IN THE COURT OF APPEALS OF IOWA

No. 2-262 / 11-0988
Filed June 13, 2012

IN RE THE MARRIAGE OF LARRY K. SOENKSEN AND MARY L. SOENKSEN

Upon the Petition of
LARRY K. SOENKSEN,
Petitioner-Appellee,

And Concerning
MARY L. SOENKSEN,
n/k/a MARY L. SPANGLER,
Respondent-Appellant.

Appeal from the Iowa District Court for Linn County, Patrick R. Grady, Judge.

Mary Soenksen appeals the economic provisions of a dissolution decree.

AFFIRMED.

Mark D. Fisher of Nidey, Wenzel, Erdahl, Tindal & Fisher, Cedar Rapids, for appellant.

Thomas F. Ochs of Gray, Stefani & Mitvalsky, P.L.C., Cedar Rapids, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

VAITHESWARAN, P.J.

Mary Soenksen appeals the economic provisions of a dissolution decree. She contends the district court (1) failed to divide and properly value shares of stock in a farm corporation and (2) should have awarded her a greater amount of spousal support for a longer period of time.

I. Background Facts and Proceedings

Mary and Larry Soenksen married in 1995. At the time of trial, Mary was fifty-five years old. She worked for a telephone company as a conference calling specialist, earning approximately $30,509 annually. She had a 401(k) retirement account valued at $56,927.68, against which she owed $5340.61. She also had a small interest-bearing pension from her employment with a previous telephone company that went bankrupt. Mary testified that she suffered from neuromuscular disease, vertigo, osteoarthritis, and osteoporosis.

Larry was forty-three years old at the time of trial and in good health. He worked on his parents' farm, earning $38,400 annually. He also drove a school bus, earning an additional $20,239.19 in 2010. He owned eight percent of the shares in the family farm corporation, Soenksen, Inc., contributed to a public employee retirement account, and had another small retirement account from prior employment.

The parties purchased a home with funds Mary inherited and money Larry received as a gift from his parents. They owed $126,139.03 on the home. They also had joint credit card debts totaling approximately $47,000 as well as individual credit card debts.

Following trial, the district court divided the parties' property and debts, granting Mary the home valued at $138,000, along with the associated debt, as well as certain other property. The court ordered her to pay one of the joint credit card debts, as well as her individual debts, and ordered her retirement account to be divided. The court awarded her $600 per month in spousal support for a period of seven years.

The court granted Larry certain personal property, held him responsible for the remaining joint credit card debt, as well as his own debt, and ordered his public employee retirement account divided. The court set aside to Larry his interest in Soenksen, Inc., which it valued at $41,204.24.

Both parties filed motions for enlarged or amended findings and conclusions, which were denied in pertinent part. Only Mary filed a notice of appeal.

II. Analysis

A. Property Division

"Before dividing the marital property, a court must identify all of the assets held in the name of either or both parties as well as the debts owned by either or both of them." *In re Marriage of Keener*, 728 N.W.2d 188, 193 (Iowa 2007). The district court identified Larry's shares of stock in Soenksen, Inc. as an asset in his name and valued this asset as follows:

> The general rule is that stock should be valued at market value if it can reasonably be ascertained. However, market value for the stock in a close corporation can rarely be ascertained. Thus its intrinsic value should be determined. A broad range of evidence is admissible to prove any fact calculated to affect its value. This includes evidence of the assets and liabilities of the corporation. *In re Marriage of Moffatt*, 279 N.W.2d 15, 19 (Iowa 1979). In *Moffatt*,

> the court noted its prior approval of basing the value on net assets as done in [Mary's] Exhibit N-2. A twenty percent reduction for non-marketability of stock especially where there are minority shares is also appropriate. *See In re Marriage of Friedman*, 466 N.W.2d 689, 691 (Iowa 1991). It is also not proper to consider tax consequences of a sale where a sale is not anticipated. *Id.* Thus, the Court finds the value of Larry's share of the stock to be $41,204.24.

Mary contends "[t]he proper valuation of Soenksen, Inc. requires the use of the last credible financial data which was provided by the parties and submitted to the court (2009 tax returns) without the application of a discount for minority interest." She asserts that, had the court used this approach, the stock would have been valued at approximately $25,000 more than the court found.

The law provides "much leeway to the trial court" in valuing a closely held corporation. *In re Marriage of Dennis*, 467 N.W.2d 806, 808 (Iowa Ct. App. 1991); *see also Keener*, 728 N.W.2d at 194. On our de novo review, we are convinced the district court's valuation was within the range of the evidence.

The exhibit on which the court relied and which Mary now disparages was offered by her. She testified the exhibit was a "stock valuation sheet done by [the corporation's] book man." It listed the corporation's net worth as $672,987, valued each share at $1.38, and assigned a minority share discount of 23 percent, resulting in a per share value for Larry's 39,416 shares of $1.06, or a total value of $41,780.96. The district court's value was within $600 of this amount and, notably, used a minority discount that was less than the discount used in Mary's exhibit. *See Friedman*, 466 N.W.2d at 691 (approving use of twenty percent discount of shares in a closely held corporation); *In re Marriage of Muelhaupt*, 439 N.W.2d 656, 661 (Iowa 1989) (discounting minority interest in

closely held family corporation by twenty percent). We conclude the court equitably valued Larry's stock.

Mary next contends the district court should have found that the shares of stock were jointly owned. She asserts "there was no expressed intent that Mary *not* share in the gift of the stock," as the "parties' relationship was good and they were happy" when the shares were given. In making this argument, Mary concedes, as she must, that if the shares were given to Larry alone, they are not subject to division unless equity dictates otherwise. *See* Iowa Code § 598.21(5) (2009) (excluding from the court's property division "inherited property or gifts received or expected by one party"); 598.21(6) ("[G]ifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage.").

The record is clear that Larry's parents gave the shares of stock to Larry alone. As the district court found:

> Larry is the only name mentioned on the stock certificates. Larry was the only one of the parties involved in the farming operation. Neither of Larry's parents indicated in their depositions or to anyone else that they were including Mary in their gift. Finally, the records show that the shares Larry has are non-voting shares and, if he wished to transfer them, they have to be first offered back to the corporation. This indicates a retaining of control over the shares by Larry's parents that is inconsistent with any intent that this property go outside the immediate family.

Based on these findings, the court determined that the stocks were "a gift" solely to Larry. We concur in these findings and determination, which are supported by the record.

We also concur in the court's determination that equity did not demand division of the shares. Mary admitted she did not directly contribute to the care, preservation, and improvement of the farm, testifying, "I figure[d] that was his job." For that reason, the district court acted appropriately in giving way "to the thrust of the statute and not to its exception" and in setting aside the shares of stock to Larry. *See In re Marriage of Thomas*, 319 N.W.2d 209, 212 (Iowa 1982).

B. Spousal Support

Mary next challenges the district court's spousal support award. She seeks $1900 per month until her death or remarriage instead of the $600 per month for seven years that the court awarded. Although our review is de novo, we afford the district court considerable latitude in determining spousal support, disturbing the award only if there is a failure to do equity. *See In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005).

While the marriage was long and Mary had some health issues, she continued to work even after the onset of her illnesses, only took seven days of sick leave in the year before trial, had no medically-imposed work restrictions, accumulated some security in retirement, and received earnings on par with Larry's farm earnings. In short, she was not incapable of self-support, a foundational requirement for an award of traditional spousal support. *See In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997) ("Traditional or permanent alimony is usually payable for life or for so long as the dependent is incapable of self-support.").

The district court nonetheless recognized that Mary was entitled to some spousal support, based in part on Larry's greater earnings. The amount the court

awarded accounts for the differential earning capacity. *See id.* (noting a substantial disparity in earnings and earning capacity is enough to warrant an award of spousal support). For this reason, we affirm the district court's limited award of spousal support.

C. Appellate Attorney Fees

Mary requests an award of appellate attorney fees in the amount of $5000. An award rests within this court's discretion. *See In re Marriage of Sullins*, 715 N.W.2d 242, 255 (Iowa 2006). As Mary did not prevail, we decline her request for these fees.

AFFIRMED.