

IN THE COURT OF APPEALS OF IOWA

No. 6-846 / 06-0087
Filed December 13, 2006

IN RE THE MARRIAGE OF DIANA LYNN LOVETT AND DANNY JOE LOVETT

Upon the Petition of
DIANA LYNN LOVETT,
Petitioner/Appellee.

And Concerning
DANNY JOE LOVETT,
Respondent/Appellant.

Appeal from the Iowa District Court for Clarke County, Paul R. Huscher,
Judge.

Danny Joe Lovett appeals from the provisions of the decree dissolving his
marriage to Diana Lynn Lovett. **AFFIRMED AS MODIFIED.**

Gregory G. Milani of Orsborn, Bauerle, Milani & Grothe, L.L.P, Ottumwa,
for appellant.

Roberta A. Chambers of Chambers Law Firm, P.C., Corydon, for appellee.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

EISENHAUER, J.

Danny Joe Lovett appeals from the provisions of the decree dissolving his marriage to Diana Lynn Lovett. Danny and Diana began dating in the summer of 1992 and started living together in October that same year. In 1992 the parties were commingling their funds. On April 23, 1994, their first child, Dustin, was born. Danny and Diana were married February 14, 1997. On April 19, 1998, their second child, Dakota, was born. The parties separated in March 2004, and the petition for dissolution was filed in May. The district court dissolved the parties' marriage. Danny contends the district court's division of property is inequitable.

Danny earned his livelihood as a farmer. In 1995 Danny purchased 240 acres of farmland from his grandfather, known as the "Robinson Farm," for \$172,500. The property was refinanced in 2005 and the indebtedness at the time of trial was \$194,504. The farm's market value at the time of trial was \$384,000. The district court awarded the farm to Danny, subject to any indebtedness.

The Lovett Farm Partnership (partnership) was established in 1997 between Danny, his brother Scott, and his father Jack. Danny's mother, Linda, testified the partnership was formed to help Danny and Scott borrow money to farm. In creating the partnership, Jack testified he contributed a line of machinery valued at approximately \$150,548 and grain valued at \$133,640. Scott and Danny each contributed a tractor, and Danny testified his equity in the partnership as a result of the tractor was \$20,000. Danny receives a monthly

draw from the partnership of \$2050 in addition to a draw for the payment of his semi truck and his pickup. The value of the partnership was disputed. The district court awarded Danny the entire interest in the partnership and valued it at \$132,106¹ based upon Danny's testimony that his "Farm and Home Plan" for April 2003 to April 2004 "showed his valuation of the partnership interest" at this amount. But, the court also found Danny contributed \$25,000 to the partnership prior to the marriage.

In 1999, the parties' purchased their marital home, a manufactured home sitting on five acres. The home was appraised at \$55,000, and the debt, according to Diana, was almost \$81,000 (this includes the mortgage on the house of \$62,987 and an additional \$18,000 debt from a home equity line of credit). Danny was awarded the marital home subject to any indebtedness.

The district court also awarded Danny his semi truck, which had \$15,000 in equity, and his pickup and motorcycle, which had no equity. Diana was awarded the horses, valued at \$4000, the Ford Explorer, the ATV, and a ring that was gifted to her. The Explorer had no equity, and the ATV was not valued. It appears from the decree that Danny was awarded property with net values of \$189,496 (Robinson Farm), \$132,106 (partnership), \$15,000 (semi truck), and (\$26,000) (marital home), for a total property value of \$310,602. When factoring in Danny's \$25,000 pre-marital contribution to the partnership, he received property valued at \$285,602. Diana was awarded property valued at \$4000. The court ordered Danny to pay Diana \$137,000 to provide an equitable distribution.

¹ The testimony and the exhibit provide the value to be \$132,105.

Danny asserts the division of assets and cash property is not equitable. We review his claim de novo. Iowa R. App. P. 6.4. However, we accord the district court considerable latitude in making an equitable determination and will disturb the ruling only when there has been a failure to do equity. *In re Marriage of Spiegel*, 553 N.W.2d 309, 319 (Iowa 1996). We give weight to the district court's findings of fact, especially when considering the credibility of the witnesses, but we are not bound by those findings. Iowa R. App. P. 6.14(6)(g); *In re Marriage of Anliker*, 694 N.W.2d 535, 539 (Iowa 2005).

Danny asserts the district court erred in valuing the partnership at \$132,106 and awarding one-half to Diana. Danny contends the district court should have applied the Iowa Uniform Partnership Act, Iowa Code section 486A.103(1) (2003), in determining the value of the partnership. In applying the Act, Danny argues the court should have looked at the partnership's net worth of \$399,050 on June 1, 2005, subtracted the payment of loans, rents, excess draws and Jack's initial contributions (totaling \$386,870), and then divided the remaining \$12,180 among the three partners. Danny states in his brief, "This evidence is every bit as compelling as the evidence apparently relied upon by the District Court (the financial statement of Danny Lovett submitted to FHA listing the Farm Partnership in the amount of \$132,000)."

If the district court's valuation is supported by the evidence and well within the permissible range of evidence, we will not disturb it on appeal. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa Ct. App. 1991). Such is the case here. Danny testified that his Farm and Home Plan for April 2003 to April 2004 showing

the value of his partnership interest as \$132,105 was a true and accurate statement. He stated that on April 16, 2003 his share of the partnership equity was \$132,105 and Diana was entitled to one-half. The district court did not award Diana one-half the partnership interest, as Danny alleges, but awarded the partnership to Danny and ordered him to make a cash payment to equalize the division of property. However, even if the court awarded Diana one-half, Danny admitted she was entitled to such. Therefore, the district court's valuation of the partnership interest is supported by the evidence and the division is equitable.

Danny also contends we should consider the value of the partnership he brought into the marriage "to arrive at the increase in value or appreciation that arose during the marriage." Danny claims that of the \$117,240 in net worth reported on his March 1997 balance sheet, "\$83,741 was a result of listing the partnership assets and liabilities on his personal financial statement," which calculates into an appreciation of \$48,364 during the marriage. It appears Danny is asking us to find the appreciated value should not have been subject to equitable division.

There are several factors to consider when determining an equitable division of property which was owned prior to the marriage and appreciated during the marriage. See *In re Marriage of Lattig*, 318 N.W.2d 811, 814-15 (Iowa Ct. App. 1982). We consider (1) the "tangible contributions of each party" to the marital relationship; (2) whether the appreciation of the property is attributed to fortuitous circumstances or the efforts of the parties; and (3) the length of the marriage. *In re Marriage of Grady-Woods*, 577 N.W.2d 852, 852-53 (Iowa Ct.

App. 1998). We also consider statutory factors including the age and physical and emotional health of the parties, the earning capacity of each party, and the economic circumstances of the parties. Iowa Code § 598.21(5). The critical inquiry is always whether the distribution is equitable in the particular circumstances. *Russell*, 473 N.W.2d at 246.

Assuming the partnership assets and liabilities reported on the March 1997 balance sheet were acquired prior to the parties' marriage in February 1997, we consider the above factors. Although this was not a long marriage, both parties have contributed significantly to the marriage. See *Grady-Woods*, 577 N.W.2d at 853 (finding a seven year marriage is not a long marriage). Diana worked outside the home for a significant amount of time during the marriage, the parties' health insurance was obtained through Diana's employment and, at one point during the marriage, the parties lived solely off of Diana's income because any farm income was barely covering the loan and taxes for the farm. Diana testified she helped on the farm, cooked, paid bills, did laundry, and took care of the children. The parties commingled their funds since 1992, and Diana's income contributed to the family's expenses. The increase in the partnership assets can be attributed to fortuitous circumstances as well as the hard work of Danny, Scott and Jack. The court recognized Danny's \$25,000 contribution to the formation of the partnership. We find the appreciation of the partnership assets during the marriage was subject to equitable division.

Danny asserts the district court should have only awarded Diana one-half the value of the principal paid on the Robinson Farm which Danny purchased in

1995. As stated above, Diana substantially contributed to the marriage. The entire value of the farm was subject to equitable distribution.

Danny asserts it was error to award him the marital home subject to the indebtedness, which includes the mortgage of \$62,987 and an \$18,000 home equity line of credit. Danny requests that we order the home sold and the proceeds or the remaining indebtedness equitably divided between him and Diana. Diana agrees with this contention. We order the home sold and the proceeds or the remaining indebtedness to be divided equitably between the parties. See *In re Marriage of Hoffman*, 493 N.W.2d 84, 88 (Iowa Ct. App. 1992).

Diana requests appellate attorney fees. An award of appellate attorney fees is not a matter of right but rests within our discretion. *In re Marriage of Scheppele*, 524 N.W.2d 678, 680 (Iowa Ct. App. 1994). In determining whether to award appellate attorney fees, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the decision of the trial court on appeal. *Id.* We decline to award Diana appellate attorney fees.

AFFIRMED AS MODIFIED.