IN THE COURT OF APPEALS OF IOWA

No. 5-649 / 94-1345

IN RE THE MARRIAGE OF SHEILA ESTALLA BALLSTAEDT AND DAVID J. BALLSTAEDT, JR.

Upon the Petition of
SHEILA ESTELLA BALLSTAEDT,

Appellee/Cross-Appellant,

And Concerning
DAVID J. BALLSTAEDT, JR.,

Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Linn County, Lynne E. Brady and Larry J. Conmey, Judges.

Appeal and cross-appeal from economic provisions of dissolution decree and ruling on contempt application. **AFFIRMED.**

Joseph C. Johnston of Johnston, Potterfield & Nathanson, P.C., Cedar Rapids, for appellant.

Benjamin W. Blackstock and Jon C. Tack of the Blackstock Law Offices, Cedar Rapids, for appellee.

Heard by Sackett, P.J., Habhab, J., and Schlegel, S.J.*

*Senior judge from the Iowa Court of Appeals serving by order of the Iowa Supreme Court.

SCHLEGEL, S.J.

This case involves an appeal and cross-appeal from the economic provisions of a dissolution decree and a ruling upon an application for a finding of contempt. The parties raise nine issues. Upon our de novo review, Iowa Rule of Appellate Procedure 4, we affirm with respect to all of the issues.

Sheila and David Ballstaedt Jr., (Dave) were married on June 12, 1965. Following twenty-nine years of marriage a decree of dissolution was filed on June 28, 1994. The parties have twelve children, six of whom were minors at the time the dissolution decree was entered. Two of the children are special needs children.

The Ballstaedts owned several businesses and real estate. Following five days of trial, the trial court entered a decree in which a nearly equal value of property was awarded to each party. After valuing the parties' businesses, real estate, and homestead, the court awarded $452,006 in property to Sheila and $477,945 to Dave. To equalize the division the court ordered Dave to provide Sheila with a mini-van worth approximately $20,000 in value within ten days of entry of the decree.

The parties had agreed the primary care of the six minor children would be placed with Sheila. David was ordered to pay $3,000 per month in child support. His child support obligation was to be recalculated when only three children remained eligible for child support. Dave was ordered to pay Sheila $2,000 a month in alimony until she reached the age of sixty-five or died. Two antique cars were directed to be sold and the proceeds placed in trust for use in paying for the children's college educations. Dave and Sheila both appeal from the dissolution decree, and Sheila appeals from the trial court's ruling on her application for a finding of contempt.

I. AWARD OF $20,000 VEHICLE TO SHEILA.

Due to the difference in the value of the property awarded to the parties, the trial court ordered Dave to provide Sheila a $20,000 minivan to offset the difference. While Dave does not agree with the values the trial court assigned to the parties' property, he argues that if those values are used he should only have to pay Sheila $12,970 -- one-half of the $25,939 difference in the property awards. Dave contends requiring him to provide a $20,000 minivan would reduce his property award and result in Sheila receiving a greater award than he received.

We find the trial court's decision was equitable. Dave was a car dealer who had access to numerous vehicles at less than retail price. Ordering him to provide Sheila with a vehicle valued at approximately $20,000 does not necessarily result in a $20,000 reduction in the value of the property awarded to him. Furthermore, in ruling on Dave's rule 179(b) motion, the court ordered Sheila to return any dealership vehicle she had in her possession when Dave delivered the new minivan to her. This order would reduce the amount of the total offset made by Dave in equalizing the property awards.

II. ANTIQUE AUTOMOBILES/VALUE OF DEALERSHIP.

The parties owned two antique automobiles which the trial court awarded to Sheila. Dave argues the antique vehicles were part of the inventory of Dave Ballstaedt Ford, Inc., an asset which the trial court awarded to him. He asserts awarding the vehicles to Sheila resulted in a $35,000 reduction in the value of the assets he received. Dave asserts the vehicles should have been awarded to him since they were part of the dealership.

Contrary to Dave's argument in his brief, the antique vehicles were assets of the marriage regardless of whether they were owned by the Ballstaedts personally or by their corporation. In its decree the trial court separately addressed the disposition of the Ford dealership and the antique vehicles, and it clearly intended for Dave to receive the dealership and the antique cars to be sold and their proceeds placed in trust.

Even it if should appear the value of the cars was included in the trial court's valuation of the dealership, we do not find the outcome to be inequitable. Dave had the greater earning capacity and ability to pay for his children's college educations, and committing some of his assets to a trust to accomplish that purpose is not inequitable. Furthermore, additional evidence, such as the offer Dave received to sell the dealership, suggests it could be worth more than the $241,696 valuation applied to it by the trial court. Given these circumstances, we reject Dave's arguments regarding the valuation of the dealership and the value of the property awarded to him.

III. VALUE OF DYERSVILLE BUILDING.

Sheila was awarded commercial real estate which the parties owned in Dyersville, Iowa. The trial court found the property had a value of $250,000. This valuation was consistent with a March 5, 1993, appraisal prepared for Dave. On appeal Dave argues he spent $27,000 to blacktop the property after the preparation of the appraisal but prior to completion of the dissolution trial. Dave contends the value of the blacktop should have been added to the appraised value in arriving at an equitable division of the assets.

A review of the record reveals some evidence was offered about Dave's expenditure to blacktop the Dyersville property. However, there is no evidence to indicate the blacktop work increased the actual value of the property or by what amount it could have increased the value. It would be speculative to assume the value of the property would have increased by the exact amount of the cost of this maintenance measure. It was equitable for the trial court to rely on the appraised value in determining the value of the Dyersville property.

IV. VALUE OF HOMESTEAD.

Dave contends the trial court used an inequitably low figure, $350,000, in setting the value of the homestead awarded to Sheila. He contends the property was appraised at $450,000. However, the $450,000 appraisal was based upon the assumption repairs would be made and refurbishing would be done to the home. The appraiser testified the actual value of the home without the repairs could be $50,000 to $100,000 less. No detailed evidence was offered at trial regarding the cost and quality of any repairs made to the home after the appraisal was completed. The assessed value of the home is $345,066. Given the evidence offered at trial, the value placed on the homestead by the trial court was within the permissible range of evidence.

V. ALIMONY.

The trial court awarded Sheila alimony in the amount of $2,000 per month until she reaches the age of 65 or dies. Dave argues alimony is not appropriate given the fact Sheila was awarded the Dyersville property which produces a monthly rental income of $4,000 per month. However, the Dyersville property was encumbered by a $48,815 mortgage. All of the rental income from this property will not be disposable income as some will have to be applied toward principal and interest payments.

Alimony is a stipend to a spouse in lieu of the other spouse's legal obligation for support. *In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa App. 1995). Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *Id.* We consider property division and alimony together in evaluating their individual sufficiency. *Id.*

At the time of the dissolution trial, Sheila was forty-eight and Dave forty-nine years of age. The parties had been married twenty-nine years. During the marriage Sheila had a total of twenty-one pregnancies and the parties had twelve children. Sheila did not work outside of the home and served as the primary caretaker for the children. Late in the marriage Sheila obtained a nursing degree. However, health problems and the needs of her six minor children, especially the two special needs children, prevent her from obtaining outside employment. Sheila's earning capacity is not anywhere comparable to Dave's.

Dave was awarded the family's three businesses, Dave Ballstaedt Ford Inc., of Mount Vernon Iowa, Mount Vernon Motor Coach and Lisbon Econo Cars. Dave's December 31, 1992, statement of assets and liabilities showed he had a net worth of $2,250,340. The trial court found Dave had a net monthly income of

$9,958.33 per month. This figure appears to be based on calculations made from the parties' 1993 tax return in which they reported interest and rental payments to them from the dealership excess of $119,500.

Dave argues an award of alimony was not equitable in this situation. We disagree. Determining the income of a self-employed person is not easy. The trial court was faced with a complicated financial scenario and it extracted from it a logical estimate of Dave's income. An award of $2,000 a month in alimony was within Dave's means to pay and was reasonable given Sheila's inability to work full-time. We affirm the trial court's alimony award.

VI. CHILD SUPPORT.

Dave contends he should pay $1,600 rather than $3,000 per month in child support. As noted above, the trial court concluded Dave had a net monthly income of $9,958.33 per month. At this level, the award of child support rests within the trial court's discretion. *See In re Marriage of Krone*, 530 N.W.2d 468, 471 (Iowa App. 1995) (child support award within court's discretion where noncustodial parent's net monthly income exceeds $3,001).

Sheila is responsible for the care of six minor children, two of whom have special needs. She is not able to work on a full-time basis and had no source of outside income at the time of trial. Her income from the Dyersville property will have to be used, in part, to pay the mortgage and interest payments on the property. "[A]n award of child support need not be limited to that which is necessary to meet the actual current needs of a child, but may reflect the standard of living the child would have enjoyed but for the dissolution." *Id.* Given Dave's level of net monthly income, the needs of six minor children, and the parties' prior standard of living, we affirm the award of $3,000 a month in child support.

VII. COLLEGE TRUST FUND.

As noted above, the parties owned two antique automobiles. The trial court awarded these vehicles to Sheila with the direction she sell them for the highest price possible. The proceeds were to be placed in a trust account and used for the children's college expenses. Dave argues the court exceeded its jurisdiction in directing this disposition of the vehicles.

A court may order a parent to provide support for a child pursuing a post-high school education. *See* Iowa Code § 598.1(6) (1993). The Iowa Code provides a court "may protect and promote the best interests of a minor child by setting side a portion of the child support which either party is ordered to pay in a separate, fund or conservatorship for the support, education and welfare of the child." Iowa Code § 598.21(5)(1993). In *In re Marriage of Antisdel*, 478 N.W.2d 864, 867 (Iowa App. 1991), this court affirmed a court order directing the sale of marital property and the placement of the proceeds in a child support trust for use in paying the children's higher education expenses. Of importance in *Antisdel* was the father's history of failing to pay child support and his almost total absence of help in paying part of the children's higher education costs. *See id.*

At trial Dave expressed his firm belief he should not provide support for his children to obtain a college education. He believes his children should provide themselves with their own opportunities. A review of the record reveals Dave was delinquent in paying court-ordered support before and after entry of the dissolution decree. Given his opposition to funding his children's college educations, it is unlikely he would have willingly paid such support had the decree ordered him to do so. We find it was equitable and within the court's authority to direct the sale of these assets and the placement of the proceeds in a trust account for use for the children's college educations.[1]

[1] In his reply brief Dave suggests the trial court acted beyond its authority in directing that the proceeds in the college trust account be used only for expenses not already addressed in ¶ 4 of the decree (dealing with post-high school educational expenses). Arguments may not be raised for the first time in a reply brief, *Young v. Gregg*, 480 N.W.2d 75, 78 (Iowa 1992), and we decline to address whether these provisions of the dissolution decree are inconsistent or are beyond a dissolution court's authority. However, to avoid future litigation over the issue, we take this opportunity to clarify that the proceeds placed in the trust account must be used consistent with the definition of "support" set forth in Iowa Code section 598.1(6) (1993).

VIII. VALUATION OF BUSINESSES AWARDED TO DAVE.

In her cross-appeal Sheila argues the trial court undervalued the businesses and real estate awarded to Dave. Relying on offers to buy that she and Dave received to sell the Mount Vernon business operations, she contends Dave received at least $650,000 more in property than she did.

Trial in this case extended from November 1993 until March 1994. Over the course of this trial numerous and divergent estimates were given of the value of the parties' businesses. The trial court relied on conservative valuations of the businesses offered by Dave and his experts. These businesses were clearly not consistently profitable, and their liquidation value appears to be different than their value as a going concern. Given this history , the trial court's valuations were within the range of evidence offered at trial, and we affirm the property distribution.

IX. CONTEMPT.

Sheila filed an application to have Dave held in contempt. A hearing on the application was held on September 6, 1994. Sheila had argued Dave was in contempt in the following ways: for being delinquent in paying child support and alimony; for not delivering the antique automobiles to her; for not providing her with a minivan within ten days of entry of the decree; for not facilitating the transfer of shares in Iowa Fidelity Life Insurance Company; and for not paying back taxes on real estate awarded to her. The trial court found Dave in contempt with respect to his refusal to turn over the antique automobiles and ordered him to serve fifteen days in jail if he did not deliver the titles and automobiles to Sheila with five days of the date of its order. The court did not find Dave in contempt with respect to Sheila's other allegations.

Section 598.23(1) provides that if a person against whom a final decree has been entered willfully disobeys the decree, the person may be cited and punished by the court for contempt. Iowa Code § 598.23(1) (1993). Under this statute a trial court has some discretion and is not required to hold a party in contempt even though the elements of contempt may exist. *In re Marriage of Swan*, 526 N.W.2d 320, 327 (Iowa 1995). A trial court may consider all the circumstances, not just whether a willful violation of a court order has been shown, in deciding whether to impose punishment for contempt in a particular case. *Id.* A trial court has broad discretion and unless such discretion is grossly abused, its decision must stand. *Id.*

A review of the transcript from the contempt hearing and the trial court's ruling persuades us there was no abuse of discretion in the trial court's decision not to impose any punishment for issues other than the transfer of the antique automobiles. Sheila's allegations pertaining to the transfer of the Iowa Fidelity shares and the payment of back taxes do not amount to contumacious conduct. A finding of contempt must be established by proof beyond a reasonable doubt. *In re*

Marriage of Spears, 529 N.W.2d 299, 304 (Iowa App. 1994). Proof of contempt in violating a court order requires a showing that there was a willful violation. *Id.* The trial court properly noted the language of the decree pertaining to the Iowa Fidelity shares and the payment of debts encumbering real property did not compel affirmative conduct on Dave's part which would rise to the level of contempt.

Dave was not in technical compliance with the decree with respect to his support obligations and the transfer of a minivan. However, his testimony regarding the mitigating circumstances rendered it within the trial court's discretion not to hold him in contempt on those issues. The trial court's ruling on Sheila's contempt application is affirmed in its entirety.

AFFIRMED.