IN THE COURT OF APPEALS OF IOWA

No. 8-645 / 98-39

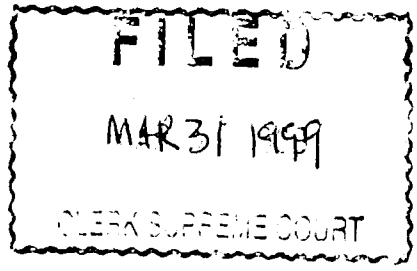
IN RE THE MARRIAGE OF CHARLES D. BOYD AND SANDRA JO BOYD

Upon the Petition of
CHARLES D. BOYD,

Appellee,

And Concerning
SANDRA JO BOYD,

Appellant.



Appeal from the Iowa District Court for Cerro Gordo County, John S. Mackey, Judge.

Sandra Jo Boyd appeals various economic provisions of the parties' dissolution decree. **AFFIRMED.**

Rolf V. Aronsen, Mason City, for appellant.

J. Mathew Anderson of Laird, Heiny, McManigal, Winga, Duffy & Stambaugh, P.L.C., Mason City, for appellee.

Considered by Huitink, P.J., and Vogel, and Zimmer, JJ.

ZIMMER, J.

Sandra Boyd appeals from the economic provisions of the district court's dissolution decree. We affirm.

Sandra and Charles were married on June 21, 1975. They have two children. At the time of trial, their son Andrew was a sophomore in college and their son Coty was a sophomore in high school. During the entire course of the parties' marriage, Charles was self-employed as a cattle broker. Charles, who financed his business through Norwest Bank, bought livestock at auctions and resold livestock to packing houses. Sandra participated in the business on a limited basis. She did some bookkeeping, handled bank deposits and assisted with insurance matters.

The parties separated in December 1996 and Charles filed a petition for dissolution of marriage. In August 1997, Norwest Bank filed an action against Sandra and Charles to recover $40,102.23 owed on its financing of the business. In October, a judgment upon confession was entered against Charles for the amount claimed. The district court entered a dissolution decree in December 1997. The trial court concluded the Norwest Bank debt was a joint business debt, and apportioned the debt equally between the parties. Sandra was ordered to pay Charles child support of $239.00 per month for the support of Coty and Charles was ordered to pay Sandra the sum of $400.00 per month as rehabilitative alimony for a period of thirty-six months.

The sole issue presented for review by Sandra is whether the trial court erred in requiring both she and Charles to be responsible for the debt owed to Norwest Bank.

I. Scope of Review. Appeal of economic provisions of a divorce decree are reviewed de novo. *See In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). "We are obliged to examine the entire record and adjudicate rights anew on the issues properly presented." *In re Marriage of Geil*, 509 N.W.2d 738, 740 (Iowa 1993). In our review we are not bound by the findings of the trial court, but give those findings some weight, especially as to the credibility of witnesses. *See* Iowa R. App. P. 14(f)(7).

II. Distribution of the Norwest Debt. Upon careful review of the record, we conclude Sandra should be apportioned one half of the approximately $40,000 debt owed Norwest Bank. Sandra participated in the financial operations of the livestock company. Furthermore, she knowingly and willingly participated in fraudulent activities which generated debt in the business account and she personally enjoyed the fruits of this fraud. Specifically, during 1995 and 1996, Charles wrote checks to fictitious individuals against the parties' joint business account, which were then cashed by Charles and Sandra and used for personal family expenses, including the purchase of household furniture, country club memberships, and vacations to Las Vegas and Arizona. Evidence was presented at trial that both parties also under-reported income for tax purposes.

We further find there is insufficient evidence to sustain Sandra's claim at least part, if not all, of the $40,000 debt was created by Charles' waste of such assets after the parties separated. Inapplicable, therefore, are those cases that have considered, in making an equitable distribution of property, conduct of a spouse resulting in the loss

or disposal of property otherwise subject to division at the time of divorce. *See, e.g., In re Marriage of Burgess*, 568 N.W.2d 827, 828 (Iowa App. 1997); *In re Marriage of Williams*, 421 N.W.2d 160, 164–65 (Iowa App. 1988). Nor are we convinced Sandra was unaware her and Charles' activities were creating debt in the account. *See In re Marriage of Burgess*, 568 N.W.2d at 828.

Costs on appeal are assessed to Sandra. Pursuant to the district court's order entered February 6, 1998, we order all interest accrued on the indebtedness owing to Norwest Bank since notice of appeal to be paid from the supersedeas bond filed by Sandra with the Clerk of Court.

AFFIRMED.