IN THE COURT OF APPEALS OF IOWA

No. 8-267 / 07-0079
Filed October 1, 2008

IN RE THE MARRIAGE OF JANNA MARIE MUGGE AND JOHN ARTHUR MUGGE

Upon the Petition of
JANNA MARIE MUGGE,
Petitioner-Appellee/Cross-Appellant,

And Concerning
JOHN ARTHUR MUGGE,
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Clay County, Don E. Courtney, Judge.

Husband appeals and wife cross-appeals from the economic provisions of the court's dissolution decree. **AFFIRMED AS MODIFIED ON BOTH APPEALS.**

Randall G. Sease, Hartley, for appellant.

Michael R. Bovee of Montgomery, Barry & Bovee, Spencer, for appellee.

Heard by Mahan, P.J., and Vaitheswaran and Doyle, JJ.

MAHAN, P.J.

John Mugge appeals and Janna Mugge cross-appeals from the decree dissolving their marriage. We affirm as modified on both appeals.

I. Background Facts and Proceedings

John and Janna were married in 1980 and have three children, the youngest of whom was born in 1985. Two of these children attended college during the course of this dissolution proceeding. The other was planning to begin college in the near future.

At the time of their marriage, Janna worked at a bank and John worked as a farmer. Approximately one year after they were married, Janna left the bank to help John farm and to start a family. While John worked on the farm, Janna raised the children, maintained the family home, kept the books for the farming operation, and assisted with the field work during the planting and harvest seasons. After years of living "cheap" so that they could invest everything back into the farm, their farming business eventually grew into a very profitable enterprise.

In the early 1990s, John and Janna changed the farm from a sole proprietorship to a corporation. The corporation owned all of the farm machinery, while John and Janna owned the outstanding shares in the corporation. The corporation did not own John and Janna's farmland. Instead, the corporation rented John and Janna's farmland, along with large amounts of farmland from other entities. The corporation also paid John and Janna a monthly salary. By the time of trial, the parties' assets (including the assets of the farming corporation) totaled approximately $3 million and their average combined net

income (including income generated by the farming corporation) was more than $250,000 per year.

In June 2002 John's father died with an estate worth approximately $2.3 million. John was the sole executor for the estate, which was not yet closed by the time of the dissolution hearing.

In 2004 John hired Carolyn Noll to work for the corporation as a hired hand. Janna did not approve of the hire and did not approve of John's relationship with Carolyn. This relationship caused friction in the Mugge marriage.

Janna moved out of the family home and filed a dissolution petition in August 2004. Around that same time, she withdrew more than $77,000 in funds from the couple's joint checking account and deposited these funds in an account that John could not access. She stopped working for the family corporation once the 2004 harvest was complete and began to work part time as an office assistant at a local business, earning approximately $367 per month.

John responded to Janna's movement of marital funds by making similar moves to prevent Janna from accessing money from the corporation. While doing so, he also conducted many transactions in cash, with little or no paper trail.

During the October 2005 dissolution hearing, Janna presented evidence illustrating how John had severely underreported his current assets. When confronted with evidence of his omissions, John argued that because Janna stopped working for the farming corporation after the 2004 harvest, she had no

interest in the 2005 harvest. As to other missing assets, John testified that he did not intentionally fail to disclose them to the court.

After the lengthy hearing, the court issued a dissolution decree dividing the parties' assets and requiring each parent to pay a post-secondary education subsidy for their children. John was ordered to pay Janna $2500 a month in traditional alimony payments until the death of either John or Janna. John was also ordered to pay $20,000 of Janna's attorney fees to compensate for the significant time Janna's attorneys had to spend researching unreported assets and unwinding John's financial affairs during the previous twelve months. John filed a motion to reconsider, and the court responded with an order adjusting the property distribution and reducing John's monthly alimony obligation to $1000. Pursuant to this amended decree, Janna received 230 acres of farmland, various income producing financial assets, and $30,737.50 in "Funds used by Janna." John received 390 acres of farmland, Janna's share of the stock in the farming corporation, a portion of his forthcoming executor fee for the handling of his father's estate, and a portion of the parties' retirement accounts. In total, Janna was awarded $1,571,480.34 in property and John was awarded $1,571,480.33 in property.

On appeal, John contends the trial court erred in (1) awarding Janna alimony, (2) including his executor fee in the marital estate, and (3) awarding Janna attorney fees. He also claims the court assigned improper values to some of the parties' assets.

Janna cross-appeals, contending the trial court (1) erred in reducing her alimony, (2) erred in assigning her $30,737.50 in "Funds used by Janna," and

(3) should have sanctioned John for his “omissions, non-disclosures, and concealments” during the dissolution proceeding. She also requests appellate attorney fees.

II. Scope and Standards of Review

We review dissolution of marriage proceedings de novo. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). We examine the entire record and adjudicate rights anew on the issues properly presented*. Id.* Although we are not bound by the district court’s factual findings, we give them weight, especially when assessing the credibility of witnesses. Iowa R. App. P. 6.14(6)(*g*). We review the district court’s decision to award attorney fees, but not to impose sanctions, for an abuse of discretion. *In re Marriage of Witten*, 672 N.W.2d 768, 773 (Iowa 2003); *In re Marriage of Butterfield*, 500 N.W.2d 95, 98 (Iowa Ct. App. 1993).

III. Merits

Because many of the claims raised on appeal and cross-appeal are intertwined, we will address both sets of claims simultaneously.

A. Alimony

Both parties claim the court erred in awarding alimony. Janna claims the court should have kept the original $2500 monthly award while John claims he should pay nothing.

Spousal support is a discretionary award, dependent upon each party’s earning capacity and present standards of living, as well as the ability to pay and the relative need for support. *In re Marriage of Kurtt*, 561 N.W.2d 385, 387 (Iowa Ct. App. 1997). In determining whether to award alimony, the district court is to

consider the factors in Iowa Code section 598.21(3) (2005). In marriages of long duration where the earning disparity between the parties is great, both spousal support and nearly equal property division may be appropriate. *In re Marriage of Weinberger*, 507 N.W.2d 733, 735 (Iowa Ct. App. 1993).

In the original dissolution decree, the district court awarded Janna $2500 per month in traditional alimony. The court stated that its reasons for the award were the length of the marriage, Janna's financial needs following the dissolution action, Janna's rheumatoid arthritis and lack of transferable job skills, and John's ability to continue to use the corporation to generate income based on the property settlement. In its amended order, the court reduced the monthly payment to $1000 because it concluded the $12,000 in alimony, when combined with the $80,250 to $85,000 in estimated annual income from her income producing assets, would allow her to pay her $93,167.64 in estimated yearly expenses.

Janna claims she should receive $2500 a month in alimony because of her large estimated yearly living expenses and because John will be able to earn more income from his father's inheritance. John claims any amount of alimony is inappropriate because Janna's assigned assets will generate income, by his calculations, of at least $88,014 per year. When this total is added to her annual wage income and the potential for dividend income in assets held in a corn processing partnership, he contends her annual income will exceed her estimated monthly expenses. Because he claims his assigned assets will only generate income of $74,939 per year, he contends he should have no duty to pay her any alimony.

We find John's arguments unpersuasive. When calculating his future income, John fails to include any of the income he will generate from his interest in the family farming corporation (which includes assets totaling $784,184.12). During 2002, 2003, and 2004, the average annual net income of the farming corporation was $115,373. Even if we were to assume that Janna would choose to no longer rent her 230 acres of farmland to the corporation, the corporation would still generate income for John as it would raise crops on John's 390 rented acres and any farmland it could rent from other entities.

We also find Janna's argument that she should receive more than $1000 per month unpersuasive. Janna's estimated interest income, when combined with her yearly income from her part-time position and $12,000 in awarded alimony payments, totals approximately $97,000 per year. Even after taxes, this yearly income, when combined with her $1.5 million in awarded assets, will satisfy her $93,167.64 in estimated yearly expenses and allow her to maintain her current station in life. We will not increase her alimony award merely because John will receive a sizeable inheritance in the near future.

Based on our de novo review, we agree with the district court's conclusion that an award of traditional alimony of $1000 per month is appropriate under the circumstances.

B. Executor Fees

As part of the property distribution, the district court awarded John $45,872.66 for the executor fees he had earned while serving as the executor for his father's estate. John claims this award was erroneous because he may

decide to waive the fee and the fee had not yet been earned or paid at the time of trial.

We find these arguments meritless. John's father died more than three years before the dissolution hearing. Prior to this hearing, John performed a substantial amount of work as executor. The estate had already deducted John's executor fee on the federal estate tax return. John signed these returns certifying that he would receive an executor fee. John cannot avoid this future payment by suggesting that he may not accept it. We agree with the court's conclusion that John earned his executor fee prior to the marriage dissolution.

C. Property Valuations

350-Acre Farm. Pursuant to the court's property distribution, John was awarded a 350-acre farm. The court, relying on the conclusion of a certified appraiser, valued this farmland at $500,000. John claims the valuation is inaccurate. He estimates that the farmland is only worth $458,709.

Although our review is de novo, we ordinarily defer to the trial court when valuations are accompanied by corroborating evidence. *In re Marriage of Vieth*, 591 N.W.2d 639, 640 (Iowa Ct. App. 1999). The district court adopted the valuation provided by the certified property appraiser, rather than John's estimate of the property's value. We find the district court's valuation was within the permissible range of the evidence and, as a result, should not be disturbed. *See id.*

Loan to Carolyn Noll. Prior to the dissolution hearing, John loaned Carolyn Noll money to buy a truck. At the hearing, Janna claimed the court should assign this loan to John as one of his pending receivables. John argued

that the loan had been repaid, and therefore should not count as an asset in the overall property distribution. The district court concluded there was a loan, but found the loan had not been repaid. Accordingly, when distributing the parties' assets, the court assigned John the value of this loan as a receivable asset.

Upon our de novo review of the record, we affirm the district court's implied credibility findings and ultimate decision to assign John the value of this loan. John testified that Carolyn repaid him in cash, and that this cash was "just used for day-to-day living and construction expenses and just miscellaneous expenses in my own personal affairs." He also presented a deposit ticket allegedly proving that the loan had been repaid. Janna disputed this deposit ticket, and presented evidence purporting to prove that John had merely withdrawn money from his own account and re-deposited it under the guise of a loan repayment. Even though Carolyn was subpoenaed to provide her bank records to substantiate the alleged repayment, she did not bring them to the hearing because she "didn't have time to get them." We, like the district court, find there is no credible evidence proving that Carolyn paid off this loan. Therefore, we conclude the loan was properly assigned to John as a receivable asset.

Value of "Funds Used By Janna." In the amended order, the court set forth a settlement distribution list and allocated Janna $30,737.50 for "Funds used by Janna." Even though the court lists this $30,737.50 as the parties' "property," these funds do not exist and the district court does not explain its reasoning for allocating this "property" to Janna. Janna argues this constitutes error. John claims the court had ample reason to include these funds as Janna

"had taken large sums of money without providing any accounting to the court or to John Mugge . . . ."

Both parties used marital funds during the thirteen months between the day Janna left the family home and the date of the dissolution hearing. However, there is no corresponding property allocated to John for "Funds used by John." Upon our de novo review of the evidence we find nothing to suggest Janna misused marital funds after the parties separated. While Janna did withdraw sizeable amounts of cash from the couple's joint checking account, she used a large part of these funds to pay for the children's college tuition. She also paid the couple's outstanding property tax bills and paid the couple's additional federal and state income tax liability. Because we find there is nothing to suggest Janna misused marital funds after the parties separated, we modify the court's property distribution to eliminate the fictitious property assigned to Janna. In order to equitably divide the couple's true property in light of this adjustment, we conclude that Janna's share of the couple's "Personal Core Funding" increases from $97,225 to $112,593.75 and John's share of the "Personal Core Funding" decreases from $52,912.55 to $37,543.80. Under this new property settlement, Janna will receive $1,556,111.59 while John will receive $1,556,111.58.

D. Trial Attorney Fees and Sanctions

John claims the trial court erred when it ordered him to pay $20,000 of Janna's attorney fees because "[i]n view of the excessive property settlement made by the court to [Janna], [she] has the ability to pay her own attorney fees." Beyond the awarded attorney fees, Janna claims the trial court should have also

sanctioned John for "omissions, non-disclosures, and concealments during the dissolution." Janna requests that we award her $879,870.58 in sanctions.

Awards of attorney fees must be for fair and reasonable amounts and based on the parties' respective abilities to pay. *In re Marriage of Hansen*, 514 N.W.2d 109, 112 (Iowa Ct. App. 1994). Iowa trial courts have "wide" discretion when deciding whether to impose sanctions for discovery violations, *In re Marriage of Butterfield*, 500 N.W.2d 95, 98 (Iowa Ct. App. 1993), and "considerable" discretion in awarding attorney fees. *In re Marriage of Gonzalez*, 561 N.W.2d 94, 99 (Iowa Ct. App. 1997).

In awarding Janna attorney fees, the district court stated:

> The Court concludes that John's actions as reflected in the evidence have required Janna's attorney to expend substantial time unwinding John's financial affairs. His actions have resulted in legal costs incurred by Janna because her attorney had to spend additional time uncovering transactions and, therefore, an award of attorney fees is justified in this case.

In light of the fact that Janna was awarded more than $1.5 million in assets pursuant to the dissolution decree, we agree that she should have no difficulty paying her legal bills in this case. However, we cannot ignore the fact that John failed to disclose several hundred thousand dollars worth of assets prior to the hearing. John's failure to disclose these assets, along with his other unrecorded transactions in the pending dissolution proceeding, required Janna to incur unnecessary amounts of attorney fees in this case. We find the district court's award of $20,000 for attorney fees was appropriate. *See*, *e.g., In re Marriage of Winegard*, 278 N.W.2d 505, 512 (Iowa 1979) (noting "the majority of the time involved and costs incurred herein were caused by [the husband's]

litigious nature" and therefore awarding the wife additional attorney fees). We also affirm the district court's decision not to impose sanctions because the record reveals both John and Janna attempted to manipulate marital assets after the separation and both tendered less than credible asset valuations.

E. Appellate Attorney Fees

Janna requests appellate attorney fees for her defense of this appeal. Appellate attorney fees are not a matter of right, but rather rest in the court's discretion. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). We consider the needs of the party making the request, the ability of the other party to pay, and the relative merits of the appeal. *Id.* After considering these factors, we decline to award Janna appellate attorney fees.

IV. Conclusion

After considering all issues raised on appeal, whether or not specifically addressed in this opinion, we adjust the property settlement so that Janna's share of the couple's "Personal Core Funding" increases from $97,225 to $112,593.75 and John's share of the "Personal Core Funding" decreases from $52,912.55 to $37,543.80. The rest of the decree is affirmed. Costs of appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED ON BOTH APPEALS.