IN THE COURT OF APPEALS OF IOWA

No. 8-494 / 08-0013
Filed October 29, 2008

IN RE THE MARRIAGE OF MARY JANE STOCK AND DUANE STOCK, JR.

Upon the Petition of
MARY JANE STOCK,
Petitioner-Appellant/Cross-Appellee,

And Concerning
DUANE STOCK, JR.,
Respondent-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Johnson County, Kristin Hibbs, Judge.

Petitioner and respondent appeal several financial provisions of the decree dissolving their marriage. **AFFIRMED AS MODIFIED.**

Sasha L. Monthei of Krug Law Firm, Cedar Rapids, for appellant.

Thomas D. Hobart and Peter J. Gardner of Meardon, Sueppel & Downer, P.L.C., Iowa City, for appellee.

Heard by Sackett, C.J., and Eisenhauer and Doyle, JJ.

SACKETT, C.J.

Mary Jane Stock appeals challenging certain financial provisions of the decree dissolving her marriage to Duane Stock, Jr.[1] We affirm as modified.

STANDARD 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); *see also In re Marriage of Bethke*, 484 N.W.2d 604, 608 (Iowa Ct. App. 1992).

Before making an equitable distribution of assets in a 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. *See In re Marriage of Brainard*, 523 N.W.2d 611, 616 (Iowa Ct. App. 1994). The assets should then be given their value as of the date of trial. *Locke v. Locke*, 246 N.W.2d 246, 252 (Iowa 1976); *In re Marriage of McLaughlin*, 526 N.W.2d 342, 344 (Iowa Ct. App. 1994). Equitable division does not necessarily mean an equal division of each asset. *In re Marriage of Robison*, 542 N.W.2d 4, 5 (Iowa Ct. App. 1995); *see In re Marriage of Peterson*, 491 N.W.2d 535, 537 (Iowa Ct. App. 1992). Rather, the issue is

[1] Duane filed a notice of cross-appeal but has not challenged any of the district court's findings in his brief.

what is equitable under the circumstances. *In re Marriage of Webb*, 426 N.W.2d 402, 405 (Iowa 1988). The distribution of the property of the parties should be that which is equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(5) (Supp. 2005); *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa Ct. App. 1983).

BACKGROUND. The parties married in 1975. Three children were born to the marriage. They have all reached adulthood and are not dependent on their parents for support. Both parties are in their middle fifties and in good health. Both are employed outside the home. At the time of trial Mary's hourly wage was about $13.50 and Duane's was fifteen dollars. They also have a farming operation and raise grain and feed livestock. They own a farm of approximately ninety acres where their home is located. In addition, they rent farmland that Duane's father has a life estate in and Duane owns one-third of, subject to his father's life estate. Both parties have been active in the farming operations. They have, in addition to the land, a number of other assets including farm implements, retirement accounts, and other personal property, as well as substantial debt.

The district court valued certain property and debts. Some property and debts were allocated to the parties. Other property was ordered sold and certain debts were to be paid from the proceeds and the balance divided. Duane was ordered to pay an equalizing payment $23,118.91.

Mary contends the district court erred in (1) refusing to order certain grain to be sold and the proceeds divided, (2) failing to set aside to her some

debentures worth $6000 as her separate property, (3) not dividing Duane's one-third remainder interest in a farm wherein his father has a life estate, (4) undervaluing a debt owed to Eldon Stutsman, Inc. she was ordered to pay, (5) failing to make provisions for a skid loader trailer and a two-wheeled trailer, (6) finding there was no agreement as to the interest on a loan owed to her mother, Shirley Clausen, and (7) using an offer by a Mr. Hodge to value the parties' farm. Duane contends the district court equitably valued and divided the assets and liabilities of the parties.

Mary's challenges need to be considered in the context of the entire property division. Unfortunately, neither of the parties nor the district court has attempted to give us the net value of the equities allocated in the decree to each party. We will address each of Mary's challenges.

CROPS. The district court ordered the 2006 and 2007 crops raised on the farm the parties owned to be sold and the proceeds to be divided. Mary contends the district court should have done the same with crops raised on the rented farm wherein Duane's father has a life estate. The district court did not provide for the allocation of the parties' interests in these crops. Mary filed an Iowa Rule of Civil Procedure 1.904(2) motion to enlarge, modify or amend findings of fact, asking that the crops be divided because, among other things, the rent was paid from joint assets. Duane resisted the motion contending he was the sole tenant on the rental farm and therefore, the crops from that land for 2006 and 2007 were his income alone and no division was required. The district court denied Mary's motion.

Duane contends the crops should not be divided because, among other things, he did all the labor to put the crops in and take them out.[2] Duane further argues Mary was given a notice in August of 2006 that she was no longer a tenant on the farm and he also asserts that he borrowed against his 401(k) to pay for crop inputs. He further argues Mary gave away hay raised on their farm to the neighbor, making it necessary for him to purchase additional hay and to used stored crop from the rental farm to feed the cattle. Duane further testified that his father rented the land to them for $100 which was about fifty dollars an acre below market and that they owe his father $37,500 in farm rents.[3] The $37,500 in farm rents was ordered to be paid out of joint proceeds; consequently, Mary is sharing the expense of renting the farm.

Generally, valuations and divisions of property are to be made at the date of trial. *In re Marriage of Muelhaupt*, 439 N.W.2d 656, 661 (Iowa 1989). However, the trial date is not always the proper date for determining values. In *In re Marriage of Driscoll*, 563 N.W.2d 640, 643 (Iowa Ct. App.1997), we stated the following:

> There may be occasions when the trial date is not [the] appropriate [time] to determine values. Equitable distributions require flexibility and concrete rules of distribution may frustrate the court's goal of obtaining equitable results. For example, when parties separate several years before even filing a petition for dissolution of marriage, an alternate valuation date is appropriate. Hence, we are not locked into a set date as it is inherent in the court's equitable powers, to make appropriate adjustments, according to the unique facts of each case.

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[2] The case was tried in September of 2007 so it is questionable as to whether the 2007 crops had been harvested.

[3] The stipulation of the parties shows this is an agreed debt.

(Citations omitted.)

Mary contended on the stipulation of assets that the 2007 soybean crop should be worth $23,193 and the 2007 corn crop should be worth $55,906. She testified that in 2007 they had 130 acres of corn and seventy-nine acres of beans with fifty acres of the corn being grown on their farm and the rest of the crops being grown on the rented farm. Duane placed no value on these crops contending their value was not known.[4] Mary, on the stipulation of assets, values the 2006 corn crop at $9000.[5]

It is not clear how much 2006 corn from the rental farm existed at the time of trial. The district court found that in 2007 Mary allowed a neighboring farmer to pasture cattle on the parties' farm contrary to earlier practices. The district court found that as a result of the pasture land being unavailable, Duane fed the cattle from the 2006 corn crop located in bins on the rental farm. We agree with the district court that Mary should have no compensation for corn fed prior to trial.

There is merit to Mary's argument that she should have a portion of the 2006 and 2007 grain from the rental farm that existed at the time of trial. The evidence is not clear as to the amount of grain or its value. We modify to divide equally between Duane and Mary any grain from their own farm and the rental farm that was in storage or in the field at the time of trial.

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[4] The stipulation does not separate the 2007 grain between the two farms but Mary contends the majority of these crops were grown on the farm where Duane's father has a life estate.

[5] Again, the stipulation does not separate the 2006 crops between the two farms.

If any of this grain has been sold then Mary should have one-half of the sale proceeds. The cost of harvesting any 2007 crops shall be paid equally by the parties.

DEBENTURE. The district court did not set aside to Mary as inherited or gifted property, $6000 in debentures Mary received from her family. Rather, they were allocated to her as a part of the property division. Mary contends she therefore should have $3000 from Duane because of this allocation. Duane contends the court's allocation was equitable and makes a further argument that Mary applied the debenture to the price of a planter in 2004. We find no reason not to affirm the district court on this issue.

UNDIVIDED REMAINDER INTEREST. Mary contends that she should receive an interest in the farm where Duane has an undivided one-third interest subject to his father's life estate. The district court denied her request saying it was a future inheritance and not subject to division. It is a vested interest not an inheritance. A vested remainder is where the estate passes by the conveyance, but the possession and enjoyment are postponed until the particular estate is determined and the estate is invariably fixed to remain to certain determinate persons. *In re Will of Uchtorff*, 693 N.W.2d 790, 793-94 (Iowa 2005). A remainder may be vested even when enjoyment is postponed until the happening of some future condition; it is contingent only if the remainder interest is "'dependent on some *dubious circumstance*, through which it may be defeated . . . .'" *Id.* (quoting *Taylor v. Taylor*, 118 Iowa 407, 409, 92 N.W. 71, 71 (1902)).

Duane's enjoyment is postponed until a time certain, that is, his father's death. Vested remainders are devisable and alienable. *Uchtorff*, 693 N.W.2d at 794.

Mary appears to concede the remainder interest was a gift or inheritance to Duane from his family. In determining whether inherited or gifted property is divisible, the controlling factors are the intent of the donor and the circumstances surrounding the inheritance. *In re Marriage of Liebich*, 547 N.W.2d 844, 850 (Iowa Ct. App. 1996). Factors to consider in determining whether inherited or gifted property should be divided include:

> (1) contributions 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.

Id.; *see also In re Marriage of Thomas*, 319 N.W.2d 209, 211 (Iowa 1982). Other matters, such as the length of the marriage or the length the property was held after it was devised or given, though not independent factors, may indirectly bear on the question for their effect on the listed factors. *Thomas*, 319 N.W.2d at 211.

Mary argues in support of her position (1) that since 1994 when the farm was rented to her and Duane, she has assisted in improving and maintaining the farm, and (2) it was part of the family's income because Duane's father allowed them to farm it at a reduced rent. She acknowledges there is no evidence as to the value of Duane's remainder interest. She asks either that the case be remanded to allow additional evidence or she be granted half of Duane's undivided interest.

We affirm the district court on this issue. While Mary and Duane made improvements on the farm they also rented it at a reduced rate. Furthermore, contrary to Mary's argument, Duane's remainder interest provides no income to the family as his father has the current right of possession of the farm and Duane has not yet come to enjoy or receive benefit from his remainder interest. Consequently one cannot say his remainder interest enhanced the family income rather the fact that Duane's father made a continuous gift to the couple by renting the farm to them at less than market value enhanced their income.

STUSTMAN DEBT. Mary was ordered to pay this debt. She argues the district court found it to be $16,000 when it was $27,346. In the parties' stipulation Duane shows it to be $16,000 and Mary showed it to be $27,346. In Mary's rule 1.904(2) motion she attached an exhibit and asked that the district court modify its order to provide the Stutsman bill of $26,889.89 be paid from the proceeds of the sale of their farm. The district court denied the request. It is unclear to us as it apparently was to the district court what the bill to MJT farms was for. Therefore we affirm on this issue.

UNDIVIDED PROPERTY. Mary also contends the court failed to divide a skid loader trailer and a two-wheel trailer. Duane said the trailer was part of the skid loader and the two-wheel trailer was missing. Mary wants $250 for her half of the skid loader trailer. She contends if the two-wheel trailer is found it should be sold and the proceeds divided. We deny the request as it is reasonable to believe the district court included the trailer in the valuation of the skid loader. There is no evidence either party has a two-wheel trailer. The district court did

not abuse its discretion in not including it in the property division. We affirm on this issue.

LOAN FROM MARY'S MOTHER. Mary's mother, Shirley Clausen, advanced the couple money when they bought their farm. There is no written documentation of the loan. Both parties agree that the money was advanced. Mary contends there was an agreement to repay her mother and contends it should be increased by $30,000 to provide 4.5 percent interest on the advance, and that the amount should be paid from the sale of the parties' home. The district court found no agreement for interest on the loan and denied a request made in a rule 1.904(2) motion. Duane responds that no payments have been made on the loan and there has been no interest paid. Clausen was asked:

> Q. Mrs. Clausen, as I understand what you are saying is that you waive the interest on this loan that you made to Duane and Mary Jane so far; is that correct? A. So far, yes.

The district court found Clausen did not expect to be paid and did not provide for the payment of interest on the debt. We affirm this finding.

APPRAISAL. Mary contends the district court should not have valued their home and farmland at $400,000. Initially Mary had contended it was worth less and an appraisal of $353,000 should have established its value. She had requested that the property be awarded to her. She contends that the offer the district court used to establish the value was not valid because it expired two days after the trial. Duane argues that farmland values have been on the rise and that the district court correctly ordered it placed on the open market. This

appears to be a non-issue. While the district court established a value for the property it then went on to provide that:

> The property shall be placed on the market immediately. If not sold within 90 days, the property shall be listed with a realtor of the parties' choice. . . . Both parties are ordered to cooperate fully with the sale of the real estate parcels. Neither may unreasonably withhold approval of reasonable offers received. Either party found to have intentionally and unreasonably caused a delay in the sale of either property may be solely financially responsible for additional mortgage payments, taxes or other additional costs incurred because of the delay.[6]

There is no error here.

CONCLUSION. We affirm in all respects except we modify the decree to divide equally between Duane and Mary any grain from their own farm and the rental farm that was in storage or yet in the field at the time of trial. If any of this grain has been sold than Mary should have one half of the sale proceeds. The cost of harvesting any 2007 crops shall be paid equally by the parties. In all other respects we affirm the district court.

We award no appellate attorney fees. Costs on appeal shall be paid one-half by each party.

AFFIRMED AS MODIFIED.

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[6] In her reply brief Mary seems to agree with the manner of sale established by the district court.