IN THE COURT OF APPEALS OF IOWA

No. 3-740 / 12-0925
Filed October 23, 2013

**IN RE THE MARRIAGE OF LEISHA F. KRAGEL
AND RANDALL P. KRAGEL,**

**Upon the Petition of
LEISHA F. KRAGEL,**
Petitioner-Appellant,

**And Concerning
RANDALL P. KRAGEL,**
Respondent-Appellee.

Appeal from the Iowa District Court for Ida County, Jeffrey A. Neary, Judge.

Petitioner appeals the economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Dee Ann Wunschel of Wunschel Law Firm, P.C., Carroll, for appellant.

Irene A. Schrunk, Sioux City, for appellee.

Heard by Mullins, P.J., Bower, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

MAHAN, S.J.

I. Background Facts & Proceedings.

Randall and Leisha Kragel were married in 1981. They have two children who are now adults. Leisha filed a petition for dissolution of marriage in October 2009. The dissolution hearing took place over the course of six days between April and December 2011.

Randall was fifty-two years old at the time of the dissolution. He has a high school degree. Randall's family has two small, closely-held corporations, and he worked for them for most of his life. Kragel Farm Corp. owns several parcels of land. Kragel, Inc. is in the business of constructing grain bins. Randall receives an annual salary of $26,000 per year from Kragel, Inc. During the marriage Randall received stock in both Kragel Farm Corp. and Kragel, Inc. from his parents.[1] Randall's mother, Bernadine Kragel, testified these gifts were made to Randall alone and not to Randall and Leisha as a couple.

In 1989 Randall entered into a farming partnership with his brother, Neil Kragel under the name Kragel Brothers. Kragel Brothers owns 409 acres of farmland, a grain bin, a machine shed, machinery, and equipment. Kragel Brothers farmed the land owned by Kragel Farm Corp. and some land owned individually by Neil. In 2010 Randall earned $287,683 from Kragel Brothers. The district court determined Randall's interest in Kragel Brothers was worth $2,634,656.

[1] Randall's father, Paul Kragel Jr., died in 2002. Under his will, the shares he owned in the companies were placed in a trust.

At the time of the dissolution Leisha was fifty years old. She has a high school degree. For a few years Leisha acted as a part-time secretary for Kragel Farm Corp. and Kragel, Inc. and as a bookkeeper at her mother-in-law's grocery store. She has also worked as a school bus driver. In 2010 Leisha began working part-time at a nursing home, where she earns $15,925 per year. Throughout the marriage Leisha also helped with farm work when called upon to do so, in addition to caring for the home and the children.

The district court entered a dissolution decree for the parties on March 26, 2012. The court determined Randall's shares in Kragel Farm Corp. and Kragel, Inc. had been received by gift and should be set aside to him. The court also set aside to Randall a portion of the value of the marital residence as a premarital asset. The court valued the parties' assets as of September 30, 2011. The court awarded Randall net marital assets valued at $1,954,546 and Leisha net marital assets valued at $609,283. The court ordered Randall to pay an equalization payment of $672,631, payable over a period of eight years. The district court ordered Randall to pay rehabilitative alimony to Leisha of $5000 per month for eight years, and then $3000 per month for a period of two years. Additionally, the court ordered Randall to pay $30,000 toward Leisha's trial attorney fees.

Both parties filed motions pursuant to Iowa Rule of Civil Procedure 1.904(2). The district court denied both motions. Leisha now appeals the economic provisions of the parties' dissolution decree.[2]

[2] Randall claims Leisha did not preserve any issues for our review. He states that during the dissolution hearing he objected to certain evidence and the district court reserved ruling on those matters. *See In re Estate of Evjen*, 448 N.W.2d 23, 24 (Iowa 1989) (noting that in equitable proceedings, the proper procedure is to admit evidence

II. Standard of Review.

In this equity action our review is de novo. Iowa R. App. P. 6.907. In equity cases, we give weight to the fact findings of the district court, especially on credibility issues, but we are not bound by the court's findings. Iowa R. App. P. 6.904(3)(g). We examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Ales*, 592 N.W.2d 698, 702 (Iowa Ct. App. 1999).

III. Property Division.

In matters of property distribution, we are guided by Iowa Code section 598.21 (2009). Iowa courts do not require an equal division or percentage distribution. *In re Marriage of Campbell*, 623 N.W.2d 585, 586 (Iowa Ct. App. 2001). The determining factor is what is fair and equitable in each particular circumstance. *In re Marriage of Miller*, 552 N.W.2d 460, 463 (Iowa Ct. App. 1996). In considering the economic provisions in a dissolution decree, we will disturb a district court's ruling "only when there has been a failure to do equity." *In re Marriage of Smith*, 573 N.W.2d, 924, 926 (Iowa 1998) (citations omitted). We look to the economic provisions of the decree as a whole in assessing the equity of the property division. *In re Marriage of Woodward*, 426 N.W.2d 668, 670 (Iowa Ct. App. 1988).

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subject to the objection). The court did not explicitly rule on those objections in the dissolution decree. Randall makes the unique argument that because Leisha did not raise the issue of *his* objections in her motion pursuant to Iowa Rule of Civil Procedure 1.904(2), she did not preserve error. There is an exception to the error preservation rules for evidentiary rulings, "whether the error claimed involved rulings admitting evidence or not admitting evidence." *DeVoss v. State*, 648 N.W.2d 56, 62 (Iowa 2002). We conclude Leisha has adequately preserved error on the issues she raises on appeal.

A. Leisha contends the district court should have determined Randall's shares in Kragel Farm Corp. and Kragel, Inc. were marital assets. Iowa Code section 598.21(6) provides:

> Property inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage.

In considering gifted property, we must first determine whether the gift was given to one party only or if the gift was made to both parties. *In re Marriage of Vrban*, 359 N.W.2d 420, 427 (Iowa 1984). In making a determination as to whether property has been gifted to one or both parties, we consider (1) the intent of the donor and (2) the circumstances surrounding the gift. *In re Marriage of Wertz*, 492 N.W.2d 711, 714 (Iowa Ct. App. 1992). Here, Bernadine testified it was the intent at the time the gift was made to give the stock in Kragel Farm Corp. and Kragel, Inc. to Randall alone. The stock certificates are made out to only Randall. We conclude the district court properly determined the gifts of stock had been made to Randall and not to Randall and Leisha together.

Citing section 598.21(6), Leisha argues it is inequitable to set aside these assets to Randall. She points out the marriage lasted for thirty years, she assisted in the farm work, and she acted as a part-time secretary for Kragel Farm Corp. and Kragel, Inc. Leisha also argues that during the farm crisis in the 1980s Kragel Farm Corp. and Kragel, Inc. did not have much value and asserts it was due to the hard work of the parties and Randall's brothers that the companies are

very successful today. She argues that because Randall's stock increased in value during the marriage she should be able to share in that increase.

"Notwithstanding the classification of property as inherited or gifted, the court may still divide such an asset as marital property, where awarding the gift or inheritance to one spouse would be unjust." *In re Marriage of McDermott*, 827 N.W.2d 671, 679 (Iowa 2013). In determining whether it would be inequitable to set aside to one spouse property received by gift or inheritance, a court considers the following factors: (1) contribution of the parties toward the property, its care, preservation or improvement; (2) the existence of any independent close relationship between the donor or testator and the spouse of the one to whom the property was given or devised; (3) separate contributions by the parties to their economic welfare to whatever extent those contributions preserve the property for either of them; (4) any special needs of either party; and (5) any other matter, which would render it plainly unfair to a spouse or child to have the property set aside for the exclusive enjoyment of the donee or devisee. *Id*.

We note on this issue Leisha conflates her contributions to the farming enterprise with Randall's receipt of the stock. The farming enterprise was primarily operated through Kragel Brothers, and Randall's interest in the partnership was considered a marital asset. Leisha did contribute to Kragel Farm Corp. and Kragel, Inc. by acting as the secretary for those companies for a period of time. The record is not clear, however, whether she was separately paid for her work. The district court considered these factors and found none of them were persuasive enough to lead to a conclusion the property Randall

received by gift from his parents should be divided. We agree with the district court's conclusion under the circumstances of this case it is not inequitable to set aside to Randall the stock in Kragel Farm Corp. and Kragel, Inc. he received by gift from his parents.

B. Leisha claims the district court should not have set aside to Randall the amount of $61,689 which represented his premarital interest in the parties' residence. Prior to the marriage, Randall had paid about fifty-four percent of the purchase price of the acreage where the marital residence was located.

"Property may be 'marital' or 'premarital,' but it is all subject to division except for gifts and inherited property." *In re Marriage of Fennelly*, 737 N.W.2d 97, 103 (Iowa 2007). "Property brought into the marriage by a party is merely a factor to consider by the court, together with all other factors, in exercising its role as an architect of an equitable distribution of property at the end of the marriage." *In re Marriage of Schriner*, 695 N.W.2d 493, 496 (Iowa 2005). There is no requirement that a court automatically award premarital property to the party who owned the property prior to the marriage. *McDermott*, 827 N.W.2d at 678.

The marital residence, valued at $418,500, was awarded to Leisha. Although the district court recognized Randall's premarital interest in the property, Leisha was able to receive a portion of the increase in value of the property. *See In re Marriage of Grady-Woods*, 577 N.W.2d 851, 853 (Iowa Ct. App. 1998) (holding even when a premarital asset is not divided as marital property, a spouse may receive a portion of the increase in value of the premarital asset). Looking at the property division as a whole, we do not find it

was inequitable for the district court to set aside to Randall the value of his premarital interest in the marital residence.

C. As noted above, the dissolution hearing in this case took place over six days between April and December 2011. The case was originally scheduled for two days in April, and at that time the assets were valued as of March 31, 2011. The parties were unable to complete the hearing in April, and the court and the parties then had a difficult time scheduling additional days for the hearing. Because of the long time frame over which the hearing was continued, the value of certain assets fluctuated. In the dissolution decree, the district court determined the marital assets should be valued as of September 30, 2011.

Leisha argues the district court should have continued to value the assets as of March 31, 2011. She claims Randall, his attorney, and experts had access to financial information generated after March 31, 2011, which was not available to her. She believes the court's decision to value the assets as of September 30, 2011, worked to her disadvantage.

In general, assets should be given their value as of the date of trial. *In re Marriage of Dean*, 642 N.W.2d 321, 323 (Iowa Ct. App. 2002). "We continue to use the date of trial as the most appropriate date to value assets, while recognizing the need for flexibility in making equitable distributions based on the unique circumstances of each case." *In re Marriage of Campbell*, 623 N.W.2d 585, 588 (Iowa Ct. App. 2001). In this case, the trial took place on six dates between April and December 2011. Therefore, there is not a specific trial date that could be used to value the assets. We determine the district court acted

equitably in fixing the date of September 30, 2011, for determining the value of the marital assets.

D. The district court determined Randall's fifty-percent interest in Kragel Brothers was worth $2,634,656. In determining the property distribution, however, the court deducted $529,000 in current and deferred income taxes for the partnership. A court should consider income tax consequences when allocating property in a dissolution decree. *In re Marriage of Hogeland*, 448 N.W.2d 678, 680 (Iowa Ct. App. 1989).

Leisha contends the amount of the court's deduction for taxes is incorrect. She claims in estimating Randall's income tax obligation, his expert, Larry Hardin, did not take all of the deductions Randall was entitled to and this artificially inflated the amount he stated Randall would be required to pay in income tax. She points out Randall paid quite a bit less in taxes in 2009 and 2010.

Although the amount of 2011 income taxes estimated by Hardin on Randall's share of the income from Kragel Brothers was greater than the amounts Randall paid in 2009 and 2010, Leisha did not present specific evidence to show how Hardin's calculations were wrong or what the amount of taxes for the partnership should be. John Sklenar, an accountant, testified Hardin was "a little aggressive there," in calculating Randall's income taxes. He testified Hardin should have used a reduced tax rate. He also testified the partnership could have continued to defer income into the future, but stated, "I'm not sure what their strategy is here." Paul Schoessler, an accountant who prepared the income

tax returns for Kragel Brothers and Randall, testified at the hearing, but he was not asked about estimated taxes for 2011.[3]

We do not disturb the district court's valuation of assets when the valuation is within the permissible range of the evidence. *In re Marriage of Hansen*, 733 N.W.2d 683, 703 (Iowa 2007). Here, the court's valuation of Kragel Brothers, including the amount of income taxes the court determined Randall would be expected to pay on partnership income in 2011, was within the permissible range of the evidence. Hardin testified about his tax calculations and gave reasons for the amount he estimated Randall would pay in 2011.

E. Leisha raises a claim that Randall dissipated marital assets during the parties' separation. She asserts Randall use partnership funds to buy items for his family members. She also claims Kragel Brothers purchased more machinery in 2011 than it usually did. Additionally, Leisha raises various claims about farming expenses and grain sales.

A spouse's dissipation of assets during a marriage is a proper consideration in coming to an equitable property division. *Fennelly*, 737 N.W.2d at 104. "In determining whether dissipation has occurred, courts must decide '(1) whether the alleged purpose of the expenditure is supported by the evidence, and if so, (2) whether that purpose amounts to dissipation under the circumstances.'" *Id*. (citation omitted). A court considers whether a party's expenditures benefited the family. *Id*. at 105.

[3] Leisha also presented the expert testimony of Terry Argotsinger, a professional farm manager, who testified about land values. He did not testify about estimated taxes.

The district court found:

> One consistent theme in the financial records and evidence here was the rather free use of corporate monies and assets to pay for family expenses, and the accounting for certain assets as corporate assets used either solely or primarily for the personal use by Randy and Leisha, without the required reporting of the use of the monies and the accounting for the assets in the proper manner tax-wise. This has made it considerably complicated and difficult for the financial experts to determine incomes, revenue streams, asset ownership, and values and consequently caused the Court the same difficulty.

The evidence shows while Randall used Kragel Brothers funds to purchase items not related to the partnership, at the same time he and Leisha benefited from the use of funds from Kragel Farm Corp. and Kragel, Inc. for personal items. Throughout the marriage the parties benefited from the payment of personal expenses by these companies. We conclude Leisha has not shown Randall dissipated marital assets to the extent it would be equitable to adjust the property division on this ground.

F. In considering the property division as a whole, we find it to be equitable. *See Woodward*, 426 N.W.2d at 670 ("We consider the economic provisions as a whole."). The district court equally divided the parties' marital assets. After the equalization payment, Leisha received marital assets of $1,281,915, and Randall received the same. We affirm the division of property in the parties' dissolution decree.

IV. Alimony.

Leisha contends she should have been awarded a greater amount of alimony and the alimony award should have continued over a longer period of time. She points out she is a high school graduate who has never worked more

than part-time during the marriage. She also points out that Randall currently has a very high income. Leisha asks for traditional alimony of $6000 per month until Randall reaches the age of sixty-seven and then $4000 per month thereafter until either party dies or she remarries.

Alimony is a stipend to a spouse in lieu of the other spouse's legal obligation for support. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). Alimony is not an absolute right; an award depends upon the circumstances of the particular case. *Id*. In making an award of alimony, the court considers the factors set forth in Iowa Code section 598.21A(1). *In re Marriage of Olson*, 705 N.W.2d 312, 315 (Iowa 2005). We give the district court considerable discretion in awarding alimony; we will disturb the court's ruling only when there has been a failure to do equity. *Smith*, 573 N.W.2d at 926.

Traditional alimony is payable for life or for as long as a spouse is incapable of self-support. *In re Marriage of Francis*, 442 N.W.2d 59, 64 (Iowa 1989). "Rehabilitative alimony was conceived as a way of supporting an economically dependent spouse through a limited period of re-education or retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting." *Id*. at 63. Reimbursement alimony "is predicated upon economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the other." *Id*. at 64.

The district court awarded Leisha rehabilitative alimony of $5000 per month for eight years and then $3000 per month for two years after that. The court determined the alimony would cease upon Leisha's death or remarriage. If

Randall predeceased Leisha, however, Leisha would have a claim upon his estate for the unpaid alimony.

The evidence in this case showed that in 2010 Randall earned $287,683 from Kragel Brothers and $26,000 from Kragel, Inc., giving him total earnings of at least $339,683. Leisha's experts testified Randall earned even more than this. On the other hand, Leisha was earning $15,925 per year working part-time at a nursing home. The evidence did not show Leisha's annual income was ever more than this.

Because this was a long-term marriage of thirty years, and historically Randall has earned a considerably larger amount of income than Leisha, on our de novo review of the record, we determine the district court should have awarded Leisha traditional alimony. "Traditional alimony analysis may be used in long-term marriages were life patterns have largely been set and the earning potential of both spouses can be predicted with some reliability." *In re Marriage of Kurtt*, 561 N.W.2d 385, 388 (Iowa Ct. App. 1997). We determine Randall should be required to pay alimony of $6000 per month until he reaches the age of sixty-five, and then $4000 per month until either party dies or Leisha remarries.

V. Attorney Fees.

Both parties request attorney fees for this appeal. This court has broad discretion in awarding appellate attorney fees. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). An award of appellate attorney fees is based upon the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal. *In re Marriage of Berning*, 745 N.W.2d

90, 94 (Iowa Ct. App. 2007). We determine Randall should pay $10,000 toward Leisha's appellate attorney fees.

We have affirmed the property division as set forth in the parties' dissolution decree. We have determined the alimony award should be modified to give Leisha traditional alimony of $6000 per month until Randall is sixty-five years old, and then $4000 per month until either party dies or Leisha remarries. We have awarded Leisha $10,000 in appellate attorney fees. We determine the cost of this appeal should be assessed one-half against each party.

AFFIRMED AS MODIFIED.