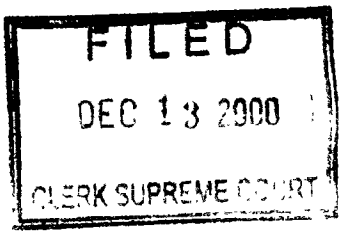
IN THE COURT OF APPEALS OF IOWA

No. 0-626 / 99-1970
Filed December 13, 2000



IN RE THE MARRIAGE OF SHERYL LEE HOYLE AND STEPHEN EUGENE HOYLE

Upon the Petition of
SHERYL LEE HOYLE,
Petitioner-Appellee/Cross-Appellant,

And Concerning
STEPHEN EUGENE HOYLE,
Respondent-Appellant/Cross Appellee.

Appeal from the Iowa District Court for Greene County County, Joel E. Swanson, Judge.

On appeal from the entry of parties' dissolution decree, Stephen argues the district court erred in valuing the premarital property and in omitting the value of farmland he owned prior to the marriage. **AFFIRMED AS MODIFIED.**

James R. Van Dyke of Van Dyke & Werden, P.C. Carroll, for appellant.

Vicki R. Copeland of Wilcox, Polking, Gerken, Schwarzkopf, Hoyt & Copeland, P.C., Jefferson, for appellee.

Considered by Streit, P.J., and Vogel and Miller, JJ.

STREIT, P.J.

Stephen and Sheryl Hoyle complain the decree dissolving their marriage is not "according to Hoyle" on over a dozen issues.[1] We affirm as modified.

I. Background.

Stephen and Sheryl Hoyle's nineteen-year marriage was dissolved in 1999. They have four children: Joshua (June 23, 1981), Adrian (May 12, 1983), Ashley (July 9, 1986), and Jordan (January 18, 1991). Joshua has reached the age of majority.

Stephen appeals the district court's dissolution decree and Sheryl cross-appeals. They both challenge the decree's various property and support provisions. We affirm as modified below.

II. The Merits.

In an equity action our review is de novo. *In re Marriage of Brauer*, 511 N.W.2d 645, 646 (Iowa App. 1993). We have a duty to examine the entire record and adjudicate anew the issues properly presented. *Id.* We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by those findings. *Id.*

A. Premarital Property.

Stephen and Sheryl both contest the district court's finding Stephen had $142,500 of premarital assets not subject to division: Stephen argues the

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[1] "According to Hoyle" is an idiom meaning "in keeping with established rules." *ML Literature and Language Arts: So to Speak*, *at* http://www.mcdougallittell.com/lit/sts/05/sts0511a.htm (last visited Nov. 7, 2000). Edmond Hoyle (1679-1769) of England, author of books of rules for card games, was so highly regarded numerous writers used his name on their own rule books, even for games that had not been invented by the time of his death, so that his name became synonymous with any rules. *Id.*

appropriate figure is $333,331 while Sheryl argues it is $50,000. The amount of property a party brings into a marriage is one of several factors to consider in making an equitable division of property. Iowa Code § 598.21(1)(b); *In re Marriage of Miller*, 552 N.W.2d 460, 465 (Iowa App. 1996). A court is not required to set aside such property, but may do so given the particular circumstances of a case. *Miller*, 552 N.W.2d at 465.

The circumstances of this case warrant setting aside $142,500 for Stephen. When the parties married in 1980 Stephen owned a twenty-five-percent interest in Hoyle Trucking, Inc., a fourteen-percent interest in Hoyle Farms, Inc., and an undivided twenty-five-percent interest in 400 acres of farmland. Despite Stephen's assertions to the contrary, the record—which contains a jumble of conflicting financial statements, purchase agreements, real estate contracts, tax returns, and the like—does not show, with any certainty, the true value of these assets at the time of the parties' marriage. Nor does the record show what happened to these assets throughout the parties' marriage. The record does show that by 1999 Stephen owned a sixty-six-percent interest in Hoyle Trucking and a five-eighths undivided interest in 160 acres of unencumbered farmland that together were worth roughly $593,300.[2] Stephen's premarital assets were the cornerstone of this wealth and, accordingly, he should be allowed to retain a portion of it. *See Miller*, 552 N.W.2d at 465. Sheryl, on the other hand, did not bring any assets to the parties' marriage, but her

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[2] The district court valued Stephen's interest in Hoyle Trucking at $373,333 and his hundred-acre interest in the land at $220,000. Stephen owned a forty-acre interest in the same land before the parties were married.

contributions as wife and mother for nineteen years cannot be overlooked. *See id.*; *see also* Iowa Code § 598.21(1)(c). Because it would be inequitable to set aside more than $142,500 for Stephen, we affirm the district court.

B. Value of Hoyle Trucking, Inc.

Stephen challenges the district court's valuation of Hoyle Trucking, Inc. He asserts his two-thirds interest in the corporation at the time of trial was worth $248,500. The court, relying heavily on Sheryl's figures, found Stephen's interest was worth $373,333. The record suggests Sheryl may not have allowed for depreciation of some of the corporation's assets. The record also suggests Stephen may have undervalued some of the assets and completely overlooked other assets. The court's valuation was within the permissible range of evidence; we affirm. *In re Marriage of Blume*, 473 N.W.2d 629, 634 (Iowa App. 1991).

C. Gift.

Stephen claims the district court should have set aside $20,000 in his favor for a gift his father gave to him in the 1970s. *See* Iowa Code § 598. 21(1). According to Stephen, he and his brothers each received a $20,000 gift. He testified he used his gift for the down payment on 160 acres of farmland he, his father, and his brothers purchased through a real estate contract in 1973. Stephen has not offered any evidence to support his claim other than his trial testimony and a copy of the real estate contract. We give weight to the district court's finding Stephen did not receive a $20,000 gift from his father and affirm the court.

D. Debts.

Stephen challenges the district court's handling of the parties' marital debts. He argues Sheryl should have been required to pay half of the debt the parties owed Stephen's grandfather. Stephen and Sheryl borrowed $12,000 from Stephen's grandfather in 1993 to pay for their home. The promissory note states the principal is "due upon demand." Nothing in the record suggests Stephen's grandfather ever demanded repayment. In fact, Sheryl testified Stephen's father requested the parties refrain from repaying the loan to avoid jeopardizing the benefits Stephen's grandfather was receiving while in a nursing home. Given these circumstances, Stephen and Sheryl may not have had to repay the loan at all had they remained married. It was not inequitable to make Stephen solely responsible for the debt.

Stephen also argues the district court should have ordered the parties to repay the debt purportedly owed Hoyle Trucking. As part of the property settlement in this case, the court ordered the parties to sell their home and divide the net proceeds equally. Stephen argues $21,375 of the proceeds should be paid to Hoyle Trucking before he and Sheryl split the net proceeds because the business paid that amount to add an office to the home. The parties do not dispute Hoyle Trucking paid for the office. However, nothing in the record shows the corporation—in which Stephen has a majority ownership interest—was to be reimbursed for funding the remodeling project. We affirm the district court.

E. Settlement Proceeds.

Sheryl claims the money she received for a personal injury settlement should not be subject to division. In 1992 Sheryl was injured in a car accident.

The parties applied $16,260 of her $26,490 settlement towards a down payment on a home in 1998. Sheryl also purchased a car valued at $6000 with the settlement proceeds; the district court included the car in her portion of the parties' property settlement. Accordingly, Sheryl argues she should receive $16,280 from the sale of the parties' home before the parties split the net sale proceeds and an additional $6000 in cash from Stephen for the car. Proceeds from personal injury settlements at issue in dissolution cases do not automatically belong to the injured party. *In re Marriage of Plasencia*, 541 N.W.2d 923, 926 (Iowa App. 1995). Rather, the settlement proceeds are divided according to the circumstances of each case. *Id.* Here, Sheryl was injured in the accident several years before the parties' marriage ended. While Sheryl's injuries undoubtedly impacted her more than Stephen during that time period, he also was negatively affected. Sheryl has not shown what percentage of the settlement represented compensation for the injuries, losses, and costs she alone incurred due to the accident.[3] Because Sheryl has not made this showing and because she is already receiving substantial amounts of money pursuant to the decree's property and support provisions, no additional money should be set aside for her. We affirm the district court.

F. Division of Farmland.

Sheryl asserts she should not be required to participate in a rental agreement with Stephen. As discussed above, Stephen owned an undivided

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[3] Sheryl testified Stephen and the parties' children received some of the settlement proceeds for their losses of consortium. She did not specify the amount they each received.

five-eighths interest in 160 acres of farmland at the end of the parties' marriage. The district court awarded Sheryl an undivided five-sixteenth interest in the land and ordered her to participate in Stephen's existing rental agreement. Forcing divorced spouses into a continuing business relationship can be a "recipe for disaster." *Cf. In re Marriage of Lundtvedt*, 484 N.W.2d 613, 615 (Iowa App. 1992). Here, the district court appears to have followed such a recipe. Stephen's existing rental agreement allegedly involves an oral, lifetime agreement with his father and his brother. Throwing Sheryl into this mix is undesirable. We modify the dissolution decree by awarding all of the parties' interest in the land to Stephen; Sheryl also shall no longer participate in Stephen's rental agreement.[4]

Stephen, in addition to the other amounts he owes Sheryl pursuant to the decree, shall pay Sheryl $110,000 for her interest in the land in annual installments of $22,000.[5] The first installment shall be paid on July 1, 2001, and the remaining installments shall be paid each July 1 thereafter until Sheryl is paid in full. Stephen may prepay his obligation to Sheryl. Interest of six percent per annum shall accrue from the date of procedendo. Sheryl shall have a lien against the land until Stephen satisfies his obligation to her.

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[4] Any rents accruing before the date of procedendo shall be governed by the district court's prior judgment.

[5] In requiring Stephen to pay Sheryl $110,000 for the land, we have not overlooked Stephen's claim that all of the land should be set aside to him as a premarital asset and gift. We addressed these contentions in divisions "A" and "C" above.

G. Alimony.

Sheryl claims the district court's award of $500 per month for thirty-six months is inadequate. She seeks support of $2000 per month for ten years. In marriages of long duration where the earning disparity between the parties is great, both alimony and nearly equal property division may be appropriate. *In re Marriage of Friedman*, 466 N.W.2d 689, 693 (Iowa 1991). Sheryl and Stephen were married for nineteen years; pursuant to the dissolution decree, their respective portions of their property settlement each totaled over $300,000. At the time of trial, Sheryl was unemployed. Her earning capacity is limited by her age, education, and the injuries she received in the car accident discussed above. She hopes to earn $18,500 per year as an officer manager after graduating from a community college in December of 2001. Stephen, on the other hand, is the majority shareholder in what appears to be a successful trucking company. The corporation pays him an annual salary and pays for most of his living expenses.[6] He also receives $12,000 in annual rent for leasing his farmland. The district court conservatively estimated his annual income was $61,000. Given the earning disparity between the parties—which has been increased by our orders regarding Sheryl's participation in Stephen's rental agreement—Sheryl's alimony award should be increased. We modify the dissolution decree to increase the award to $800 per month for thirty-six months, effective when the decree was filed.

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[6] During the parties' marriage, the corporation paid for such things as the Hoyle family's medical insurance, uncovered healthcare expenses, car insurance, utility bills, cable bills, credit card bills, vacations, newspaper subscriptions, and golf course memberships. This list is not exhaustive.

H. Child Support.

Sheryl claims the district court's child support award is also inadequate. The court ordered Stephen pay $1047 of child support per month for the parties' three youngest children. Sheryl asserts Stephen should be ordered to pay $2000 per month. "To arrive at an appropriate child support award, the court must determine the net monthly incomes of the custodial and noncustodial parents and then apply the guideline chart consistent with the number of children of the parties living in the custodial home." *Nielsen v. Nielsen*, 521 N.W.2d 735, 737 (Iowa 1994). Here, the district court found Sheryl had a gross annual income of $19,525 ($13,525 imputed minimum wage income and $6000 of rental income) and Stephen had a gross annual income of $61,000 ($25,000 salary from Hoyle Trucking, $6000 of rental income, and $30,000 in benefits from Hoyle Trucking). Sheryl argues Stephen's annual income during the last few years of the parties' marriage was at least $125,000 given the benefits the Hoyles received from Hoyle Trucking every year. The record does not clearly show the value of the wide array of personal expenses paid for by Hoyle Trucking while Sheryl and Stephen were married. Nor does it show what expenses Hoyle Trucking will cover for Stephen now that Sheryl and the children no longer live with him. We give weight to the district court's finding that Stephen receives $30,000 in benefits from Hoyle Trucking per year.

The value of Stephen's benefits, however, should not be added to Stephen's gross income before applying the child support percentages. *See In re Marriage of Huisman*, 532 N.W.2d 157, 159 (Iowa App. 1995) ("[T]he definition of net monthly income does not encompass adding employment benefits to other

income prior to applying the guideline percentages."); *but cf. In re Marriage of Titterington*, 488 N.W.2d 176, 178-79 (Iowa App. 1992). Although nonsalary employment benefits are not considered income for child support purposes, they may justify an upward deviation in child support. *Huisman*, 532 N.W.2d at 159. A deviation is appropriate in this case. For child support purposes, the district court imputed a gross annual income of $13,525 to Sheryl. Her earning capacity is not much greater than this figure and, given our orders here, she no longer will receive $6000 of annual rental income. Sheryl estimates she her children have monthly living expenses of over $5000.[7] Stephen, on the other hand, is paid $25,000 per year by Hoyle Trucking and receives an estimated $30,000 per year in benefits from the corporation.[8] He will also now receive $12,000 per year of rental income. Accordingly, Stephen's child support obligation is increased to $1200 per month for his three minor children, commencing on the date of procedendo. When he must only support two children pursuant to the dissolution decree, his monthly obligation shall decrease to $1000; when he must support only one child, it shall decrease to $700.

J. Healthcare.

Stephen and Sheryl both contest the dissolution decree's provisions regarding health insurance and uncovered healthcare expenses. Stephen argues he should not be required to maintain health insurance for the parties'

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[7] We recognize a family of four will incur substantial living expenses, but we are not convinced Sheryl's estimate of over $5000 of monthly expenses is reasonable or realistic.

[8] We recognize the advantage Stephen receives from these benefits is tempered by the fact he owns sixty-six percent of Hoyle Trucking.

children and pay all of their uncovered medical, dental, optometric, and orthodontia expenses. He asserts Sheryl should pay half of the uncovered expenses. Sheryl counters Stephen should also be required to maintain health insurance on her for thirty-six months.

Given the circumstances of this case, the decree should not be modified. Requiring Stephen to pay for the children's insurance and uncovered expenses is a significant burden. This approach, however, provides Stephen with greater flexibility in choosing an appropriate insurance plan. It also prevents future bickering over the division of uncovered expenses. Sheryl's claim that Stephen should provide insurance for her for thirty-six months also has merit. Sheryl has health problems that may make finding adequate insurance more difficult and expensive. But, given Stephen is already responsible for all of his children's healthcare costs and $800 of alimony per month, requiring him to pay for Sheryl's insurance would be inequitable. We affirm the district court.

K. Income Tax Exemptions.

Sheryl claims the district court should not have awarded Stephen the income tax exemptions for all three of the parties' dependent children. Because Sheryl bears the day-to-day responsibility for these children and much of their financial support, she should also be able to benefit from the available income tax exemptions. Accordingly, we modify the dissolution decree to allow Sheryl to declare Ashley as an income tax exemption for federal and state income tax purposes.

L. Attorney Fees and Costs.

Sheryl requests Stephen be ordered to pay her attorney fees and costs of $8898.26. An award of attorney fees rests within our discretion. *In re Marriage of Elbert*, 492 N.W.2d 733, 736 (Iowa App. 1992). We are to consider the needs of the 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 Miller*, 524 N.W.2d 442, 445 (Iowa App. 1994). Given the terms of the dissolution decree, Sheryl has the ability to pay for her own attorney fees. Moreover, while Stephen initially appealed the decree, Sheryl filed a cross-appeal shortly thereafter in which she raised nine additional issues. We deny Sheryl's request for attorney fees and costs.

Stephen requests Sheryl be ordered to pay half of the cost of the appendix. We deny Stephen's request and tax all costs to him.

III. Conclusion.

We affirm the dissolution decree as modified: Stephen shall pay Sheryl $110,000 for her five-sixteenths interest in the 160 acres of farmland, and Sheryl shall not participate in the future in the rental agreement involving that land. Stephen shall pay Sheryl alimony of $800 per month for thirty-six months. He shall also pay child support of $1200 per month for the parties' three minor children. Finally, Sheryl shall be allowed to declare Ashley as an income tax exemption. We affirm the district court on all of the parties' other claims.

AFFIRMED AS MODIFIED.