IN THE COURT OF APPEALS OF IOWA

No. 0-179 / 99-1134
Filed August 16, 2000

IN RE MARRIAGE OF DIANE LEONA SPLENDORE AND JOHN ANTHONY SPLENDORE

Upon the Petition of
DIANE LEONA SPLENDORE,
Petitioner-Appellee,

And Concerning
JOHN ANTHONY SPLENDORE,
Respondent-Appellant.

FILED
AUG 16 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Dallas County, Dale B. Hagen, Judge.

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

Randy V. Hefner of Van Werden & Hefner, Adel, for appellant.

Dorothy L. Dakin of Dakin Law Office, Boone, for appellee.

Considered by Zimmer, P.J., and Vaitheswaran, J., and Hayden, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (1999).

HAYDEN, S.J.

The respondent-appellant, John Splendore, appeals economic provisions of the parties' dissolution decree. He contends the district court (1) over valued an egg operation situated on five acres of land by $35,000, (2) over valued the farm machinery, (3) erred in awarding Diane Splendore rehabilitative alimony, and (4) it was an abuse of discretion for the district court to award Diane $4,000 trial attorney fees to be paid by John.

The parties were married in June 1982. Sons, Paul was born July 16, 1981, and Daniel was born August 16, 1983. Diane was awarded custody of Paul and John was ordered to pay $323.00 per month child support. John was awarded custody of Daniel and Diane was ordered to pay $278.00 per month for child support. These matters are not involved in this appeal.

At the time of trial, John was forty-three years old and Diane was forty-eight years old. Both parties are in good health and are high school graduates. This is the third marriage for Diane and the first marriage for John. John has no other children. Diane has one daughter born of her first marriage. This daughter does not reside with Diane. Two children were born of Diane's second marriage. Her former husband has custody of these two children. Diane has visitation and has the children three months during the summer.

When the parties were married John's net worth was $83,000. His assets included real estate. The parties still owned this real estate at the time of trial. Diane owned an automobile and household property at the time of marriage.

At the time of trial John's farming operation consisted of farming 350 acres of row crops and some hogs. In addition, he was employed by Hy-Line

International as a truck driver. He worked for Hy-Line between thirty-six to forty-four hours per week. He earned $23,372 in 1998. John has held other employment through out the marriage. Diane now lives in a rented home in Perry, Iowa and works part-time for the Elks Club in Perry. She earns about $300 per month there. She operates a carpet cleaning business and earns about $800 per month from that endeavor. Diane has always worked for minimum wage.

In 1991, the parties bought a carpet cleaning business for $10,000 which consisted of a cleaning machine and clientele customer list.

On February 1994, the parties purchased five acres of land for $50,000 on contract from John's parents. At the time of trial they still owed in excess of $36,000 on this property. It has a large four bedroom home in good condition and it became the homestead of the parties. Both parties agree they got a very good deal on this property.

In 1996 and 1997 the parties built a Hy-line chicken layer building at a cost of $231,774 and bought equipment for the building at a cost of $100,000. The total cost of this facility was $331,774. This five-acre property also contains a farrowing house, barn with a shop, and grain bins.

The parties listed this property at $335,000 on October 30, 1997 with the Farm Credit Services. As of April 14, 1999, there remained $223,667 owed to Farm Credit Services for the construction of this facility.

At trial, John listed this property at $300,000. Diane valued this property at $320,000. The trial court determined the value of the building and the equipment to be $335,000.

Diane valued the parties' farm machinery and equipment including hand tools at the time of trial to be $80,000. John valued the farm machinery and equipment at $52,000 and the hand tools at $750.

The trial court assigned a value of the farm machinery, equipment and tools at $70,335. This was taken from an October 1997, balance sheet which was signed by both parties.

During the course of this marriage, Diane worked side-by-side with John on the farm doing the farm work as well as the household work. After the parties got the layer operation going Diane worked with that. She also handled the carpet cleaning business.

Since Diane left the farm and moved to Perry, John has had to hire another person to work and care for the chicken-egg laying business.

The court granted the parties a dissolution of marriage. We list only the items of the court's decree of which the parties are in dispute.

Under the decree John was ordered to assume the following debts or pay the following amounts:

DEBTS	PRINCIPAL AMOUNT OF DEBT.
Michael Splendore	$ 10,000.00
Real Estate Contract owed Henry And Alice Splendore	$ 36.076.63
Federal Land Bank	$223,667.00
PCA	$ 13,564.00
Commodity Credit Corp.	$ 45,000.00
Property Division Award	$ 89,892.50
Diane's Attorney Fees	$ 4,000.00
Rehabilitative Alimony	$ 14,400.00
TOTAL:	$436,013.00

In effecting a division of property and debt the trial court credited John with the real estate which he brought into the marriage and then attempted to divide

equally the remaining marital property. The trial court awarded John the real estate, including the chicken facility and the farm machinery and equipment. The court awarded Diane the carpet cleaning business valued by the court at $7,500 and a judgment against John in the amount of $89,892.50. Diane was also awarded $300 per month for four years as rehabilitative alimony and $4,000 attorney fees. John was ordered to pay the operating note on the Hy-line chicken facility. The monetary property division award in the sum of $89,892.50 to Diane was to be paid in monthly increments of $400 on or before the first day of each month commencing June 1, 1999, until December 1, 2004 when all of the remaining balance shall be paid in full. Interest was to be eight percent per annum.

On appeal, John challenges the monetary property division award, the award of rehabilitative alimony, and the award of attorney fees.

We affirm as modified.

We review dissolutions of marriage de novo. Iowa R. App. P. 4; *In re Marriage of Burgess*, 568 N.W.2d 827, 828 (Iowa App. 1997).

I. Property Division Award

Parties in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Gonzalez*, 561 N.W.2d 94, 98 (Iowa App. 1997). Iowa courts do not require an equal division or percentage distribution. *Id.* The determining factor is what is fair and equitable in each circumstance. *Id.* Distribution of property should be made in consideration of the criteria in Iowa code section 598.21(1); *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983).

Property which a party brings into the marriage is a factor to consider in making an equitable division. Iowa Code section 598.21(1)(b). A premarital asset is not necessarily set aside like gifted property and inherited property. *In re Marriage of Miller,* 552 N.W.2d 460, 465 (Iowa App. 1996). Instead, it is a factor to consider together with all the other circumstances, in making an overall division. *Id.* Its impact on distribution will vary with the particular circumstance of each case. *Id.* In considering accumulations to premarital assets, we do not limit our focus to the parties direct contributions to the increase. *Id.* Instead, we broadly consider the contributions of each party to the marriage, as well as all other factors. *Id.* We take into consideration the contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services. Iowa Code § 598.21(1)(c) (1997).

In equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the trial court, but is not bound by them. Iowa R. App. P. 14(f)(7); *In re Marriage of Vrban,* 359 N.W.2d 420, 427 (Iowa 1984). The court on appeal should review the evidence of the value of marital property de novo and adjudicate the rights of the parties anew. *In re Marriage of Hoak,* 364 N.W.2d 185, 192-193 (Iowa 1985).

In determining property division, it is the value of property at the time of dissolution. *In re Marriage of McLaughlin, 526* N.W.2d 342, 345 (Iowa App. 1994).

John, on appeal, claims the trial court erred in placing a value of $335,000 to the five acre tract upon which the parties had built a chicken and egg producing facility.

Diane listed this property at $320,000, in her financial affidavit May 3, 1999, one day before trial. She also testified at trial the value of this property was $320,000. John, in his financial affidavit filed before trial, placed the sum of $300,000 on this property. He also testified at trial this was its value.

On the parties' tax returns John had claimed a useful life for the building of ten years. He claimed a useful life of seven years for the equipment in the building. He took accelerated depreciation on these items for tax purposes. The trial court's valuation of $335,000 of this chicken-egg laying facility and the land upon which it was situated was taken from a valuation in a financial statement dated October 30, 1997, some eighteen months before the date of this trial. Diane wants the value high, John wants the value low. We determine the trial court did not determine the value of this chicken-egg facility at time of trial but rather used the value shown on the balance sheet of October 1997. We determine the value of this property to be $315,000.

At trial, Diane valued the farm machinery and equipment at $66,960. This did not include the hand tools. John listed the machinery, equipment and hand tools on his financial affidavit at $52,750. The trial court valued the farm machinery and equipment at $70,355. We fail to find any evidence or testimony at the trial it was worth this amount. We determine the farm machinery, equipment, and hand tools had a value of $65,355 at the time of trial. *See In re Marriage of Fall,* 593 N.W.2d 164, 168 (Iowa App. 1999).

We determine the monetary property division award to Diane is $77,392.50. This is computed as follows: $20,000 adjustment on the chicken-egg laying facility and $5,000 adjustment on the farm machinery, equipment and

hand tools. This adjustment reflects an over-valuation by the trial court. The total amount is $25,000 and half of that is $12,500. The record shows this property was acquired during the marriage of the parties and should be divided fairly and equitably between them. The decree is modified accordingly.

II. Award of Alimony

John argues Diane, was not entitled to rehabilitative alimony in the amount of $300 per month for four years.

Alimony is not an absolute right, but instead depends upon the particular circumstances of each case. *In re Marriage Debler,* 459 N.W.2d 267, 269 (Iowa 1990). Property division and alimony are to be considered together in determining the sufficiency of an alimony award. *Id.*

The criteria to be considered by the courts in making an award of alimony are set forth in Iowa Code section 598.21(3) (1997). This criteria includes, but is not limited to the following: length of the marriage, age and physical and emotional health of the parties, distribution of the property made to the parties, the educational level of each party at the time of marriage and at the time the action is commenced. Iowa Code § 598.21(3).

Also this section directs the court to consider the earning capacity of the party seeking maintenance, including educational background, training, and employment skills, work experience, length of absence from the job market, the responsibilities for children under either an award of custody or physical care and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment. *See In re Marriage of Geil,* 509 N.W.2d 738, 742 (Iowa 1993) (emphasis ours). Also the feasibility of the party

seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and the length of time necessary to achieve this goal. *Id.*

An award of alimony is proper when the marriage is of long duration and where the disparity in earning capacity is great. *Id.*

The trial court found Diane to have a gross annual income of $18,160. This included the alimony award of $3,600 per year. Without the alimony her income would be $15,560 per year. John had a gross annual income of $27,070 before the alimony deduction.

John argues, since he was ordered to pay in excess of $425,000 of the marital debt there is not sufficient income to service that debt, pay child support, make payments upon the property division award and pay alimony.

We note this has been a seventeen year marriage and Diane has been out of the job market for seventeen years. She has always worked for minimum wage and is now working for minimum wage.

Each of the parties were awarded physical custody of one of the two children. John was ordered to pay $323 per month to Diane for child support of Paul. Diane was ordered to pay John $278 per month child support for Daniel. John's child support payments are $45.00 per month more than Diane's.

The debts John was ordered to pay are mostly tax deductible expenses of the farming and chicken-egg operations. These debts were deducted in computing John's gross annual income.

John also argues there was no evidence to indicate Diane planned on furthering her education or job training to support an award of rehabilitative alimony.

The Iowa Supreme Court has ruled a spouse was entitled to an award of rehabilitative alimony where the economically dependant spouse was out of the job market for the duration of the parties marriage and may need further training. *In re Marriage of Bevers*, 326 N.W.2d 896, 900 (Iowa 1982). *See* also *In re Marriage of Clark*, 577 N.W.2d 662, 665 (Iowa App. 1998). In *Clark*, there was no indication the spouse had plans or desire to pursue further education or job training. *Clark*, 577 N.W.2d at 665.

We affirm the trial court on this issue.

III. Award of 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 Crotty*, 584 N.W.2d 714, 719 (Iowa App. 1998). The court on appeal reviews for abuse of the trial court's discretion. *Id.*

The record shows Diane earns approximately $800 per month from the carpet cleaning business and approximately $300 per month working part-time at the Elks Club. She was awarded rehabilitative alimony of $300 per month for four years and $323 per month child support from John for the minor child, Paul. Also, she is to receive $400 per month from John as part of property division.

In addition to the $278 per month child support for the parties' minor child Daniel, her monthly expenses are approximately $1,950.

Diane will not have enough income to meet her monthly expenses. She does not have the financial ability to pay her trial attorney fees. See *In re Marriage of Miller*, 552 N.W.2d 460, 465 (Iowa App. 1996).

Although the sum of $4,000 appears to be on the "high side" we hold the trial court did not abuse its discretion in making this award.

IV. Diane Requests Attorney Fees on Appeal

Factors to be considered in making a determination as to whether attorney fees should be awarded on appeal are 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. *Marriage of Miller*, 552 N.W.2d at 465.

We order John pay to Diane the sum of $800 to apply upon her appellate attorney fees.

We have reviewed the record, relevant testimony of the parties, witnesses and exhibits. Except for our modification of the monetary property division, the trial court's decree is affirmed.

Costs on appeal are taxed to John.

AFFIRMED AS MODIFIED.