IN THE COURT OF APPEALS OF IOWA

No. 1-290 / 00-1251
Filed October 24, 2001

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CLERK SUPREME COURT

IN RE THE MARRIAGE OF PAUL J. GODES AND LAREE B. GODES

Upon the Petition of
PAUL J. GODES,
Petitioner-Appellant/Cross-Appellee,

And Concerning
LAREE B. GODES,
Respondent-Appellant/Cross-Appellant.

Appeal from the Iowa District Court for Clinton County, C.H. Pelton, Judge.

The petitioner appeals, and respondent cross-appeals, from various economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

J. Drew Chambers of Holleran, Shaw, Murphy & Stoutner, Clinton, for appellant.

Richard A. Davidson of Lane & Waterman, Davenport, for appellee.

Heard by Sackett, C.J., and Miller and Hecht, JJ.

SACKETT, C.J.

Petitioner Paul J. Godes appeals and Respondent LaRee B. Godes cross appeals challenging the equities of the property division and alimony award made by the district court in dissolving their long-term marriage. We affirm as modified.

Paul and LaRee married in 1972. Paul, who was fifty-one years of age at the time of the dissolution, is a high school graduate and in good health. His lifelong occupation has been that of a farmer. He manages and farms, with the help of part-time labor, a 628-acre farm of primarily corn and soybeans. The land he farms, part of which is in a family farm corporation, has come to him from his parents or is owned by his mother, who was ninety-six years old at the time of the dissolution.

LaRee, who was fifty-one years of age at the time of the dissolution, suffers with diabetes, high cholesterol and high blood pressure. She has a degree in elementary education and special education. She currently is certified to teach kindergarten through ninth grade and special education in grades kindergarten through twelfth grades. She taught for a year after the parties were married. In 1987 she began substitute teaching and earned as high as $1,000 a month. She was hired to be a special education teacher in a public school system beginning in the fall of 2000. She will have an annual salary of $23,000 and is provided medical insurance and will contribute to IPERS.

During the greater part of the marriage the parties assumed traditional roles. LaRee assumed the major responsibilities for the parties' three children and helped with Paul's parents, who lived in the same area, as they aged.

Mitchell, the parties' youngest child, was eighteen years old and had just graduated from high school at the time of the dissolution. Mitchel and his two siblings hold shares in a family farm corporation as the result of gifts from his paternal grandparents. The parties agreed that the expense of Mitchel's higher education is not in dispute and the district court approved their agreement, finding the parties attended to their children's financial and education needs voluntarily.

The district court valued the parties' assets and determined their net worth to be approximately $431,821.00. Included in this figure is a 43.21% interest in a family farm corporation that the parties acquired as the result of gifts from Paul's parents valued by the district court at $160,000. Excluded from this figure is an interest that Paul held in a family trust that came by way of inheritance from his father near the time of the marriage. The trust assets were valued at $976,887, and the estimated annual income was $21,464. The district court determined the $431,821 should be divided equally between the parties. Paul desired to keep the farm corporation so he received all the parties' stock and was ordered to pay LaRee $156,593 in five installments with interest at nine percent per annum.

The district court granted LaRee's request for alimony and ordered Paul to pay her alimony of $1500 a month for her lifetime. The district court further provided that if Paul predeceased LaRee, the alimony should be paid by Paul's estate.

Paul's brief focuses on three areas where he disagrees with the district court and asks that the decree be modified in these three areas. He contends that the district court (1) overvalued his growing crops by fixing their value at

$200,000; (2) erred in considering his receiving $30,940 in government subsidies; and (3) overvalued his grain bins and grain handling equipment by valuing them at $50,000. He further contends that the award of alimony to LaRee was both excessive and of too long a duration. LaRee contends she should have had substantially more property because of Paul's interest in the trust.

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 Wagner,* 604 N.W.2d 605, 608 (Iowa 2000). 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).

The date of the dissolution is the time when an assessment of the parties' net worth should be undertaken. *Locke v. Locke*, 246 N.W.2d 246, 252 (Iowa 1976); *Schantz v. Schantz*, 163 N.W.2d 398, 405 (Iowa 1968). We value property for division purposes at its value at the time of the dissolution. *In re Marriage of McLaughlin*, 526 N.W.2d 342, 344 (Iowa Ct. App. 1994). It is the net worth of the parties at the time of trial, which is relevant in adjusting property rights. *In re Marriage of Muelhaupt*, 439 N.W.2d 656, 661 (Iowa 1989); *In re Marriage of Moffatt*, 279 N.W.2d 15, 20 (Iowa 1979).

The partners in the 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 Ct. 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.* The distribution of the property should be

made in consideration of the criteria codified in Iowa Code section 598.21(1) (1999). *See In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa Ct. App. 1983).

We consider property division and alimony together in evaluating their individual sufficiency. *In re Marriage of Dahl*, 418 N.W.2d 358, 359 (Iowa Ct. App. 1987); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa Ct. App. 1984).

We first look to Paul's challenges to the property division. In doing so it is clear from our review of the record the accumulated net worth of the parties is the result of gifts and inheritances to Paul from his family. LaRee has participated in retaining and maintaining those assets and has assumed substantial responsibilities for the home and family.

Paul makes no claim that the property the district court found the parties owned should be his property alone. Rather his first challenge is to the value placed by the district court on his growing crops.

In valuing the parties' assets in a dissolution action, the value of crops growing upon real estate owned by both or either party may be considered as property separate from the value of the real estate. *See In re Marriage of Martin*, 436 N.W.2d 374, 376 (Iowa Ct. App. 1988). While the growing crop may be considered expectancy only, they are an accrued and accruing asset and have value. *Id.* An accepted method of arriving at their value is to estimate the probable yield of the crop at harvest, calculate the value of that yield and deduct the value and amount of labor and expense required to mature, care for and market the crop. *See Id.* citing *Martin v. Jaekel*, 188 N.W.2d 331, 335 (Iowa 1971) and *Eppling v. Seuntjens*, 254 Iowa 396, 402, 117 N.W.2d 820, 824

(1962). This valuation method does not value the crops at their various stages of maturity but does decrease the ultimate market value by expenses incurred during the crops' maturity and considers the expense of harvest. While such a method of valuation may not be fair in all cases, it is not unfair in this situation where Paul has the benefit of some $75,000 in prepaid crop expense.

The case was tried in June so we assume the crops had been in the ground less than a month. Neither party showed any value for growing crops or grain on hand. Considering evidence of the acres planted and assuming the parties had grain on hand, the district court valued one year's crops as an asset of the parties. The district court valued these crops at $200,000, based on what it considered an expected harvest yield would be if it were sold at what the court determined to be widely published rates for the November sale of corn and soybeans. The court arrived at a value of $194,370. The court then noted there was $75,000 in prepaid crop expenses which were not listed as assets. The court apparently considered this and indicated it also considered costs of harvesting, drying and hauling in arriving at the $200,000 figure.

Neither party listed growing crops as an asset in his or her financial statements. However, LaRee did value the crops at $75,000 in a joint statement of assets and liabilities filed the day of trial. While she argues that the district court's valuation of growing crops is correct, she does not point to any evidence that would support the court's valuation or would show, as the district court indicated, that there was grain on hand. Paul, on the other hand, contends that the growing crops should be valued at no more than the average of the net farm income shown on Schedule F of the parties' federal and state income tax returns

over the last five years. To accept Paul's argument would be to value the crops at a little more than twenty thousand dollars.

Each party has an obligation to list the assets and liabilities of the parties to the best of his or her ability. LaRee suggests information regarding the value of the growing crops should have come from Paul. This is not a case where assets were hidden, nor are there claims of failure to respond to discovery requests. The fact that crops were planted on the land and that there may have been grain on hand should not have been a secret to either party.

The district court's valuation of the growing crops was $125,000 higher than the $75,000 value given them by LaRee. The question then becomes how far the district court and this court on review are allowed to go to value assets where the record provides minimal evidence of their value. We do afford the district court some deference in arriving at values of property. Looking at the number of acres planted, the prepaid crop expenses and the probability of the existence of stored grain from other crops, we cannot say the addition of $200,000 for the value of these items is not within the permissible range of evidence. Consequently, we affirm the district court on this issue. *See In re Marriage of Huisman*, 532 N.W.2d 157, 160 (Iowa Ct. App. 1995); *see also Marriage of Bare*, 203 N.W.2d 551, 554 (Iowa 1973); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa Ct. App. 1984).

Paul further challenges the district court's decision to conclude that he would receive a government payment in 2000 of the same value, specifically $30,940, as the payment he received in 1999. We recognize, as did the district court, that Paul received government payments in other years. However, there is

no credible evidence from which we can determine that he will receive a payment or its amount. We agree with Paul that the district court should not have assumed a government payment would be forthcoming, and absent any credible evidence to support the valuation we modify the decree to omit the amount allocated to a government payment.

Paul also contends that the $50,000 value attributed to grain bins and grain handling equipment is too high. He argues that the bins are more than twenty years old, are on land not owned by the parties, and that there is no severance agreement with the owner of the land. LaRee contended the bins were worth $100,000. Paul claimed they were worth nothing though he valued them on a bank financial statement. The district court's valuation was within the permissible range of evidence. We affirm the district court on this issue. *See Huisman*, 532 N.W.2d at 160.

We therefore modify to reduce the property the district court found owned by the parties by the sum of $30,940, which is the amount attributable to the government payments.

LaRee next contends that an equal division of the property was not justified because Paul holds an interest in the trust, which is worth nearly a million dollars. She does not deny this is inherited property and does not contend it should not be set aside to Paul. Rather, her argument is that because Paul has a beneficial interest in this inherited property she should have a greater share of other property.

The trust as established generally provided that during Paul's mother's life the trustee could use income and/or principal as deemed necessary for her

reasonable care and support. There was further provision that the trustee could also use income and/or principal for reasonable care and support and education of Paul. At the death of Paul's mother the trust would go to Paul if he were surviving. If he were not, the share he would have taken would go to his descendants per stripes.

While Paul had an interest in the trust at the time of the dissolution, his right to receive the property was contingent on his surviving his mother. LaRee has already benefited from farm corporation stock given by Paul's parents. We cannot disagree with the district court's decision not to increase LaRee's share of accumulated property because of Paul's interest in the trust.

We affirm the property division in all respects, except we modify to exclude the government payment as an asset. Consequently, we reduce the sum that Paul is required to pay LaRee by one half of that amount, or $15,470. This reduces the cash that Paul is to pay LaRee to $141,123.60. This amount shall be payable as ordered by the district court in five annual installments, with the first installment, now $28,224.60, being payable within sixty days of June 27, 2000, and the subsequent payments in four annual installments due June 27, 2001, June 27, 2002, June 27, 2003 and June 27, 2004, with interest at nine percent per annum.

Paul next contends the alimony he was ordered to pay is excessive in both amount and duration. In making the award the district court considered that Paul would probably survive his mother and inherit over a million and a half dollars in assets. At the time of the dissolution he was earning about $20,000 a year farming. In addition, he receives payments from the trust which he used to

pay family expenses. We first address the question of what should be considered in determining if and in what amount LaRee should receive alimony.

Any form of alimony is discretionary with the court. *In re Marriage of Ask*, 551 N.W.2d 643, 645 (Iowa 1996); *In re Marriage of Wessels*, 542 N.W.2d 486, 490 (Iowa 1995). Before awarding alimony the district court is required to consider the factors listed in Iowa Code section 598.21(3) (1999). *In re Marriage of Crotty*, 584 N.W.2d 714, 718 (Iowa Ct. App. 1998). We agree with the trial court that we consider Marvin's inherited and gifted property on the issue of alimony. *In re Marriage of Hardy*, 539 N.W.2d 729, 732 (Iowa Ct. App. 1995); *see also In re Marriage of Voss*, 396 N.W.2d 801, 804 (Iowa Ct. App.1986). However, there is no support for considering an inheritance that is only expected in computing alimony.

The parties' joint income tax return shows Paul has annual income of approximately $20,000. The trust report shows that it has anticipated income of $20,000 annually. We recognize that Paul has been taking amounts in excess of this from the trust and is receiving money from his mother by way of loans and gifts. However, under the terms of the trust Paul's right to draw from it is limited. LaRee has an annual wages of $23,000. We believe that considering Paul's current financial status the amount awarded is excessive, and we decrease it to $750 a month.

Paul also contends his alimony obligation should terminate at his death. We agree with Paul that the alimony should not have been extended beyond his lifetime. There is no authority to order distribution of a decedent's assets after death because of a dissolution of marriage. *See In re Marriage of Boehlje*, 443

N.W.2d 81, 85 (Iowa Ct. App. 1989); *see also In re Marriage of Van Ryswyk*, 492 N.W.2d 728, 731 (Iowa Ct. App. 1992) (modified alimony award to provide it will cease upon the death of either party); *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997) (modified to order termination of husband's alimony obligation upon his death, noting husband's compliance with alimony obligation during his lifetime was sufficient to discharge his duty to support wife following dissolution of their marriage, and no equitable purpose was served by imposing an alimony obligation on his estate).

Summary

We modify to decrease the cash award to LaRee by one half of the amount the district court determined was a government payment and as a result the amount that Paul is required to pay LaRee is decreased to $141,123.60, payable under the same terms. We modify the alimony to decrease it to $750 a month and provide that it shall terminate on the death of either party.

We award no appellate attorney fees. Costs on appeal are taxed one half to each party.

AFFIRMED AS MODIFIED.