IN THE COURT OF APPEALS OF IOWA

No. 0-587 / 10-0247
Filed October 6, 2010

**IN RE THE MARRIAGE OF SHERRI LYNN LINGLE
AND CURTIS EDSON LINGLE**

**Upon the Petition of
SHERRI LYNN LINGLE,**
Petitioner-Appellant/Cross-Appellee,

**And Concerning
CURTIS EDSON LINGLE,**
Respondent-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Crawford County, Edward A. Jacobson, Judge.

Sherri Lingle appeals, and Curtis Lingle cross-appeals, from economic provisions of a dissolution decree. **AFFIRMED AS MODIFIED.**

Maura Sailer of Reimer, Lohman & Reitz, Denison, for appellant.

Joseph C. Lauterbach and Bryan D. Swain of Salvo, Deren, Schenck & Lauterbach, P.C., Harlan, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.

DANILSON, J.

Sherri Lingle appeals, and Curtis Lingle cross-appeals, from economic provisions of a dissolution decree. Upon our review, we affirm the spousal support award and the dissolution decree with the following modifications: Sherri should receive the S10 pickup, road grader, and camper; Curtis should be assigned to pay the $490 and $90 family medical bills and the Chase credit card debt; and Curtis should be allowed to claim the youngest three children as tax dependency exemptions.

I. Background Facts and Proceedings.

Sherri and Curtis Lingle married in 1998 and divorced in 2010. The parties stipulated to joint legal custody and primary physical care of the parties' four children with Sherri. The parties also stipulated that Curtis would pay Sherri $1029 per month in child support until the parties' oldest child graduated high school,[1] and $930 per month thereafter. The district court adopted these stipulations. On the disputed issue of spousal support, the court ordered Curtis to pay Sherri $400 per month for forty-eight months.

As for the property division, the court assigned Curtis the family home upon finding that Sherri was unable to pay the mortgage; divided the family's five vehicles, camper, motorcycle, trailer, road grader, and off-road vehicles; assigned a value of $8453 to Curtis's 401k and awarded Sherri $4000 of the account; divided any unpaid family medical bills equally between the parties; assigned the Smoke Shop business to Sherri and ordered the debt to be paid by Curtis as it was secured by a second mortgage on the family home; assigned a

[1] The oldest child was expected to graduate high school in May 2010.

disproportionate amount of credit card debt to Sherri upon finding that Sherri was likely to file bankruptcy; and awarded Curtis three tax dependency exemptions for the oldest children and Sherri the tax dependency exemption for the youngest child. Finally, the court ordered Curtis to pay Sherri $1500 for her trial attorney fees.

Both parties filed motions to enlarge and amend the ruling. The court denied the motions. In their appeals, the parties take issue with the district court's spousal support award, property division, tax dependency allocation, and trial attorney fee award. We turn to these issues.

II. Property and Alimony Issues.

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). 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) (2009). *See In re Marriage of Olson*, 705 N.W.2d 312, 315 (Iowa 2005).

A. Property Division.

The ultimate goal of the property division is to divide all property equitably between the parties. *See* Iowa Code § 598.21(5). "Equitable distribution depends upon the circumstances of each case." *See In re Marriage of Hansen*, 733 N.W.2d 683, 702 (Iowa 2007). An equitable division is not necessarily an equal division. *Anliker*, 694 N.W.2d at 542.

Sherri contends the court's distribution of the parties' assets and debts is inequitable. She takes issue with the court's valuation of several assets and the court's failure to award her the homestead, the 1991 S10 pickup, the 1976 camper, and the road grader. Sherri also objects to the court's division of Curtis's 401k and the allocation of some of the debts.

Ordinarily, we divide property based upon evidence of its value. An appraisal may be preferred, but is not required, as valuations can be determined by the testimony of the owner or other corroborating evidence. *See Hansen*, 733 N.W.2d at 703. The district court's valuation will not be disturbed when it is within the range of permissible evidence. *Id*.

The difficulty here is that the district court did not fix a value on all the assets. This court has stated:

> The reason we underscore the importance of assigning values and setting forth the net property distributions in the decree is two-fold: (1) to enable the reviewing court to assess whether an equitable division of property was effected; and (2) to aid the parties in better understanding their respective property awards, which would, in some cases, dispense with the need for an appeal.

In re Marriage of Bonnette, 584 N.W.2d 713, 714 (Iowa Ct. App. 1998). However, we recognize that the district court faced a too frequent problem where much of the trial testimony related to the physical care issue, with little testimony or evidence presented on the property distribution or property valuations. In such circumstances, the district court is hampered in its efforts to fix values or thoroughly explain its conclusions and reasons supporting the distribution.

Notwithstanding, we observe that the values the parties in this case have placed upon their personal property, with just a few exceptions, do not

significantly differ, and it appears the court has generally tried to comply with the parties' partial stipulation in its distribution.

One item not subject to the parties' stipulation was Sherri's wedding ring. We find that Sherri's wedding ring should not be valued or included within the property division, as it is separate and gifted property. There is no evidence to suggest that a refusal to include the ring in the division would be inequitable to Curtis. *See* Iowa Code § 598.21(6).

In respect to the Smoke Shop, the business the parties purchased during the marriage and where Sherri was self-employed, the district court stated:

> Curtis believes that the value of the Smoke Shop is $51,700 and Sherri believes it is $10,349. Sherri was paid $49,525.63 as a result of a fire in the Smoke Shop. Although she attempts to account for the proceeds, the court is not convinced that she has "come clean" with all of the insurance proceeds. Irrespective of the actual value of the Smoke Shop, all of the assets are awarded to Sherri. The debt associated with the Smoke Shop shall be paid by Curtis, as the same appears to be secured by the property awarded to him.

We conclude the value of the Smoke Shop should be fixed in the sum of $48,000. This amount is derived from the insurance proceeds of $49,525.63 less approximately $1500 in family expenses paid with the proceeds by Sherri.[2] Obviously, Sherri received the insurance proceeds, and whether she has actually invested them entirely into the Smoke Shop is not our concern, but simply that she received the value of the business assets. Remaining insurance proceeds, if any, should be awarded to Sherri.

[2] Sherri contends that she paid a substantial amount of family expenses out of the insurance proceeds. Upon our review of Sherri's proof of expenditures in "Petitioner's Exhibit 6," we can only identify approximately $1500 of the expenditures used for the family.

The district court determined that Curtis should receive the family homestead, stating, "The court finds that the facts do not support Sherri's being awarded the homestead of the parties, simply because she cannot pay for the same, even with the award of child support and alimony." We acknowledge it may be appropriate for the physical care parent to remain in the family home to provide stability for the children. Iowa Code § 598.21(5)(g); *Hunt v. Kinney*, 478 N.W.2d 624, 625 (Iowa 1991); *In re Marriage of Ales*, 592 N.W.2d 698, 704 (Iowa Ct. App. 1999). In this case, the court concluded that only Curtis will be able to afford to make the mortgage payments on the homestead.[3] Although we are not equally convinced, until the second mortgage is paid, Sherri would be stretched financially to afford the residence. More significant is the fact that the "homestead" includes seven acres of Curtis's farm operation. Considering all of the arguments and facts, we find no reason to disturb the court's distribution of the homestead to Curtis.

In regard to the 2009 crops, we find that the court properly awarded Curtis the proceeds from the crops. At the time of hearing, the crops had not yet been harvested. The crops were part of the land, so when Curtis was awarded the acreage he was also given the crops on the acreage. *See In re Marriage of Conley*, 284 N.W.2d 220, 223 (Iowa 1979). Because Curtis was also farming some additional land that he apparently rented, and the parties separately valued the growing crops, we determine that all of the growing crops have a separate

[3] Because Curtis is being awarded the homestead and has proposed a greater value for the homestead, we rely upon his value of $72,000.

value of $31,149.[4] *See In re Marriage of Martin*, 436 N.W.2d 374, 376 (Iowa Ct. App. 1988) (court may value crops growing on land as "property separate" from the value of the real estate).

In order to make the property division equitable, however, we find Sherri should receive the 1991 S10 pickup, because Curtis received two other pickups in addition to the S10. Sherri should receive the road grader, as the parties stipulated. Sherri should also receive the 1976 camper, because the children use the camper. We modify the district court's division to reflect these changes.

In regard to Curtis's 401k, the court determined the account was a "marital asset to the extent of the appreciation and value during the marriage, totaling $8453." The court then awarded Sherri $4000 of the account. We agree with the court's division of Curtis's 401k, as the court roughly and nearly divided the 401k in proportion to the amount attributable to the joint marital efforts. *See In re Marriage of Sullins*, 715 N.W.2d 242, 248 n.2 (Iowa 2006) ("[T]he value of the marital interest in defined contribution plans is the amount of contributions made during the marriage plus accumulated interest on these contributions.").

With the exception of the specific values we have identified (for the homestead, Smoke Shop, and 2009 crops) there is not a significant difference in the value of all the remaining personal property awarded to each party, using either Sherri's or Curtis's estimates on the property values.

Sherri also takes issue with the district court's allocation of the parties' debt. The allocation of marital debts between the parties is as integral a part of

[4] Although the district court did not fix a value on the crops, we rely upon the testimony of Curtis concerning the value of the crops because it appears that he was primarily the one involved in the farming operation.

the property division as is the apportionment of marital assets. *Sullins*, 715 N.W.2d at 251. The allocation of marital debts therefore inheres in the property division. *In re Marriage of Siglin*, 555 N.W.2d 846, 849 (Iowa Ct. App. 1996). As the court set forth in the decree:

> Curtis shall be responsible for the debt at the First National Bank home loan and the Crawford County Bank farm loan, in addition to the Crawford County Bank Smoke Shop loan. Curtis shall also be responsible for the farm plan debt and the crop insurance debt, together with the J.C. Penney and Visa credit card debt. Sherri shall be responsible for the Wells Fargo debt on her automobile, the Chase credit card, the AT&T credit card, the Capitol One credit card, Maurice's, Advanta, and Farner-Bocken. The parties shall jointly be responsible for the Crawford County Medical Health, the Family Medicine, and the WIMH Family Medical bills.
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> The court is aware that Sherri is absorbing a disproportionate amount of credit card debt. However, the court believes Sherri needs to be held accountable for the debt that she created and in addition is aware that Sherri intends to discharge nearly all of that debt in bankruptcy. The court has required Curtis to pay the Smoke Shop debt at the Crawford County Bank, which leaves Sherri's business essentially paid for, except for the payment to suppliers, which occurs in the normal course of operating a business.
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> The court is also aware that it will be difficult or nearly impossible for Curtis to pay the debt that has been assigned to him in the decree, without declaring bankruptcy himself.

A court's allocation of debts should fairly reflect the parties' financial ability to assume them. *See In re Marriage of Geil*, 509 N.W.2d 738, 741 (Iowa 1993). The fact that one or both parties may be contemplating bankruptcy, however, should not be considered as a factor in allocating the debts of the parties. *Id.* at 743 ("[T]he dischargeable nature of these obligations will be for the bankruptcy court alone to decide.").

That said, on our de novo review, we affirm the court's allocation of debts with only a few exceptions. We agree with Sherri that Curtis should be assigned

to pay the $490 and $90 family medical bills, because during his testimony, Curtis agreed to pay those two debts. The remaining $106 medical bill shall be split between the parties. We recognize that Sherri should be responsible for most of the marital credit card debts. However, the fact that Curtis was unaware that Sherri "maxed-out" the credit cards does not give proof that the debt was incurred solely due to Sherri's gambling losses.[5] Sherri gave various examples of family expenses that were paid by the use of the credit cards, such as orthodontics for one of the children, medical bills, Curtis's motorcycle, and inventory for the Smoke Shop. Accordingly, we find it equitable to allocate the credit card debt owed to Chase, in the sum of $15,122, to Curtis.

In reaching this decision, we have considered many factors, including Curtis's earning capacity, Curtis's support obligations, Sherri's needs, and Sherri's dissipation of family assets as a result of her gambling habit. *See* Iowa Code § 598.21(5)(g). We also note that one significant advantage to this division to Sherri is that Curtis is responsible to pay a debt of the Smoke Shop, which was awarded to her, as the debt is secured by the second mortgage on the homestead. This distribution of property and allocation of debt does not equally divide the net worth of the parties, but we conclude is equitable in light of these factors.

B. Alimony.

The district court ordered Curtis to pay Sherri spousal support of $400 per month for forty-eight months. Curtis argues the court should not have awarded

[5] The evidence reflects that Sherri has dissipated marital assets to the extent that she spent thirty to fifty dollars per week on her gambling habit, but these expenditures are far less than the amount that Curtis attempts to attribute to her.

any spousal support. Although our review is de novo, the district court is given considerable latitude in determining spousal support. *See Anliker*, 694 N.W.2d at 540. "We will disturb that determination only when there has been a failure to do equity." *Id.*

In regard to the issue of spousal support the district court stated:

> In 2008, Curtis earned approximately $39,000 and Sherri earned approximately $9,000. Sherri claims that her earning capacity has been substantially diminished by the parties' mutual decision that she should stay home and take care of the children. The decision to purchase the Smoke Shop in Denison was made after the children were somewhat older and the hours of the Smoke Shop fit Sherri's schedule better than many other jobs.
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> . . . .
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> In the instant case the relative income of Curtis to Sherri seems to warrant the payment of alimony by Curtis, particularly when apparently the parties agreed that Sherri would stay home and concentrate on child care during the formative years of the children, while Curtis would be responsible for earning the money.
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> Sherri does not present a particularly compelling argument that she should be entitled to alimony because of her circumstances; however, because of the large amounts of credit card debt that she has run up and her daily gambling habit. Between the payment of child support, insurance, mortgage indebtedness and a percentage of the parties' debts, Curtis is going to have his hands full without the payment of any alimony.
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> . . . .
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> The court finds the Sherri is entitled to a reasonable amount of rehabilitative alimony for a period of four years.

This is a marriage of average duration of approximately twelve years. Sherri is thirty-nine years old, and Curtis is thirty-eight years old. Both parties are healthy and capable of full-time employment. We recognize that an award of spousal support to Sherri may not be best characterized as "rehabilitative," as she will not likely use the support to seek training or education that would allow her to increase her earning capacity. *See In re Marriage of Becker*, 756 N.W.2d 822, 826 (Iowa 2008) ("The goal of rehabilitative spousal support is self

sufficiency and for that reason 'such an award may be limited or extended depending on the realistic needs of the economically dependent spouse.'" (citation omitted)). We agree, however, that Sherri is entitled to some amount of traditional spousal support given the disparity of the parties' incomes, the length of the marriage, and the parties' mutual decision that Sherri primarily stay home with the four children. *See* Iowa Code § 598.21A(1); *Becker*, 756 N.W.2d at 826; *In re Marriage of Stark*, 542 N.W.2d 260, 262-63 (Iowa Ct. App. 1995) (balancing recipient's need with payor's ability to pay). We conclude the court's award was equitable.

III. Tax Dependencies.

Curtis takes issue with the court's assignment of the tax dependency exemption for the parties' youngest child to Sherri. It appears the parties agreed that if Sherri received physical care of the children, then Curtis could claim the youngest three children so long as he stayed current on child support, medical support, health insurance, and alimony. We modify the decree to reflect this change for 2010 and all years thereafter.

IV. Attorney Fees.

A. Trial attorney fees.

Curtis argues the court should not have ordered him to pay $1550 to Sherri for trial attorney fees "[i]n light of Sherri's dissipation of $60,000 in marital assets through gambling." Sherri contends the court should have awarded her more attorney fees. An award of trial attorney fees is reviewed for an abuse of discretion. *Sullins*, 715 N.W.2d at 255. Because Curtis earned significantly more

than Sherri at the time of trial, we conclude the district court did not abuse its discretion in ordering him to pay some of her attorney fees. *See id*.

B. Appellate attorney fees.

Both parties request attorney fees on appeal. Appellate attorney fees are not a matter of right, but rest in this court's discretion. *Id*. When awarding appellate fees, we look to the need of the party requesting fees, the other party's ability to pay, and the merits of the appeal. *Id.* Upon consideration of these factors, we find that a reasonable amount of appellate attorney fees to Sherri is warranted in this case. We award Sherri appellate attorney fees in the amount of $1250.

V. Conclusion.

We affirm the spousal support award and find that Curtis should be allowed to claim the youngest three children as tax dependency exemptions. We modify the dissolution decree to reflect the following: Sherri should receive the S10 pickup, road grader, and camper; Curtis should be assigned to pay the $490 and $90 family medical bills; and Curtis should be assigned to pay the $15,122 Chase credit card bill. We reach this decision after considering many factors, including Curtis's earning capacity, Curtis's support obligations, Sherri's needs, and Sherri's dissipation of family assets as a result of her gambling habit. Costs are assessed equally to each party.

AFFIRMED AS MODIFIED.