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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-403 / 91-1732

IN RE THE MARRIAGE OF JEFFREY DONALD GRUBB AND JULIE ANN GRUBB

Upon the Petition of

JEFFREY DONALD GRUBB,

Appellee,

And Concerning

JULIE ANN GRUBB,

Appellant.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge.

The wife appeals the economic provisions of the district court's decision dissolving the parties' marriage. **AFFIRMED AS MODIFIED.**

Thomas D. Hanson of Hanson, Bjork & Russell, Des Moines, for appellant.

Thomas J. Levis and Mark R. Schuling of Brick, Gentry, Bowers, Swartz, Stoltze, Schuling & Levis, P.C., Des Moines, for appellee.

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

DONIELSON, P.J.

Jeffrey and Julie Grubb were married on September 25, 1988. Their marriage was of short duration; the parties separated on August 1, 1990. No children were born to the marriage.

Jeffrey was born on June 6, 1955. He is the sole officer and shareholder of Landmark Builders Corporation, a home building business in Des Moines. He has been involved in this business for many years. Jeffrey's income tax returns show he earned $95,000 in 1988, $90,000 in 1989, and $80,000 in 1990.

Julie was born on August 26, 1958. Prior to the marriage she was employed by Pepsi-Cola, where she earned about $12,000. In 1987, at Jeffrey's urging, Julie got her real estate license and became employed with Iowa Realty. Julie has sold residential real estate for Landmark and other home builders. She had income of $40,831 in 1988, $35,422 in 1989, and $54,754 in 1990.

Prior to the marriage the parties entered into an antenuptial agreement which provided that in the event of the dissolution of the marriage, each party would retain the property he or she brought to the marriage. However, if the fair market value of Landmark exceeded $400,000, the value in excess of $400,000 would be divided equally between the parties. Also, any property acquired after the marriage would be divided equally between the parties. The agreement specifically excluded the issue of alimony.

Jeffrey filed a petition for dissolution of marriage on February 19, 1991. The district court issued a decree of dissolution on October 8, 1991. The court found Julie left the marriage in substantially better financial condition than she entered it and denied her request for alimony. The court determined the antenuptial agreement was binding between the parties. The court found the fair market value of Landmark was $398,007, and thus, there was no value in excess of $400,000 to divide between the parties. Of the property not covered by the antenuptial agreement, Julie had property worth $25,000 in her possession and Jeffrey had property worth $6,500. Therefore, Julie was ordered to pay the parties' income tax debt of $17,000.

Julie has appealed.

I. Our review of this equitable action is de novo. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992). We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. Id.

II. Julie first contends the district court improperly valued Landmark. In particular, she claims the court's valuation of two custom home projects was not supported by the evidence. She claims the court undervalued these two construction projects by $89,884 and the value of Landmark should be increased by this amount.

Julie also contends the court undervalued two parcels of undeveloped land owned by Landmark. The court questioned the credibility of Julie's opinion concerning the value of the two parcels. Julie asks that the parcels be sold in order to determine their fair market value.

We find the district court properly used a percentage of completion method to value the two custom homes. We defer to the court's judgment that Jeffrey's opinion concerning the value of the two undeveloped parcels of land was more credible. In both of these instances, we find the value placed on the real estate by the trial court to be well within the permissible range of evidence, and we will not disturb it on appeal. See In re Marriage of Russell, 473 N.W.2d 244, 246 (Iowa App. 1991).

III. Julie claims the court did not equitably divide the property not covered by the dissolution decree. She states the parties had agreed she would pay no estimated income taxes for 1990 and that Jeffrey would pay any tax due. However, after the parties separated Jeffrey filed separately, and Julie was required to pay $17,000 in income taxes.

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 Sell, 451 N.W.2d 28, 31 (Iowa App. 1989). The court should base the division on the basis of what is equitable and just under all the

circumstances. In re Marriage of McNerney, 417 N.W.2d 205, 209 (Iowa 1987).

We agree with the district court's conclusion that the $17,000 income tax obligation should be considered a debt of the parties. However, we determine the debt should be divided equally between the parties. Therefore, we order Jeffrey to pay Julie $8,500 to represent his portion of the debt. We modify the dissolution decree to make this change.

IV. Finally, Julie contends she should have been awarded alimony. She points out that Jeffrey clearly has sufficient income to pay alimony. Julie asks for $1,000 per month for three years.

It is well settled that alimony is not an absolute right and must be determined based on the facts and circumstances of each case. In re Marriage of Brown, 487 N.W.2d 331, 334 (Iowa 1992). The determination of an amount of spousal support may take into account the property division. Id.

An award of alimony is not warranted under the facts of this case. The marriage was of short duration and Julie left the marriage in a better financial condition than she entered it. We affirm the district court's refusal to award spousal support in this case.

We have modified the dissolution decree to order Jeffrey to reimburse Julie $8,500 for one-half of the parties' income tax obligation. We affirm the district

court on all other issues. Costs of this appeal are assessed to Julie Grubb.

AFFIRMED AS MODIFIED.

Schlegel, J., concurs; Habhab, J., dissents.

HABEAB, J. (concurring in part and dissenting in part)

I concur in part and dissent in part. I concur with all of the findings of the majority except that part which requires Jeffrey to reimburse Julie $8,500 for one-half of the $17,000 income tax obligation. As to that, I would affirm the trial court.