IN THE COURT OF APPEALS OF IOWA

No. 9-695 / 08-1919
Filed October 7, 2009

IN RE THE MARRIAGE OF CHERYL A. ANGIER AND CHRIS E. ANGIER

Upon the Petition of CHERYL A. ANGIER,
Petitioner-Appellee/Cross-Appellant,

And Concerning CHRIS E. ANGIER,
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Polk County, D.J. Stovall, Judge.

Chris Angier appeals the property settlement and alimony provisions of a decree of dissolution. Cheryl Angier cross-appeals as to alimony. **AFFIRMED AS MODIFIED AND REMANDED**.

Sharon Soorholtz Greer of Cartwright, Druker & Ryden, Marshalltown, for appellant.

Debra Hockett-Clark, West Des Moines, and Andrew Howie of Hudson, Mallaney & Shindler, P.C., West Des Moines, for appellee.

Considered by Vaitheswaran, P.J., Mansfield, J., and Schechtman, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

MANSFIELD, J.

Chris Angier appeals the property settlement and alimony provisions of a decree dissolving his marriage to Cheryl Angier. Cheryl cross-appeals the alimony provisions. We modify both the property settlement and the alimony award and remand for further proceedings consistent herewith.

I. Facts.

At the time of trial, Cheryl was age fifty, Chris was age fifty-one, and they had been married to each other for twenty-six years. The parties had three children, only one of whom was a minor (an eleven-year-old daughter). Cheryl and Chris were separated at the time of trial, with Cheryl living in the former marital home in West Des Moines and Chris living in Des Moines.

Cheryl graduated with a bachelor's degree from the University of Iowa in 1981. However, after the couple's first child was born in 1982, Cheryl primarily stayed home to raise the first two children. In the early to mid-1990s, Cheryl worked outside the home as a nurse's associate and then as a teaching associate, but this employment ceased in 1996 after the couple's third child, their daughter, was born. The daughter was diagnosed with a serious form of cancer shortly after birth, and had to undergo multiple surgeries, but the cancer has been in remission for nine years. In 2007, when the parties separated, Cheryl began working approximately thirty hours a week doing a variety of tasks for a nonprofit organization at a rate of ten dollars per hour. Cheryl agrees that she has marketable skills.

Chris, like Cheryl, has a bachelor's degree from the University of Iowa. He has worked in the insurance business for many years and is currently

employed by GuideOne. Chris earns approximately $80,000 a year plus a bonus.

In 2004, three years before Cheryl petitioned for dissolution, Cheryl and Chris acquired a farm in Marion County. This farm had been in Cheryl's mother's family for several generations. Cheryl's mother and father lived on it for twenty-two years. When Cheryl's mother died in 2002, Cheryl's father, Jack Noah, inherited it from her.

By June 2003, Jack Noah had remarried and executed a new will. The will provided that upon his death, his new wife (Lois Noah) would receive a life estate in the farm, but it would then pass to his daughters Cheryl Angier and Carol Honary in equal shares.[1] The next year, however, Jack and Lois decided they wanted to move away from the farm to the warmer climes of Arkansas. Cheryl's father recognized that he needed some return from the farm. In an April 2004 letter to Cheryl and her sister, Jack proposed several options. The third option involved "sell[ing] out the farm lock, stock and barrel to both the Angier family and the Honary family for 150,000 dollars which they could split and use the property any way they wished." Cheryl's father planned to sell the farm whether the Angiers and the Honarys bought it or not. In July 2004, after making plans to dispose of the farm, Jack executed a new will leaving his entire estate to his new wife Lois unless she predeceased him.

[1] In a separate memorandum to the will, Jack deposed of certain items of personal property. Among other things, he indicated that his son-in-law Chris should receive four guns from his collection, noting that he "found him to be an honest and responsible adult."

In October 2004, Jack and Lois Noah deeded the farm property to Cheryl and Chris Angier as joint tenants for the sum of $80,000 cash, which was substantially less than its actual market value. Jack and Chris finalized the transaction directly without Cheryl's involvement. According to Chris, Jack told Chris that this was "what he wanted" out of the farm. According to Jack, this was only a "token price." He believed it was one-third the actual value of the farm ($240,000). He intended that each of his daughters, Cheryl Angier and Carol Honary, would receive the benefit of one-half the difference between the purchase price and the actual value.

Cheryl and Chris obtained the needed $80,000 by taking out a new mortgage on their marital home. In the first year of owning the farm, Cheryl and Chris used several thousand dollars of their marital funds to get the property in good rental condition. Thereafter, all farm expenses (e.g., mortgage, taxes) have been paid from marital funds, and all rental payments have been treated as marital income. Cheryl and Chris have both done work on the farm, and had planned to retire there. Since the first year, the farm has been financially self-supporting.

Cheryl acknowledged that when the farm previously passed through her family, no one ever paid anything for it. Thus, the $80,000 transaction was the first purchase. At trial, Cheryl took the position that the farm actually belonged to herself and her sister, although she conceded that none of the farm income has been paid to her sister and her sister has had no involvement with the farm since 2004. Chris agreed that the $80,000 price "had something to do with the fact that Cheryl is his daughter." Both of the Honarys testified that they were generally

aware of Jack's $80,000 price, and that they had discussions with the Angiers about putting up half of that amount. According to them, the Angiers went ahead and paid the full $80,000 although the Honarys were ready, willing, and able to pay half or even all of the purchase price. The Honarys assumed that Carol's interest in the property was being protected.

Cheryl's father testified by deposition that he wanted to keep the farm in the family in 2004. As noted, he testified that $80,000 was a "token price." He testified that he understood he was signing over the farm to Cheryl and that Chris "would finance it for Cheryl." However, he acknowledged that the deed went to both Cheryl and Chris and there was nothing wrong with it. According to appraisal evidence presented at trial, the actual value of the farm in 2004 was approximately $200,000, and its value had increased by 2008 to $295,000.

Following trial, the district court approved a property settlement that generally resulted in an equal division of the parties' considerable investments and retirement accounts. However, the district court excluded the Marion County farm from that property settlement, except for a $29,000 increase in equity that it treated as marital property. (The court arrived at $29,000 by taking the present value of $295,000, subtracting the 2004 value of $200,000, and subtracting the remaining mortgage balance of $66,000.) As the district court explained, "It is obvious that the $80,000 nominal sale price agreed to by Cheryl's father was meant to keep the property in the family." The district court also ordered Chris to pay Cheryl $400 per month in rehabilitative alimony for sixty months. Chris now appeals, challenging both the disposition of the Marion County farm and the provision for alimony. Cheryl cross-appeals, arguing that the district court's

alimony award was insufficient and that she should receive $1100 per month until she dies or remarries or Chris dies.

II. Standard of Review.

We review dissolution proceedings de novo. Iowa R. App. P. 6.4; *In re Marriage of Becker*, 756 N.W.2d 822, 824-25 (Iowa 2008). We give weight to the factual findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(*g*).

III. Analysis.

A. Marion County Farm.

The district court found that the Marion County farm was not a marital asset subject to full division, notwithstanding the fact that Cheryl and Chris jointly financed the purchase and jointly took title to it. The district court reasoned that Cheryl's father agreed to a steep discount "to keep the property in the family." The district court added, "To sell the property at this point pursuant to Chris's desires would defeat keeping the farm property in the family."

Upon our review, under the specific facts of this case, we accept the district court's implicit determination that the equity in the farm at the time of the 2004 transfer was a gift to Cheryl. Although the farm was titled in both spouses' names, we have previously held that this is not determinative. *See In re Marriage of Fall*, 593 N.W.2d 164, 167 (Iowa Ct. App. 1999). In reaching our conclusion, we note the undisputed evidence that the purchase price was far below the actual value of the property. Moreover, everyone recognized this at the time. Also, Jack, Cheryl, Carol, and Carol's husband all testified that Jack's overall plan was for Cheryl and Carol to derive equal benefit from the property;

there is no evidence that Jack wanted to favor one daughter over the other. In effect, it appears Jack intended to get back the $80,000 he needed, relinquish the property to Cheryl, and let Cheryl and Carol work out the details later. Although Chris mentions Jack's decision to bequeath four guns to him, this modest bequest, accompanied by modest praise (Jack says he found Chris to be "an honest and responsible adult"), does not convince us that Jack would have intended to give him half of an entire farm.

However, we believe the district court should have allocated more than $29,000 of the equity in the farm to be divided as marital property. From 2004 until the time of dissolution, the couple used marital assets to improve and maintain the property, used marital assets to pay down the mortgage, and treated the rental income as marital property. The district court specifically found, and we concur, that Chris subsequently performed "some work to enhance the value of the farm property." Thus, it is our view that any increase in value from 2004 to the time of dissolution should have been treated as a marital asset.

Accepting the district court's determinations that the property is now worth $295,000 and that it was worth $200,000 in 2004, we hold that $109,000 of equity in the farm should have been subjected to division as marital property. We arrive at this number as follows: In 2004, Jack gifted $120,000 (the difference between the $200,000 value and the $80,000 purchase price) to Cheryl. Cheryl also is assuming the $66,000 balance on the mortgage. This results in a total of $186,000. The difference between $295,000 and $186,000 is the marital share, and it comes to $109,000.

For the foregoing reasons, we believe the property settlement needs to be redetermined, with $109,000 of the farm property equity rather than $29,000 to be included in the division of property pursuant to Iowa Code section 598.21(5) (2007). The remaining $186,000 of value, which includes both the original $120,000 gift to Cheryl and the $66,000 mortgage balance assumed by Cheryl, would still be treated as Cheryl's separate property and would not be divided. We accordingly remand for this purpose. On remand, we anticipate that the district court would carry out this modification by reducing Cheryl's assigned assets by $40,000 (one-half of the difference between $109,000 and $29,000) and reassigning those same assets to Chris.

B. Alimony.

Chris argues that the district court should not have awarded alimony; Cheryl, meanwhile, contends the monthly alimony payments should have been greater and of longer duration. An award of spousal support depends on the circumstances of a particular case. *Becker*, 756 N.W.2d at 825. In making a spousal support award, the district court must consider the statutory factors enumerated in Iowa Code section 598.21A. These factors include: (1) the length of the marriage; (2) the age, physical, and emotional health of the parties; (3) the property division; (4) the educational level of the parties at the time of the marriage and at the time the dissolution action is commenced; (5) the earning capacity of the party seeking support; and (6) the feasibility of the party seeking support becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. *Id*. The court also considers each party's earning capacity and each party's present standard of living and ability to pay

balanced against the relative needs of the other. *In re Marriage of Hitchcock*, 309 N.W.2d 432, 436-37 (Iowa 1981).

The district court found, and we agree, that Cheryl is entitled to rehabilitative spousal support. However, we find in order to do equity, the spousal support award must be increased. The parties were married for twenty-six years. At the time of the trial, Cheryl was fifty and Chris was fifty-one years old. While Chris was advancing his career, Cheryl stayed home and raised three children, one of whom was still at home. Understandably, this has had an adverse impact on her current and future earning capacity. Although Cheryl does have marketable skills, at the time of trial there was a large disparity between the parties' incomes. Cheryl's annual income was $16,640, compared with Chris's annual income of $80,212 plus a bonus. Moreover, the district court indicated its alimony award was intended, in part, to take into account the fact that it only considered Chris's regular salary, not his bonus income, for child support purposes. Weighing all of these considerations, we find it necessary to modify the alimony award in order to do equity. *See In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa Ct. App. 1998) (stating an award of spousal support is a balancing of the equities). Thus, we award Cheryl alimony for sixty months in the amount of $900 per month.[2]

[2] We assume Cheryl has been receiving alimony at the lower $400 per month level while this appeal has been pending. This would mean that her alimony would now be increased to $900 per month, and when the original five years are over, Cheryl would still receive alimony at the level of $900 a month until Chris has paid a total of $54,000 ($900 per month times sixty months) in spousal support.

IV. Conclusion.

For the foregoing reasons, we have decided the property settlement provisions of the dissolution decree should be modified so as to treat $109,000 of the equity in the Marion County farm as subject to division. Additionally, we modify the decree's alimony provisions to award Cheryl five years of alimony in the amount of $900 per month. We also in our discretion deny Cheryl's request for attorney fees on appeal. Thus, we affirm the decree of dissolution as modified and remand for further proceedings consistent herewith. Costs of this appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED AND REMANDED.