IN THE COURT OF APPEALS OF IOWA

No. 1-528 / 10-1892
Filed October 5, 2011

**IN RE THE MARRIAGE OF RONALD JONDLE
AND REGINA JONDLE**

Upon the Petition of

RONALD JONDLE,
Petitioner-Appellee/Cross-Appellant.

And Concerning

REGINA JONDLE,
Respondent-Appellant/Cross-Appellee.

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

Regina Jondle appeals and Ronald Jondle cross-appeals from the decree dissolving their marriage. **AFFIRMED AS MODIFIED.**

Mark D. Fisher of Nidey, Wenzel, Erdahl, Tindal & Fisher, Cedar Rapids, for appellant.

Michael D. Tungesvik of Kruse & Dakin, L.L.P., Boone, for appellee.

Heard by Sackett, C.J., and Vaitheswaran and Tabor, JJ.

SACKETT, C.J.

Regina Jondle appeals and Ronald Jondle cross-appeals from the October 25, 2010 decree dissolving their marriage. The district court divided the parties' property and awarded Regina what it termed reimbursement alimony of $20,000 a year for four years. Regina contends she should have additional alimony and a larger property settlement. We modify the property division to require Ronald to make an equalizing payment of $100,000 to Regina. We deny her request for additional alimony. Ronald, on cross-appeal, contends if Regina is awarded a property settlement, the court should vacate the alimony award and give him credit for alimony he paid. We agree with his argument and modify to vacate the alimony award. We affirm as modified.

BACKGROUND. Ronald, who was born in 1960, and Regina, who was born in 1962, married in August of 1991. They each had been married once before. At the time of marriage Ronald was a farmer and did some trucking occupations that he continues to pursue. Regina worked at a jewelry store. Regina brought two children to the marriage. Ronald eventually adopted them. Sometime after the marriage Regina left the work force and stayed home to care for the children and assist with the farm operation. In 2000 Regina was employed at the McFarland Medical Clinic in Webster City, Iowa. At the time of the dissolution she continued to work for the clinic and was earning $17,000 a year. The clinic provides Regina with health insurance and retirement benefits.

The parties had financial problems during their marriage and filed for bankruptcy in both the 1990s and 2002. After the second bankruptcy, Regina did

not want to participate in the farm operation or in incurring farm debt. Ronald could not get financing unless she co-signed his notes to FHA.[1] In January 2006, Regina and Ronald signed an agreement prepared by an attorney for FHA whereby Regina relinquished any right, interest, and ownership in their farm operation to Ronald, and Ronald accepted all of her interest and assumed all of her responsibility for debts. The farm operation was to include all farm assets including, but not limited to grain, seed, chemicals, inputs, outputs, machinery, government payments, livestock, and farmland, and all farm debts including loans, mortgages, and promissory notes on grain, machinery, livestock, and farmland. The agreement not only addresses interests and obligations connected to the farm operation, but also provided Regina acknowledged the agreement would result in a forfeiture of her rights to share in the potential growth and profits of the farm operation. Regina's signature on the agreement is notarized, but she claims she just signed the second page and did not see the agreement. After executing this agreement, Ronald borrowed from FHA, and Regina did not sign the notes. The parties filed separate income tax returns.

PROCEEDINGS. Ronald filed a petition for dissolution of marriage in May of 2009. Regina sought temporary alimony and attorney fees. The district court awarded Regina temporary alimony of $400[2] a month to commence on

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[1] FHA refers to the Farmers Home Administration. It is also referred to at places in the record as FSA. Because of the parties' past credit history and tenuous financial condition there was evidence that this was the only place where Ronald could obtain financing.

[2] Ronald contends she was awarded the temporary alimony because she was to keep him on her health insurance, which she failed to do. However the order fixing the temporary alimony makes no reference to such an agreement.

November 1, 2009, and ordered Ronald to pay $400 to her attorney as temporary fees.

The matter came up for trial on October 12, 2010. The district court entered its decree thirteen days later October 25. The court identified and valued the parties' assets and debts. Based on the court's determination of values the court gave Ronald $941,533.37 in assets and $756,780.97 in debts and Regina $51,014 in assets and $10,300 in debts. Ronald was ordered to pay Regina alimony the court termed reimbursement alimony of $20,000 a year for four years. Any alimony not paid accrued interest at the rate of 4%. Additionally Ronald was directed to pay $2000 towards Regina's attorney fees.

SCOPE OF REVIEW. We review de novo. Iowa R. App. P. 6.907; *In re Marriage of Campbell*, 623 N.W.2d 585, 586 (Iowa Ct. App. 2001). While not bound by the trial court's determination of factual findings, we will give them considerable weight, especially when considering the credibility of witnesses. *In re Marriage of Lux*, 489 N.W.2d 28, 30 (Iowa Ct. App. 1992); *In re Marriage of Craig*, 462 N.W.2d 692, 693 (Iowa Ct. App. 1990).

DIVISION OF ASSETS AND LIABILITIES. Regina contends she should have been given a larger property award. Iowa is an equitable division state. *In re Marriage of Robison*, 542 N.W.2d 4, 5 (Iowa Ct. App. 1995). An equitable division does not necessarily mean an equal division of each asset. *Id*. Rather, the issue is what is equitable under the circumstances. *In re Marriage of Webb*, 426 N.W.2d 402, 405 (Iowa 1988). The partners in the marriage are "entitled to a just and equitable share of the property accumulated through their joint efforts."

In re Marriage of Russell, 473 N.W.2d 244, 246 (Iowa Ct. App. 1991). "Iowa courts do not require an equal division or percentage distribution." *Id*. "The determining factor is what is fair and equitable in each circumstance." *In re Marriage of Swartz*, 512 N.W.2d 825, 826 (Iowa Ct. App. 1993). The distribution of the property should be made in consideration of the criteria codified in Iowa Code section 598.21(5) (2009). *See In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa Ct. App. 1983). While an equal division of assets accumulated during the marriage is frequently considered fair, it is not demanded. *In re Marriage of Keener*, 728 N.W.2d 188, 193 (Iowa 2007).

Regina contends it is not equitable to give Ronald assets of $941,533.37[3] and for her to receive assets of only $51,014. She also contends the district court erred in both calculating assets and improperly deducting illusory expenses. She argues the district court failed to value several items properly, and relied on materials that were not supported by documentation. She also contends the district court's values of certain items are not within the range of permissible evidence as suggested in *In re Marriage of Wiedemann*, 402 N.W.2d 744, 748 (Iowa 1987). She argues the district court failed to give the required weight to a statement of assets and liabilities that Ronald presented to his lender, FHA, on July 20, 2010, certifying his net worth at $397,059. She also contends that statement did not contain a number of assets, including a combine, a bulldozer, and a pair of semi-trailers. She argues the district court undervalued items included on the statement including prepaid expenses and supplies in the

[3] In making this argument she ignores the fact that in addition to being given property Ronald was allocated substantial debt.

amount of $290,275, other current assets of $10,000, cash value life insurance of $8000, household goods of $14,000 and other intermediate assets of $10,000.

Ronald leaves the marriage with substantial debt. Regina leaves with minimal debt.[4] Creditors have pending litigation against him. He owns no farmland and his income is dependent on his being able to lease farmland on a year-to-year basis.[5]

We look at Regina's challenges to the district court's valuations. Although our review is de novo, we will defer to the trial court when valuations are accompanied with supporting credibility findings or corroborating evidence. *In re Marriage of Vieth*, 591 N.W.2d 639, 640 (Iowa Ct. App. 1999). In assessing the district court's valuation here, we consider the valuations placed on assets shown on the FHA balance sheet as well as the valuations of the assets allocated to Ronald by the district court. Though the combine, bulldozer, and pair of semi-trailers were not on the balance sheet, they were valued by the district court and considered as property going to Ronald. Ronald argues, and apparently the district court agreed, that the prepaid expenses and supplies of $290,275 listed as assets on the FHA balance sheet represented the expenses invested in the crop then in the field.[6] The crop had been harvested by the time of the dissolution hearing and the district court valued the crops and included them in Ronald's distribution. We agree with Ronald that the district court should not

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[4] While she argues she did not know what she signed, FHA extended monies to Ronald requiring only his signature and security interests in certain farm assets. This enabled Ronald to continue to farm without Regina's obligating herself for farm debt.

[5] There is no evidence of any long term leases.

[6] At the time the balance sheet was prepared (July 2010), the crops were in the field.

have included the value of both crop inputs and harvested crops, and correctly only considered harvested crops.[7]

We agree with Regina that there was no finding by the district court that the other current assets of $10,000 shown on the balance sheet existed; however, the district court valued a federal crop payment at $15,000 and accounts receivable at $12,000. While the balance sheet showed $14,000 in household goods, Regina on her financial statement valued jointly owned household goods at $1800 and jointly owned appliances at $3000. The district court gave each party $1800 in household goods. There is evidence to support the valuations, and we defer to the amounts fixed by the district court.

Regina also contends there are illusory expenses. The district court found that Ronald offered extensive exhibits identifying the debt, and setting forth a computation of debt, a projected cash flow, and projected income and expenses. The district count adopted them, finding no evidence to the contrary.

Included in the debts are a number of expenses incurred in harvesting the 2010 crop. Regina contends because the crops are harvested these expenses should not be considered. We find no merit in this argument as it appears these expenses had not been paid at the time of the dissolution hearing. Regina also argues and Ronald does not disagree that his harvest expenses include $18,000 Ronald claims is owed to him as a salary. He argues Regina had received her wages for the year and these are his wages for the year and it is only fair to include them. While there is some merit to his argument we decrease the

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[7] Ronald had finished his harvest the night before the dissolution.

claimed expenses by that amount. The date of trial is the most appropriate date to value assets and liabilities. *See In re Marriage of Campbell*, 623 N.W.2d 585, 588 (Iowa Ct. App. 2001). That said we believe Regina should receive a property settlement of $100,000 payable at the rate of $20,000 a year for five years with interest accruing on any unpaid balance at the rate of 4% per annum. The first payment to be due and owing on December 15, 2010, and a like payment of $20,000 plus accrued interest to be due on December 15 of the next four succeeding years. We modify the decree accordingly.

ALIMONY. The district court called the $80,000 alimony given Regina reimbursement alimony. Regina wants more alimony, which she calls rehabilitative, so she can go back to school to become a nurse. Ronald contends on cross-appeal that if we give Regina a property settlement we need to revisit the alimony.

Spousal support is provided for under Iowa Code section 598.21A. Whether spousal support is justified is dependent on the facts of each case. *See In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976). Entitlement to spousal support is not an absolute right. *Id*. In analyzing a spousal support order, we look not only at the parties' earnings, but also at each party's earning capacity as directed by section 598.21A. *See In re Marriage of Wegner*, 434 N.W.2d 397, 399 (Iowa 1988). Consequently, if both parties are in reasonable health, as here, they "need to earn up to their capacities in order to pay their own present bills and not lean unduly on the other party for permanent support." *Id.*

However, in assessing a claim for spousal support, we also consider the property division together with the spousal support provisions to determine their sufficiency. *In re Marriage of Weiss*, 496 N.W.2d 785, 787 (Iowa Ct. App. 1992). An alimony or spousal support award is justified "when the distribution of the assets of the marriage does not equalize the inequities and economic disadvantages suffered in marriage by the party seeking the [support]" and there also is a need for support. *Id.* at 787–88.

While we consider support and property division together, there are important differences between them.

> It is anticipated that spousal support will be paid from future income whereas property distributions are designed to sort out property interests acquired in the past. A property division divides the property at hand and is not modifiable, Iowa Code § 598.21(7), while a spousal support award is made in contemplation of the parties' future earnings and is modifiable. *Id*. § 598.21C. Furthermore, spousal support has different income tax implications than a property settlement. *See* I.R.C. §§ 62(a)(10), 215(a).

In re Marriage of Hazen, 778 N.W.2d 55, 59 (Iowa Ct. App. 2009). Also, a property settlement may be dischargeable in bankruptcy, while alimony is not. *In re Marriage of Trickey*, 589 N.W.2d 753, 757 (Iowa Ct. App. 1998). However there is no basis to assume an alimony award will be paid after bankruptcy even if the debt is not discharged. It would only be paid if the bankrupt party had assets or income.

This is a not a case that calls for payment of alimony to Regina. Regina's earnings have exceeded Ronald's. Her employment provides her with health insurance and retirement benefits. While she was out of the workforce for ten years and helped with the farming and assumed responsibility for the care of the

home and of the children she brought to the marriage, by the time of the dissolution she had rehabilitated herself and had annual earnings of $18,000.

Ronald's earnings are historically low. He owns no land and leases the acres he farms on year-to-year basis. He argues that all of his income is shown in his tax return, and notes it averages $11,209.40 a year over the past five years using straight-line depreciation. He admits that his 2009 tax return showed a very positive income, but argues there were significant expenses incurred by him in 2009 that he did not have the ability to pay. He argues that if he had been able to pay the bills, he would have shown a loss.[8]

Ronald further points out that his estimated Social Security benefit at age sixty-seven is $690.[9] He has no other retirement benefits. He contends that at the current time he has no net worth, as his liabilities equal his assets.[10]

Ronald also points out he relies on FHA, a lender of last resort, to finance his farming operation. He notes in order to qualify for loans, underwriting requires limits on net worth and operating loan amounts, and he is not able to obtain loans from commercial banking institutions for operating expenses.

We have said when division of property is impractical, a higher spousal support award may provide an opportunity to balance equities where the parties have few assets and yet one partner, through joint efforts, leaves the marriage

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[8] No estimate was made of his anticipated 2010 income tax liability. It appears his expenses are high so it maybe that his liability is not great. But the sale of the recently harvested crops will be income to him when sold, and any income tax thereon reduces the value to him of this asset.

[9] There was over a ten-year marriage, so he could draw on Regina's account if it provided a higher amount.

[10] Ronald definitely has shown a financial upturn because of the upturn in the farm economy and the increased price of grain.

with a substantially higher income than the other. *See In re Marriage of Mouw*, 561 N.W.2d 100, 102 (Iowa Ct. App. 1997) (awarding wife $2000 a month alimony where education husband received during marriage resulted in his having substantial income potential). Unlike *Mouw* there is property here. And this is a marriage that would generally call for a nearly equal division of the accumulated assets. *See In re Marriage of McLaughlin*, 526 N.W.2d 342, 344 (Iowa Ct. App. 1994); *see also In re Marriage of Russell*, 473 N.W.2d 244, 246-47 (Iowa Ct. App. 1991) (making equal division in twenty-one year marriage where neither party brought substantial assets or debts into marriage). The property award of $100,000 gives Regina half the parties' assets without responsibility for debt.[11]

There is no support for awarding Regina additional alimony, and the alimony award is stricken. Ronald is given credit against the property award for any amounts paid as alimony under the district court's decree.

ATTORNEY FEES. An award of attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Miller*, 532 N.W.2d 160, 163 (Iowa Ct. App. 1995). The court should make an attorney fee award that is fair and reasonable in light of the parties' financial positions. *Id*. To overturn an award, the complaining party must show the district court abused its discretion. *In re Marriage of Gonzalez*, 561 N.W.2d 94, 99 (Iowa Ct. App. 1997). Neither

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[11] Because she was not liable on any of the farm debts she has no responsibility for them even if Ronald should default. It appears his lenders have a security interest in his crops, so they will not all be available to pay the property settlement.

party is in a superior financial position. We award no attorney fees. Costs on appeal are taxed one half to each party.

AFFIRMED AS MODIFIED.