FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF R. DEAN GOLDSMITH AND BARBARA L. GOLDSMITH

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UPON THE PETITION OF R. DEAN GOLDSMITH,

Petitioner-Appellant,

AND CONCERNING BARBARA L. GOLDSMITH,

Respondent-Appellee.

Filed September 24, 1985

5-269
84-833

Appeal from the Iowa District Court for Adams County, M. C. Herrick, Judge

Petitioner-husband appeals from the decree dissolving the parties' marriage. He asserts: (1) that the trial court's findings of fact are not entitled to any weight because they are the work product of respondent-wife's counsel; (2) that the trial court's valuations of the parties' property are not supported by credible evidence; (3) that the trial court's property division and alimony and attorney fee awards are inequitable. **AFFIRMED AS MODIFIED.**

James M. Redmond, Des Moines, for petitioner-appellant.

Robert J. Laubenthal of Smith, Peterson, Beckman & Willson, Council Bluffs, for respondent-appellee.

Considered by Oxberger, C.J., Snell, and Hayden, JJ.

OXBERGER, C.J.

The appellant-husband in this divorce action urges this court to modify the lower court's decree regarding alimony, attorneys fees, and property provisions, claiming the trial court's order will put him out of the farming business. He also claims that the court on appeal should not give weight to the lower court's findings of fact since the court's decree was a verbatim adoption of the wife's proposed findings of fact. The wife responds saying, inter alia, certain evidence should not be considered by this court and that we should impose sanctions upon the husband's attorney. We affirm the decree as modified.

We first dispose of the respondent-wife's contention in her brief that we should impose sanctions upon the petitioner's attorney. The respondent does not point out any authority for this court to impose sanctions for "dilatory and vexatious" practice, and aside from granting a motion to dismiss or requiring a party to change an appendix or file new briefs, we find no statutory or appellate rule authority for this. The supreme court in November 1984 denied respondent's motion to dismiss and we find this addressed the issue.

Respondent also claims we should not consider as a part of the record a letter which was sent to the trial court judge which explained the method used by respondent and her attorney in reaching the figures for property values in her proposed findings of fact and conclusions of law. The letter was sent with the proposal, but not filed with the clerk of court. We find not filing the paper would be improper since it would otherwise constitute an ex parte communication with the judge. In any event, we do not consider the contents of the letter in reaching our conclusions today.

The first issue presented on appeal by the petitioner, Dean Goldsmith, concerns the values assigned to the couple's property. He argues that since the trial court adopted the wife's findings of fact verbatim, with only a few

changes in the requested child support and one change in property valuation, we should not give the findings any weight. Although Iowa has recognized it is customary to allow adoption of the successful party's findings of fact, Baker v. Cutting, 280 N.W. 548, 551 (Iowa 1938), the respondent-petitioner refers us to decisions in other jurisdictions indicating that a verbatim adoption of the other party's proposal indicates courts should carefully scrutinize such findings. See Annot. 54 A.L.R.3d 868 (1973). In this case, petitioner continues, the judge could not have carefully perused respondent's proposal, since, allowing two days for mail delivery, he had only four days to look at the extensive evidence presented and this time included a weekend.

As petitioner concedes, our courts have accepted the practice of a judge adopting one party's findings of facts. The dangers of not judiciously scrutinizing such findings, however, are evident by the facts here, where the wife, Barbara, expressed her open animosity for her husband in court and further indicated she did not care if the results forced her husband out of the farming business. The court's duty in a divorce proceeding is to achieve equity for all parties concerned. In a de novo case such as this one, we are to give the trial court's findings some weight, but are not bound by them. Iowa R. App. P. 4, 14(f)(7). The deference we accord the court is somewhat stronger regarding credibility of witnesses. Iowa R. App. P. 14(f)(7). A de novo review is, in any event, "review anew" in nearly all respects and if we reach a different conclusion in viewing the record, we will modify the trial court's findings. In re Marriage of Vrban, 359 N.W.2d 420, 423 (Iowa 1984); In re Marriage of Huston, 263 N.W.2d 697, 699 (Iowa 1978).

Petitioner next attacks the values assigned by the court to the couple's properties. In adopting Barbara's values, Dean says the court found certain liabilities too low, and overvalued real estate and farm machinery. He says

his evidence was more credible regarding values on the estate. Dean's expert had spent a considerable amount of time appraising property in the county and he says the expert also spent more time in analyzing the farm market values of the farm properties owned by the couple. Barbara's expert claimed that the values of the land had increased while Dean's expert said farmland values had fallen. We find this to be the crucial difference between the experts. Both were well qualified. Evidence was presented by Dean indicating farmland values have declined. This court is also allowed to take judicial notice of such a fact. Iowa Rule of Evid. 201. This court cannot be ignorant of that which nearly every person in this state and country is aware of; a depressed farm economy has been caused in large part by the fact land values have fallen and not risen. The evidence presented by Dean backs this conclusion. We modify the finding of the trial court's value placed on the "Prosser Farm" owned by the couple. Dean paid $370,000 for this land in 1981 and the value of $305,138 assigned by Dean's expert is more credible in light of the depressed Iowa farm economy.

For similar reasons we find the value given the farm machinery to be too high. As the evidence presented by Dean indicates, the depressed farm economy has caused the price of farm equipment to drop also. Petitioner's expert, who had observed the sale of such machinery, testified of a value of $171,560, a $90,742 difference from that assigned. We accept this figure as reflecting the value of the equipment.

The figure presented which the court accepted reflecting the amount owed on the Federal Land Bank Debt was $315,581 for mortgages on the Prosser Farm, and $194,340 for mortgages on the Talty Farm, Bunting Farm, and drying bin. This does not include the interest payment due Federal Land Bank. We find these amounts should have been included, and hold an additional $38,545 is due in the Prosser farm debt and another $30,258 due for the drying bin/Bunting/Talty mortgage.

Finally, a value of $476,489 was assigned to the Production Credit Association debt. The witness who testified regarding the amount of this debt, John Muller, was the loan adviser for Dean and Barbara, and had no bias regarding the matters involved. The court's figures included as an asset $46,125 worth of stock in PCA. The stock is a mandatory purchase occurring when money is borrowed and is automatically sold when the loan is repaid. This amount is then also included as a liability, as Muller's testimony confirmed. Therefore, the stock loan and debt cancel each other out, although this was not reflected in the findings adopted by the court. Accordingly, we modify the PCA debt from $476,480 to $482,732.

In summary, we modify the trial court's valuation of the marital assets from $1,516,557 to $1,346,259. The debt is modified from the court's finding of $1,161,380 to $1,236,177. Therefore, the net marital assets are $110,082 instead of $355,177.

The trial court awarded Barbara the 84-acre homestead, which included some of the farmed land and a machine shed. Barbara testified she was fond of the home and wanted to live there. She also was given the household goods and furniture, a trailer, vehicle, pickup, and some farm equipment. The court also held that since there was a second mortgage on the house to secure one debt and Barbara had co-signed certain notes, Dean would have to pay off these notes sixty days from the date of the decree. He would have to pay the Federal Land Bank note of $225,905 and the Prosser note of approximately $300,000 two months after the decree. If he did not pay these notes, the court continued, he would have to sell the land and equipment mortgaged. Further, if this money was not sufficient, Barbara would have a judgment against Dean for an amount to pay these debts.

All this was done, apparently, to give the wife the homestead free and clear. The price to be paid for this goal, however, is to force the husband out of business. Barbara expressed her desire to be free of the debts of the farming operation and an impending threat of bankruptcy. However, the marital debts as well as assets are to be divided equitably. See In re Marriage of Smith, 351 N.W.2d 541, 543 (Iowa Ct. App. 1984). Pursuant to the court's decree Dean will not be able to continue farming in order that Barbara may live in their debt-free homestead. We have several problems with this. First, we do not believe a court handling a divorce should force liquidation of a business. We do at times require the sale of certain assets or a marital home. This is not the same as liquidating a farm business. Second, there will be no alimony, child support, or property payments forthcoming if Dean has no income. While Barbara commented he "could get a job just like me" the evidence shows the only business Dean has been involved in for nineteen years is farming.

Both these problems were squarely addressed in the case of In re Marriage of Callenius, 309 N.W.2d 510 (Iowa 1981). As in Callenius, nearly all of the couple's assets were tied up in farming. The court noted, "The variance between contract sale price and present value and the forfeiture attempt by the vendor give ample warning of things that may happen without care, planning,and adequate cash. Forfeiture would decimate the assets of the parties." Id. at 515. Further, "We have previously recognized the reasonableness of a trial court awarding a farm to the spouse who operated it and in fixing the awards and schedule of payments to the other spouse without reaching equality so the farmer-spouse might retain ownership of the farm." Id. The court awarded the farmland to the husband, with a cash property award to the wife, commenting:

> Awarding the home eighty acres and another eighty acres to Donna would take away from Ronald an important source of income and his only obvious source of refinancing. It would sever a farming unit embraced

> in one contract of sale and provide additional problems if one party defaulted on the contract. Forced sale of the property also raises questions concerning income tax liabilities. Furthermore, it would have serious effects on Ronald's ability to farm on his present sacle.

Id.

We believe this case is controlled by the principles set out at Callenius. The husband here needs the eighty-four acres as security for the loans and for production purposes. Accordingly, we modify the decree to award the 84-acre homestead to the husband along with the $16,500 mortgage debt. We further award to the husband items which he needs for farming, and for which the wife admitted she had little use. These include the tools he has at his workshop, the Klean King washer, and the 1977 Chevrolet pickup.

We hold Barbara shall be awarded a cash property settlement of $55,041, which is one-half of the net worth of $110,082 to be paid in ten equal annual installments over ten years. Interest of ten percent shall accrue on the unpaid balance and the first payment shall be due sixty days from the procedendo in this case.

The trial court provided alimony in the amount of $750 per month for six years. The record reflects that Barbara's main concern regarding alimony was that she have some means of support in later years. Considering the 23-year marriage, the high school education of both parties, their ages, the fact there is one minor child, along with the property award, and financial situation of both parties, we find it would be an equitable provision for both parties for us to hold Dean shall pay $200 per month in alimony, the first payment due May 1, 1984, the date of the original decree, and continuing for ten years. The payments shall cease upon the death of Dean or Barbara or upon her remarriage or cohabitation with an unrelated adult male. In addition, Dean shall pay $1000 each year for ten years into an irrevocable IRA plan for Barbara's benefit.

He shall also permit Barbara to live rent-free for ten years on the homestead house or on the Prosser farm, at the wife's option. In this manner, Barbara will still be able to live in the homestead if she prefers, and yet provision is made for the needs of both parties.

Dean finally asserts the portion of the decree requiring him to contribute $4500 to Barbara's attorneys fees is inequitable. In awarding fees at trial level, we look at the resources of the spouse and their ability to pay. Locke v. Locke, 263 N.W.2d 694, 696 (Iowa 1978). The court is given discretion in making such an award. Id. Considering the economic situation of the parties, we affirm the court's holding regarding attorneys fees.

AFFIRMED AS MODIFIED.