

IN THE COURT OF APPEALS OF IOWA

No. 0-345 / 89-1777

FILED

SEP 26 1990

CLERK SUPREME COURT

**IN RE THE MARRIAGE OF RICKY LEE NESVIK AND
MAUREEN ELLEN NESVIK**

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Upon the Petition of
RICKY LEE NESVIK,

Appellee,

And Concerning
MAUREEN ELLEN NESVIK,

Appellant.

Appeal from the Iowa District Court for Winneshiek
County, James L. Beeghly, Judge.

Appellant appeals from a dissolution decree,
challenging economic provisions. She also requests
attorney's fees on appeal. **AFFIRMED AS MODIFIED.**

Samuel C. Anderson of Swisher & Cohrt, Waterloo, for
appellant.

James Burns and Linny C. Emrich of Miller, Pearson,
Gloe, Burns, Beatty and Cowie, Decorah, for appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

HABHAB, J.

Ricky and Maureen Nesvik were married in January 1979. They have one child, Steven, born in June 1979. Both Ricky and Maureen were thirty-one years old at the time of trial. Neither has any formal education beyond the twelfth grade.

Upon graduation from high school, Ricky began farming property belonging to his parents and planned to commence a dairy operation. The family owned a 160-acre farm and a 107-acre farm. After Ricky's father's death in 1977, Ricky's mother inherited the vast majority of personal and real property, but Ricky and his brothers inherited a small portion of the real estate and entered into a partnership to operate the farm. Ricky and Maureen lived on the 160-acre farm and made extensive repairs. In 1985 they moved to their present home on the 107-acre farm.

In June 1986, Ricky purchased the bulk of the personal property from the brothers' partnership and the 107-acre farmstead. The purchase price was \$117,000. Ricky assumed a large debt when purchasing the property and was to pay back to the partnership \$93,675. The farm personal property was purchased by Ricky for \$62,784. His payments to the PCA and his mother totaled \$1,200 per month.

The main operation on the farm consists of a sixty-cow dairy operation, with a small localized feed business on the side. Some full and part-time help is hired to assist with the operation. Ricky performed most of the farming

chores, while Maureen performed household tasks, took care of their son, occasionally sold Tupperware, and answered the telephone for a funeral home. Ricky has had two knee operations in the past four years. He has been informed by his doctor that he has about five good years of milking cows because his cartilage is wearing so thin that bones are next to meeting. His knees catch and he cannot get up and down, which is necessary for him in farming. His ability to farm in the future is in possible jeopardy. Maureen has no severe health problems.

On January 19, 1989, Ricky filed the present action for dissolution of marriage. Maureen moved from the family home and with Steven resided at her parents' home before moving to Arkadelphia, Arkansas. Trial was held and the parties' marriage was dissolved on August 24, 1989. Pursuant to the decree and stipulation entered into by the parties, Maureen received physical custody of Steven. Ricky was ordered to pay \$275 per month in child support commencing on September 10, 1989, and thereafter until Steven reaches eighteen years of age, marries, or otherwise becomes emancipated. The court further provided that should Steven pursue a college education, Ricky was to pay child support in the amount of \$200 per month and Maureen was to pay \$100 per month.

Ricky was also ordered to pay Maureen spousal support in the amount of \$150 per month for thirty-six months. Ricky was awarded the farm and farm property, which was

valued by the court at \$339,404, and was also assessed all of the farm debts, estimated at \$245,425.03, leaving a net property award of \$93,978.97. Maureen was awarded assets totaling \$9,493 and debts of \$185, leaving a net award of \$9,308. The court additionally awarded a cash property settlement of \$23,200, \$3,200 of which was credited Ricky as an advanced property settlement. The remaining \$20,000 was to be paid in two \$5,000 increments and one \$10,000 increment, at a rate of 12% per annum on any unpaid portion of the award. Ricky was also ordered to pay \$2,000 towards Maureen's attorney fees.

Maureen subsequently filed for and was granted an extension of time to file a 179(b) motion. Following a hearing, the trial court overruled the 179(b) motion but amended the decree to provide that Ricky and Maureen are to share Steven's travel expenses between Arkansas and Iowa. Maureen has subsequently appealed the various provisions of the decree.

In this equity action, our scope of 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).

Maureen first contends that the trial court erred in valuing the assets awarded to Ricky at \$339,404 rather than \$377,974. Maureen maintains the fair market value of the 107-acre farm is \$197,363 rather than the \$162,422 adopted by the trial court. Maureen argues that the farm machinery was erroneously valued at \$76,350 for the trial court did not take into account a John Deere 4320 tractor that was not considered by David Burrack in his valuation. Maureen believes the tractor is valued at \$4,984.84. She insists her total award of 20% of the marital assets is inequitable under the facts of the present case. We disagree.

Iowa courts have consistently recognized that there are no hard and fast rules governing economic issues in dissolution actions and that precedents are of little value. In re Marriage of Vrban, 359 N.W.2d 420, 423 (Iowa 1984). Our decision must ultimately rest on the facts of each individual case. Id. In making our determination as to the fair and equitable nature of the property award, we are guided by the factors set forth in Iowa Code section 598.21 (1989). We recognize that partners in a marriage are 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). We consider alimony and property division together in evaluating their individual sufficiency. In re Marriage of Cooper, 451 N.W.2d 507, 508 (Iowa App. 1989).

In the present case three persons testified at trial concerning the valuation of the 107-acre farm. Ron Juve, a realtor hired by Ricky, used the comparable sales approach to arrive at the evaluation of \$162,442. Juve was a native of the county in which the Nesvik farm was located and had been involved in other sales of farms in the area. Robert Miller of Scheidel Realty and Auction determined that the land consisted primarily of Down Silt Loam with lesser amounts of Tama and Fayette Silt Loam. Miller appraised the farm at \$181,900. James Jensen, an accredited rural appraiser hired by Maureen, valued the farm at \$197,363, based on the soil content. Maureen maintains Juve's valuation is too low because he made his analysis based on a faulty soil analysis and failed to take into account inflation.

Iowa courts have generally followed the rule that where the valuation of property is within the permissible range of evidence, such valuation will not be disturbed on appeal. In re Marriage of Stickle, 408 N.W.2d 778, 782 (Iowa App. 1987), citing In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973). As with evidence generally, the weight to be given expert testimony is for the trier of fact. See Business Ventures, Inc. v. Iowa City, 234 N.W.2d 376, 384 (Iowa 1985). Expert opinion testimony, even if uncontroverted, is not binding on the trier of fact and may be accepted in whole, in part, or not at all. In Interest of C.W., 342 N.W.2d 885, 887 (Iowa App. 1983).

Upon our de novo review, we do not believe the trial court erred in adopting the valuation of \$162,442. The court had all the relevant appraisals before it and had heard all testimony regarding the value of the farm. Maureen at no time questioned the competency of Ron Juve at trial. Upon examining all the evidence, the trial court adopted the Juve valuation based on the comparable sales method. It has been recognized that comparable sales are often the best evidence of valuation of land. See United States v. 421.89 Acres of Land, 465 F.2d 336, 338-39 (8th Cir. 1972). Because we find the valuation within the permissible range of evidence, we decline to disturb it on appeal.

Maureen concurrently challenges the trial court's valuation of the farm machinery at \$76,350 since evidence was introduced that a John Deere tractor was left out of the Burrack appraisal. We first note the trial court did not pass upon the issue of including the tractor in the valuation of the farm machinery. In her 179(b) motion filed after the decree was entered, Maureen failed to raise the issue. It is well-settled that in order to preserve error when a trial court fails to resolve an issue, claim, or defense, such issue must be raised in a rule 179(b) motion. Nowlin v. Scurr, 331 N.W.2d 394, 396 (Iowa 1983). Moreover, we believe the trial court's valuation of the farm machinery was well within the permissible range of evidence. Maureen herself agreed to have Burrack appraise

the parties' farm machinery, equipment, livestock, and feedstuffs. Maureen stipulated to the valuations at trial and offered no objections to the valuations.

We likewise reject Maureen's attempt to argue specific percentages of marital property. We have recognized that there is no specific percentage which must govern the division of assets, and we need not achieve an equitable property division with any mathematical exactness. In re Marriage of Stickle, 408 N.W.2d 778, 781 (Iowa App. 1987). The trial court was in a better position to evaluate the witnesses' credibility and the evidence introduced at trial. We therefore decline to disturb the trial court's valuation of the farm machinery and affirm the trial court's finding that the total value of farm assets was \$339,404. We have considered Maureen's remaining arguments regarding the valuation of the farm assets and find them to be without merit.

Maureen additionally argues that the trial court erred in finding that the joint marital debts amounted to \$245,425.03. Maureen argues that \$15,000 of that debt was acquired after the parties had separated and should therefore not be counted in making the final property division. We initially note that in her 179(b) motion, Maureen argued that the joint debts totaled \$237,009.59. Maureen now argues that the joint debts were now only \$225,066.62. Maureen was ordered to pay only \$150 of the entire joint debt, the remaining debt awarded to Ricky. We

believe that under the circumstances, the trial court was correct in its assessment of the parties' debt. Maureen has offered no evidence to justify her discrepancy in the marital debts she asserted in her 179(b) motion and on appeal. Maureen's evidence regarding the marital debt was presented to the trial court, and the trial court was within its province to determine the weight of the evidence. Iowa R. App. P. 14(f)(7).

Maureen next argues that the trial court erred in ruling that she pay for Steven's travel expenses from Iowa to Arkansas during Ricky's visitation. She argues that her financial condition will not enable her to afford this expense. We believe the holding in In re Marriage of Wahlert, 400 N.W.2d 557 (Iowa 1987), is applicable to the present case. In Wahlert, the mother, who had physical custody of the parties' minor child, moved from Iowa to Arizona. 400 N.W.2d at 559. The trial court had ruled in a modification action that the father pay the travel expenses during visitation. Id. at 561. On appeal, the father asserted that the move made his exercise of visitation rights less frequent and more expensive. Id. The Iowa Supreme Court agreed and ordered the mother to share in the travel expense. Id.

In the present case, we note that Maureen is unemployed. We also note, however, that Maureen was only thirty-one years of age at the time of trial. Maureen, while having only a high school education, most certainly

has earning capacity, as the trial court so found. We believe the trial court was correct in ruling that Maureen share equally in travel expenses.

Maureen next asserts that the trial court erred in failing to extend spousal support payments of \$150 per month from thirty-six months to sixty months. Alternatively, Maureen argues that she should be awarded a flat sum of \$400 per month and the income tax exemption for Steven. Maureen also requests that Ricky be ordered to provide health insurance.

Under Iowa law, payment of alimony is not an absolute right, but depends upon the circumstances of each particular case. In re Marriage of Dahl, 418 N.W.2d 358, 361 (Iowa App. 1987). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3) (1989). In re Marriage of Hayne, 334 N.W.2d 347, 350 (Iowa App. 1983). When determining the appropriateness of alimony, the court must consider (1) the earning capacity of each party, and (2) their present standards of living and ability to pay balanced against their relative needs. In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983). Rehabilitative alimony was conceived as a way of supporting an economically-dependent spouse through a limited period of time for re-education or training following a divorce as an incentive for that spouse to become self-supporting. In re Marriage of Frances, 442 N.W.2d 59, 63 (Iowa 1989). The

duration of such an award depends on the realistic needs of the economically-dependent spouse. Id. at 64.

In the present case, we find that Maureen is thirty-one years of age and in good health. Maureen did not have outside employment during the marriage. In order to become economically self-sufficient, Maureen will undoubtedly have to further her education. We therefore believe that rehabilitative alimony is proper in the present case. We also note, however, that Ricky is heavily burdened with debt on the farm and is in declining health due to his leg and knee injuries. The record reveals that Ricky's net income is only approximately \$1,100 per month. We believe that under the circumstances of the present case, considering the property division and alimony payments as a whole, the trial court was correct in ordering rehabilitative alimony payments for three years. See In re Marriage of Behn, 385 N.W.2d 540, 543 (Iowa 1986); In re Marriage of Butler, 346 N.W.2d 45, 46-47 (Iowa App. 1984).

Maureen also argues that Ricky should be required to maintain health insurance for Steven. Ricky maintains that he is already providing health insurance for Steven. We believe that Ricky should provide for Steven's health insurance until he reaches eighteen years of age, marries, or otherwise becomes emancipated, provided that if Steven is a full-time student in higher education, such insurance shall be maintained until the age of twenty-two.

Maureen lastly maintains the trial court's decision concerning support of Steven for post-high school education is premature. The trial court had ordered Ricky to pay Steven \$200 per month and Maureen to pay \$100 per month towards Steven's support. Maureen argues that Steven is only ten years old and it is too early to tell if Steven will attend college.

The Iowa Supreme Court recognized as permissible a similar support award in In re Marriage of Vrban, 293 N.W.2d 198 (Iowa 1980). In Vrban, the respondent father contended the part of the decree ordering him to pay child support for college education was premature since the children had not yet reached the age of eighteen as set forth in Iowa Code section 598.1(2). 293 N.W.2d at 202. The Vrban court rejected such an interpretation, holding that providing for support in the decree for college expenses even though the children had not satisfied the requirements of section 598.1(2) was permissible. Id. at 203. But see In re Marriage of Rohlfson, 398 N.W.2d 197 (Iowa App. 1987) (court holding that provision for college expenses was premature since oldest child was only nine years old). We believe that the provision providing for Steven's post-high school education and support is equitable under the circumstances. We note that the trial court has continuing authority to modify the child support order should either Ricky's or Maureen's ability to pay significantly change during this period of time. In re

Marriage of Pieper, 369 N.W.2d 439, 441 (Iowa 1985). We have considered all remaining issues presented by Maureen and find them to be without merit. Each party shall pay his/her attorney fees on appeal. Costs on appeal are assessed to appellant.

AFFIRMED AS MODIFIED.