IN THE COURT OF APPEALS OF IOWA

No. 7-035 / 06-1115
Filed March 28, 2007

IN RE THE MARRIAGE OF SANDRA J. RUNYAN AND SAMUEL R. RUNYAN

Upon the Petition of

SANDRA J. RUNYAN,
Petitioner-Appellee,

And Concerning,

SAMUEL R. RUNYAN,
Respondent-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Jon C. Fister, Judge.

Samuel R. Runyan appeals and Sandra J. Runyan cross-appeals challenging the economic provisions of the decree dissolving their long-term marriage. **AFFIRMED AS MODIFIED ON APPEAL; AFFIRMED ON CROSS-APPEAL.**

John J. Wood of Beecher, Field, Walker, Morris, Hoffman & Johnson, P.C., Waterloo, for appellant.

Brian G. Sayer of Dunakey & Klatt, P.C., Waterloo, for appellee.

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

SACKETT, C.J.

Samuel R. Runyan appeals and Sandra J. Runyan cross-appeals challenging the economic provisions of the decree dissolving their long term marriage. We affirm as modified on appeal and affirm on cross-appeal.

SCOPE OF REVIEW.

Our review of the economic provisions of a divorce decree is de novo. Iowa R. App. P. 6.4. We examine the entire record and adjudicate anew the issues properly presented on appeal. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(*g*); *In re Marriage of Grady-Woods*, 577 N.W.2d 851, 852 (Iowa Ct. App. 1998). We approach this issue from a gender-neutral position avoiding sexual stereotypes. *In re Marriage of Pratt*, 489 N.W.2d 56, 58 (Iowa Ct. App. 1992) (citing *In re Marriage of Bethke*, 484 N.W.2d 604, 608 (Iowa Ct. App. 1992)).

BACKGROUND.

Samuel, who was fifty-eight years old at the time of trial, and Sandra, who was fifty-nine, married in 1967. They have three adult children. Sandra was employed outside the home as an optician from 1985 until 2000. She has had a number of back surgeries and at the time of trial was working part-time for Kelly Services, earning ten dollars an hour. Samuel is a real estate broker, a contractor, and a developer. He is in good health.

In 2000 and 2001, the parties showed an annual income of just over $60,000. In 2002, Samuel's income dramatically increased. The parties showed

income of $172,325 in 2002, $205,545 in 2003, $266,536 in 2004, and $265,677 in 2005. Nearly all of the family income in those four years can be attributed to Samuel. Samuel attributes his substantial increase in these years to income from the sale of lots and homes in developments in which he held an interest. Samuel testified he does not expect to maintain an income this high in future years. He owns interests in an addition under development and in two others that have lots for sale. He believes his income will not remain constant because of changes in the economy, other new developments in the area, increased competition, changes in the housing market, and the fact that additional land for development is not available at a reasonable price in the area.

EQUITY OF PROPERTY DIVISION.

Samuel contends the property division is not equitable primarily because the district court overvalued property that went to him.

In the case *In re Marriage of Dean*, 642 N.W.2d 321, 323 (Iowa Ct. App. 2002) (citations omitted), we set forth the court's considerations when distributing assets in a dissolution.

> Before making an equitable distribution of assets in dissolution, the court must determine all assets held in the name of either or both parties as well as the debts owed by either or both. The assets should then be given their value as of the date of trial. The assets and liabilities should then be equitably, not necessarily equally, divided after considering the criteria delineated in Iowa Code section 598.21(1) (1999). In general, the division of property is based upon each marriage partner's right to a just and equitable share of the property accumulated as a result of their joint efforts.

In the June 28, 2006 decree dissolving the parties' marriage, the district court entered a decree wherein the court accepted the parties' values on some property, valued other property, and then, based on these valuations, determined

Sandra should have equities of approximately $460,000 in value, and Samuel should have equities of about $1,263,000 in value. To equalize the property division the court ordered Samuel to pay Sandra $402,000. The sum was to be paid at the rate of $50,000 or more a year, plus accrued interest, with the first payment due on or before December 31, 2006, and successive payments due on or before December 31 of each year thereafter. The sum was to accrue interest at seven percent per annum from July 1, 2006, until paid.

VALUATION.

Samuel contends the district court overvalued certain property transferred to him: The Meadows, Fieldstone Second Addition, and Fieldstone Third Addition. The two Fieldstone Additions together with Fieldstone First Addition, which has been totally sold, are owned by what appears to be an S Corporation, Lamas, Inc., which was formed seven or eight years prior to trial. Samuel owns one-half of the shares of stock in Lamas, Inc., and the other shares are owned by his partner. The extremely successful earlier sales of Fieldstone First and Second contributed to the spike in Samuel's income. A year prior to trial, Samuel valued his interest in Lamas, Inc. at $99,000 on a financial statement when he sought credit from his bank.

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). Where we find the value placed on a particular item of property by the district court to be well within the reasonable range of credible evidence, we will not disturb such valuation on appeal. *In re Marriage of Bare*, 203 N.W.2d 551, 554

(Iowa 1973); *In re Marriage of Driscoll*, 563 N.W.2d 640, 643 (Iowa Ct. App. 1997).

A. *Valuation of the Meadows*. There are five developed lots in this division and a home not yet completed. The district court took the listing price for the lots and house, discounted it by ten percent, and subtracted the debt on the property. Samuel's interest was determined to be about $10,000. Samuel does not appear to challenge this value. We find it within the reasonable range of credible evidence and affirm. *Bare*, 203 N.W.2d at 554.

B. *Valuation of Second Fieldstone Addition*. There are five developed lots in this division that have been on the market for a considerable amount of time. The asking price for a lot is between $50,000 and $52,000. The district court determined the asking price for the five lots to be $255,000. The court found there had been no recent offers or sales and determined the asking price should be discounted by at least ten percent to account for the delay and risk in getting the lots sold. The court set the present value of the remaining lots at $229,000. Samuel challenges this valuation, contending two lots did not sell because they were corner lots and required setbacks which would require a home of unique design to utilize the lots. He testified the other lots may need to be reduced to $50,000 per lot to be sold. We find this valuation to be within the reasonable range of credible evidence and affirm.

C. *Valuation of Fieldstone Third Addition.* Fieldstone Third Addition is currently being developed. There are forty-four lots in the addition and the plan calls for a total asking price of $3,445,500. At the time of trial, the development did not have sewer, water, streets, telephone, and cable; grading was not

finished; and seeding and landscaping needed to be done. There was testimony that additional improvements might be necessary to make the lots sellable at the proposed listing price.

The district court found it might take five years for all the lots to be sold, and discounted the listing price by ten percent. It appeared the court then subtracted $1,137,825 for what it determined would be borrowed to complete the project, and $239,580, the debt yet owing on the purchase of the land. The court then valued the Addition at $1,723,545, putting the value of Samuel's one-half interest at $938,000.

Samuel contends this development was overvalued. He contends it should be valued at $517,000. Samuel notes that for borrowing purposes he valued Lamas, Inc. a year earlier at $99,000. He argues that the district court discounting undeveloped lots, which may not be sold for five years, by the same percentage as the court discounted developed lots ready for sale, is not equitable. He points out it will require his continued effort to ready the development for sale, and that the money borrowed for development and owed on the purchase will draw interest until there are sufficient sale proceeds to pay them off. He also notes there may be commissions due when the lots are sold.[1] He contends the district court did not consider these factors.

We recognize there is no guarantee when the lots will sell, whether they will bring the asking price, or more or less than the asking price. We also recognize that interest will continue to accrue on debt, and that finishing and selling the development will require Samuel's future services. Should the lots sell

[1] Samuel testified if he or his partner sold the lots there would not be commissions, but if sold by others there would be.

slowly and for less than the suggested price, this valuation will be unfair to Samuel because the property division is not modifiable. *See In re Marriage of Wiedemann*, 402 N.W.2d 744, 749 (Iowa 1987) (noting the nature of the assets should be considered, especially where there is a high risk of decrease in value).

We agree with Samuel that it is difficult to reconcile the district court's application of a ten percent discount to developed lots available for immediate sale and undeveloped lots. It does not appear in discounting the undeveloped lots by ten percent the district court gave adequate consideration to interest that will continue to occur on the development debt, sales commissions that will be owed on lots sold by other than Samuel and his partner, and the income tax consequence on sale of the lots which will be sold. Tax consequences can be considered in a property division. *See* Iowa Code § 598.2(1) (2005); *In re Marriage of Hook*, 364 N.W.2d 185, 195 (Iowa 1985). Particularly where, as here, a sale of the property is pending as distinguished from *In re Marriage of Friedman*, 466 N.W.2d 689, 692 (Iowa 1991), where the court rejected reduction of value of assets by tax consequence of sale where there was no evidence a sale was pending or contemplated.

We find, upon considering all factors, that valuing the lots at $517,000 is more reasonable.

The reduction in value calls for a modification of the property settlement. Also in modifying the property settlement we consider that the district court ordered Samuel to immediately pay interest on Sandra's property settlement despite its finding liquidation of the lots will take five years.

We decrease the amount Samuel is ordered to pay Sandra to $200,000 at the rate of $25,000 a year with accrued interest at seven percent per annum until paid.

ALIMONY.

Samuel contends the alimony award is too high. Sandra contends she should have more alimony. Sandra was awarded spousal support of $2000 a month. In addition, Samuel was ordered to provide health insurance for Sandra and pay her co-payments and deductibles but not in excess of $5000 a year.

"[A]ny form of alimony is discretionary with the court." *In re Marriage of Ask*, 551 N.W.2d 643, 645 (Iowa 1996) (citing *In re Marriage of Wessels*, 542 N.W.2d 486, 490 (Iowa 1995)). Before awarding alimony, the district court is required to consider the factors listed in Iowa Code section 598.21(3). These factors include (1) the length of the marriage, (2) the age and the physical and emotional health of the parties, (3) the property distribution made in the dissolution decree, (4) the educational levels of the parties, (5) the earning capacity of the party seeking maintenance, (6) the ability of the party seeking maintenance to become self-supporting at the standard of living enjoyed during the marriage, (7) the tax consequences to each party, (8) any mutual agreements by the parties concerning financial or service contributions, (9) the provisions of any antenuptial agreement, and (10) any other factors the court determines relevant on a case-by-case basis. *Id.*; *In re Marriage of Crotty*, 584 N.W.2d 714, 719 (Iowa Ct. App. 1998). Whether spousal support is justified is dependent upon the facts of each case. *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976). "An alimony 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 alimony, who also has a need for support." *In re Marriage of Sychra*, 552 N.W.2d 907, 908 (Iowa Ct. App. 1996) (citing *In re Marriage of Weiss*, 496 N.W.2d 785, 787-88 (Iowa Ct. App. 1992)). The district court did not abuse its discretion in ordering alimony of $2000 a month and we affirm on this issue.

ATTORNEY FEES.

The district court ordered Samuel to pay $10,000 towards Sandra's attorney fees. We review for an abuse of discretion. *In re Marriage of Wood*, 567 N.W.2d 680, 684 (Iowa Ct. App. 1997). The district court did not abuse its discretion in ordering Samuel to pay $10,000 towards Sandra's attorney fees.

Sandra requests appellate attorney fees. "An award of appellate attorney fees is not a matter of right, but rests within the court's discretion." *Id.* In determining whether to award appellate attorney fees, "we consider 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 decision of the trial court on appeal." *Id*. We deny Sandra's request for appellate attorney fees. She is receiving substantial assets and has the ability to pay her fees and among other things she was not successful on her cross-appeal.

Costs on appeal are taxed equally to the parties.

AFFIRMED AS MODIFIED ON APPEAL; AFFIRMED ON CROSS-APPEAL.