IN THE COURT OF APPEALS OF IOWA

No. 7-083 / 96-430

IN RE THE MARRIAGE OF SUSAN DOOLITTLE LARSON AND BRUCE E. LARSON

FILED
APR 30 1997
CLERK SUPREME COURT

Upon the Petition of
SUSAN DOOLITTLE LARSON,
Appellee,

And Concerning
BRUCE E. LARSON,
Appellant.

Appeal from the Iowa District Court for Story County, William J. Patterson, Judge.

The respondent appeals various economic provisions of the parties' dissolution decree. **AFFIRMED.**

Loren A. Nalean of Nalean & Nalean, Boone, for appellant.

Margaret M. Rhodes of Payer, Hunziker & Oeth, Ames, for appellee.

Heard by Sackett, P.J., and Cady and Vogel, JJ.

VOGEL, J.

Bruce and Susan Larson were married on November 30, 1974. The parties have two children, Aaron, now an adult, and Tara, born in June 1981. Susan filed a petition for dissolution on May 10, 1995. Bruce appeals various economic provisions of the parties' dissolution decree. Susan requests an award of appellate attorney fees.

Scope of review. 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 district court especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7). Where the valuation of property is well within the permissible range of the evidence, we will not disturb the valuation. *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa App. 1984).

I. Rental income. Bruce contends the district court erred in finding he earned $1750 per month in income from the six-plex. He claims he earns only $900 per month, and that to the extent his child support obligation was based on this perceived income it should be lowered. We disagree. The district court properly considered Bruce's living in one of the rental units as offsetting the expenses of utilities, maintenance, depreciation, and tax he would incur had this been a home he owned. We affirm.

II. Treatment of truck. In dividing marital assets, we consider assets "accumulated through the joint efforts of the parties." *In re Marriage of Hass*, 538 N.W.2d 889, 892 (Iowa App. 1995). Assets are then equitably, not necessarily equally, divided under the circumstances after considering the criteria delineated in Iowa Code section 598.21(1) (1995).

A. Truck debt. Bruce next argues the district court erred in failing to treat the Chevrolet truck bought for Tara as marital property. The district court correctly characterized the truck as a marital asset to the extent of marital funds used to purchase the truck. The debt was correctly considered in the property settlement calculation. Bruce's assertion he should have supervisory capacity over the truck has not been preserved for review.

III. Valuation of six-plex. Bruce argues the district court incorrectly determined the value of the six-plex at $173,040 and contends its value is closer to $150,000. The valuation of property is well within the permissible range of the evidence and we will not disturb the valuation. *Griffin*, 356 N.W.2d at 608. We affirm on this issue.

IV. Attorney fees. Susan requests an award of appellate attorney fees. An award of attorney fees is not a matter of right, but rests within the trial court's discretion. *In re Marriage of Gilliam*, 525 N.W.2d 436, 439 (Iowa App. 1994). We are to consider the needs of a 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 Roberts*, 545 N.W.2d 340, 345 (Iowa App. 1996). As Susan was obligated to defend the trial court's decision on appeal, we find she is entitled to an award of appellate attorney fees of $1000.

We affirm the trial court's decision in its entirety. Costs on appeal assessed to Bruce.

AFFIRMED.