

IN THE COURT OF APPEALS OF IOWA

No. 0-519 / 10-0249
Filed August 11, 2010

IN RE THE MARRIAGE OF GARLAND ROTH AND KIMBERLY ROTH

**Upon the Petition of
GARLAND ROTH,**
Petitioner-Appellee,

**And Concerning
KIMBERLY ROTH n/k/a
KIMBERLY JACOBY,**
Respondent-Appellant.

Appeal from the Iowa District Court for Poweshiek County, Michael Mullins, Judge.

Kimberly Roth appeals challenging the economic provision of the decree dissolving her marriage to Garland Roth. **AFFIRMED.**

Elizabeth Kellner-Nelson of Pendleton Law Firm, P.C., West Des Moines, for appellant.

John Wagner, Amana, for appellee.

Considered by Sackett, C.J., Potterfield and Tabor, JJ.

SACKETT, C.J.

Kimberly Roth appeals from a January 2010 decree dissolving her twenty-four-year marriage to Garland Roth. She contends the district court should have awarded her more alimony, a larger property settlement and should have required Garland to refinance the parties' former residence. On our de novo review we find the district court's decree did equity and we affirm.

SCOPE OF REVIEW. This case was tried in equity, so our review is de novo. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *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. *Id.*

BACKGROUND AND PROCEEDINGS. Garland, born in 1954, and Kimberly, born in 1961, married in 1985. Their only child, Kimberly's biological child who Garland adopted, is an adult. At the time of trial Garland was a self-employed trucker, an occupation he had during the marriage. He currently has reported net income on his federal tax return, schedule C, of approximately \$60,000 a year. Kimberly had several different jobs. She assisted Garland in his endeavors and since September of 2007 has been employed in quality control at ITWC. Her annual income is approximately \$30,000. She also has employee benefits including life insurance, vision, dental and health insurance, disability insurance, profit sharing and a retirement plan. She received education during the marriage including a two-year degree, a commodity training certification, and a commercial driver's license.

Garland's health is good although he does have problems with high blood pressure and occasionally suffers symptoms of depression. Kimberly suffers back problems that resulted from a motorcycle accident, and she has Type II diabetes controlled by diet, and thyroid and cholesterol problems.

The parties' assets included a personal residence, personal property including vehicles and bank and retirement accounts. They also had debt. The district court valued their combined net worth at just under \$150,000 and divided debts and property to leave each with about \$75,000. Kimberly was awarded alimony of \$300 a month for sixty months. The alimony was to terminate early in the event of Garland's death or Kimberly's remarriage. Each party was to pay his or her own attorney fees and one half of the costs of the action.

I. Kimberly contends the district court should have ordered Garland to refinance the parties' former personal residence. The property awarded to Garland included the parties' personal residence. The court valued the home at \$146,580 and found it was encumbered in the amount of \$121,632. Garland was charged with payment of the encumbrance. The court specially found that any liability or encumbrance on property distributed to a party was the responsibility of the party who received the assets and they should indemnify and save the other harmless from the obligation.

Kimberly contends Garland should be required to refinance the real estate awarded to him so as to absolve her from her obligation on the debt thereon. She filed a post-trial motion asking the district court to enlarge its ruling and require Garland to do so. The court denied the motion indicating it did not recall

there was evidence at trial concerning Garland's ability to refinance. The court also noted that her motion made no mention of her intentions as to the treatment of judgment liens on a refinance, that is, whether she would insist on their payment or would subordinate them to a new mortgage. The court denied her request stating, "[t]his Court does not have adequate information before it to fully consider said motion."

The encumbrance on the home is for less than it is worth. The court ordered Garland to indemnify and hold Kimberly harmless on the debt. Kimberly testified Garland told her if he got the house he could refinance it but other than this testimony there does not appear evidence that he can do so. While we would encourage him to refinance we believe the district court was in the better position to assess the issue and we see no reason to reverse the district court's post-trial ruling and affirm on this issue.

II. Kimberly contends she should have alimony of \$750 a month until she reaches sixty-five or dies.

Alimony is an allowance to the spouse in lieu of the legal obligation for support. *In re Marriage of Sjulín*, 431 N.W.2d 773, 775 (Iowa 1988). Any form of spousal support is discretionary with the court. *In re Marriage of Ask*, 551 N.W.2d 643, 645 (Iowa 1996). Spousal support is not an absolute right; an award depends on the circumstances of each particular case. *In re Marriage of Dieger*, 584 N.W.2d 567, 570 (Iowa Ct. App. 1998). The discretionary award of spousal support is made after considering the factors listed in Iowa Code section 598.21(3) (2009). *Id.* We consider the length of the marriage, the age and

health of the parties, the parties' earning capacities, the levels of education, and the likelihood the party seeking alimony will be self-supporting at a standard of living comparable to the one enjoyed during the marriage. *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa Ct. App. 1998). Property division and alimony should be considered together in evaluating their individual sufficiency. *In re Marriage of Trickey*, 589 N.W.2d 753, 756 (Iowa Ct. App. 1998). In marriages of long duration, both spousal support and nearly equal property division may be appropriate, especially where the disparity in earning capacity is great. *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997).

Kimberly has received education during the marriage to assist her with employment. She is gainfully employed in a job that provides her with benefits including health insurance, profit sharing and the ability to contribute to a retirement account. She has received nearly \$85,000 in assets and \$10,000 in debt. While she has some health problems she is able to work on a full time basis. Kimberly is younger than Garland; she has more working years left. The district court did not abuse its discretion in the amount and duration of the alimony award.

III. Kimberly contends the property division made by the district court is not equitable and Garland should be required to pay her a property settlement of \$6710. She argues that the district court (1) did not correctly value vehicles, (2) credited her with receiving \$3000 which was depleted by her living expenses during the pendency of the dissolution, and (3) should have given her credit for money Garland spent during the parties' separation for income taxes. Garland

contends that the \$3000 was joint money and she used it for her own purpose so considering it as property she received was fair. He contends the income taxes he paid were joint debts and the district court was correct in not crediting them to him. We generally value assets and liabilities at the time of trial. See *Locke v. Locke*, 246 N.W.2d 246, 252 (Iowa 1976); *In re Marriage of Campbell*, 623 N.W.2d 585, 587 (Iowa Ct. App. 2001); *In re Marriage of McLaughlin*, 526 N.W.2d 342, 344 (Iowa Ct. App. 1994). There is no reason to depart from that rule and we do not do so here, that is, we consider that Kimberly received \$3000 less than Garland as the result of the district court's decision to count those funds as having been individually received by Kimberly. Our goal is an equitable distribution, not necessarily an equal one.

Kimberly also contends the district court erred in admitting in evidence an appraisal Garland received on his tractor from a local dealer, contending that the court should have used the Blue Book value. On our de novo review we do not consider the written appraisal to which objection was taken, but note there is testimony supporting the value fixed by the district court.

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 Driscoll*, 563 N.W.2d 640, 641-42 (Iowa Ct. App. 1997); *In re Marriage of Brainard*, 523 N.W.2d 611, 616 (Iowa Ct. App. 1994). The assets and liabilities should then be equitably, not necessarily equally, divided after considering the criteria delineated in Iowa Code section 598.21(1) (2009). See *Driscoll*, 563 N.W.2d at 642. 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 re Marriage of Hitchcock*, 309 N.W.2d 432, 437 (Iowa 1981). Generally, we 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). We will not disturb valuations by the trial court that are within the permissible range of the evidence. *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa Ct. App. 1984).

We conclude the district court's valuations of the properties are within the reasonable range of the evidence and we affirm them. We find the district court's division of property equitable. Though the division is not as close to equal as it would have been had the district court not charged Kimberly with the \$3000 she spent, when considering the financial decision as a whole we find no reason to modify. We award no attorney fees. Costs on appeal are charged to Kimberly.

AFFIRMED.