). When determining the appropriateness of alimony, the court must consider "(1) the earning capacity of each party, and (2) the present standards of living and ability to pay balanced against relative needs of the other." *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa App. 1994) We consider property division and alimony together in evaluating their individual sufficiency. *In re Marriage of O'Rourke*, 547 N.W.2d 864, 866 (Iowa App. 1996). The court may consider the amount of child support ordered under the decree when determining if

spousal support is to be awarded and, if so, the appropriate amount of the award. *In re Marriage of Will*, 489 N.W.2d 394, 400.

We find the district court correctly determined Laurie is not entitled to alimony. At the time of marriage Laurie earned $30,000 per year. She has a college degree in science and is licensed to teach cosmetology. Clearly, Laurie has the ability to provide her own means of support.

IV. ATTORNEY FEES. Iowa trial courts have considerable discretion in awarding attorney fees. *Gonzalez*, 561 N.W.2d at 99. To overturn an award, the complaining party must show the trial court abused its discretion. *Id.* We find the trial court did not abuse its discretion.

Laurie also requests appellate attorney fees. In determining whether to award attorney fees on appeal, our decision is guided by the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal. *In re Marriage of Geil*, 509 N.W.2d 738, 743 (Iowa 1993). We award Laurie $1000 in appellate attorney fees.

AFFIRMED AS MODIFIED.

Streit, J., concurs; Sackett, P.J., concurs in part and dissents in part.

SACKETT, J. (concurring in part; dissenting in part)

I concur in part and dissent in part. I agree that before dividing property in a dissolution the property should be valued as of the date of trial. The division of the property is determined not on the basis of that valuation but on the respective equities of the division.

"Equitable" does not necessarily mean "equal." Each case is judged on its own particular facts. *See In re Marriage of Gaer*, 476 N.W.2d 324, 326 (Iowa 1991). The trial court is granted considerable latitude in resolving disputed property claims and its ruling will be disturbed only when it has failed to do equity. *See In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998).

Assessing the division made by the trial court in its entirety, I find it equitable and I would affirm it.