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2014 IL App (3d) 120303-U

Order filed April 9, 2014

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2014

In re MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 9th Judicial Circuit,
RITA JANE BUCKMAN,	)	Knox County, Illinois.
	)	
Petitioner-Appellee,	)	
	)	Appeal No. 3-12-0303
and	)	Circuit No. 09-D-170
	)	
JAMES RAY BUCKMAN, by Dee Dee A.	)	
Boyer, Executor of the Estate of James Ray	)	
Buckman, Deceased,	)	The Honorable
	)	James B. Stewart and Scott Shipplett,
Respondent-Appellant.	)	Judges, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Presiding Justice Lytton and Justice Wright concurred in the judgment.

ORDER

¶ 1 *Held*: In a case involving a dissolution dispute over the valuation of a given year's crop proceeds, the appellate court affirmed the circuit court's calculation of the crop proceeds and the payment schedule implemented by the court.

¶ 2 The petitioner, Rita Jane Buckman, filed for dissolution of her marriage to James Ray Buckman. A judgment of dissolution was entered that granted Rita 55% of the marital property, including 55% of the 2010 crop proceeds from James's farming operation. A second order was

eventually issued in which the 2010 crop proceeds were calculated and a payment schedule implemented. James appealed, but he died during the pendency of this appeal. The executor of James's estate, Dee Dee A. Boyer, was substituted for James and is now the respondent in this appeal. Before this court, the respondent argues that: (1) the circuit court erred when it calculated the 2010 crop proceeds; (2) the court erred when it required James to pay Rita's share of the 2010 crop proceeds in two payments; and (3) Judge Shipplett's order was an impermissible modification of Judge Stewart's first order. We affirm the circuit court's judgment.

¶ 3 FACTS

¶ 4 On July 28, 2009, Rita filed a petition for dissolution of her marriage to James, who was a farmer. When the parties submitted their final arguments regarding property distribution, James included an exhibit that listed the parties' assets and debts, including a debt with FS for $51,483.58. Regarding property distribution and other matters, Judge James Stewart announced his decision to the parties via letter on November 24, 2010. In that letter, Judge Stewart stated, *inter alia*, that he used James's aforementioned list of assets and debts and that Rita would receive 55% of the marital estate and James would receive 45% of the marital estate. Further, Judge Stewart stated:

> "I have not dealt with the 2010 income which is largely speculative at the present time. The husband should file with this court a sworn affidavit as to all grain sales and money derived therefrom as well as the locations and weight of all grain stored. He should further account to his wife through her attorney for any and all sales and after paying expenses associated with crop production, the proceeds should be split 55 per cent [*sic*] to the wife and 45 per cent [*sic*] to him."

¶ 5 Rita's attorney prepared the judgment of dissolution order. Paragraph H of that order stated the following:

> "With regard to income from the sale of the parties' 2010 crop, the Respondent, JAMES R. BUCKMAN, shall file with the Court a sworn affidavit reflecting all grain sales and proceeds derived therefrom, as well as the locations and weight of all grain in storage. The Respondent, JAMES R. BUCKMAN, shall also account to [the petitioner's] attorney *** in writing for all sales of 2010 crops and the proceeds received therefrom. The Respondent, RITA J. BUCKMAN, shall be paid fifty-five per cent [*sic*] (55 %) of the net proceeds from any sale of 2010 crop."

Both attorneys signed the order and Judge Stewart approved it on February 28, 2011.[1]

¶ 6 On April 7, 2011, Rita filed a motion to enforce the judgment, noting in part that James had not complied with paragraph H of the dissolution order. Rita also filed a motion for adjudication of indirect civil contempt on November 1, 2011, alleging that James still had not complied with paragraph H of the dissolution order.

¶ 7 On January 13, 2012, James filed a motion that requested the circuit court to determine the amount due to Rita for the 2010 crop proceeds, as well as the method of payment.

¶ 8 On March 8, 2012, a hearing was held before Judge Scott Shipplett on the issues raised by the parties' aforementioned post-dissolution motions. During the hearing, one of the documents presented to the court was Rita's summary of the 2010 net crop proceeds and expenses. James's attorney agreed that the expenses totaled $19,083.02. The figures relating to the sale of grain were $35,703.14; $750.22; $28,056.24; $47,564.48; $32,119.90; $20,203.78;

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[1] Paragraph G of the dissolution order covered an equalization payment to be made from James to Rita that was to be paid over 10 years at 3.85% interest.

and $1,535.47; all of which were agreed to by James's attorney, and which totaled $165,933.23. James's attorney did not agree to the inclusion of several figures, though, three of which were listed as "Gov't payment." James's attorney agreed that two of these government subsidies had been made before trial and that one of the subsidies had been paid after trial—a payment of $5,645.[2] James's attorney argued that the $5,645 subsidy should not be included as income because it was not a "crop proceed" as contemplated by the dissolution order. James's attorney also argued that the other two government subsidies should not be included because they were made before the dissolution proceeding—"[James] already received that income, and it was already in his checking account, which was taken into account at the trial." Rita's attorney argued that the subsidy was paid in connection with the raising of crops and, therefore, should be included as income.

¶ 9 Judge Shipplett inquired of James about the nature of the $5,645 government subsidy. James stated, "[i]t's basically a type of an insurance program so to speak on your crops." James agreed with Judge Shipplett's classification of the subsidy as a payment contingent on the world-wide grain price—the lower that price, the higher the amount of the subsidy.

¶ 10 The parties also discussed the FS debt that James's exhibit listed as $51,483.58. That amount represented James's share of the debt he and his father incurred for their joint farming operation. However, James's attorney argued at the hearing that James actually paid over $55,000 for his share of the debt, and James's check for $55,689.29 was entered into evidence. When asked by Judge Shipplett why the amount was different from the one listed on the exhibit,

[2] Documents introduced into evidence reflected that the $5,645 government subsidy was paid on October 13, 2011.

James stated that he actually paid for more of it than his father, and James's attorney stated that James and his father do not split everything, such as fuel costs.

¶ 11 On March 14, 2012, Judge Shipplett announced his decision on the 2010 crop proceeds issue. In that decision, Judge Shipplett ruled that the $5,645 government subsidy "was a post-judgment payment and was a subsidy for grain prices, and should be included in gross income from grain sales." Noting that the parties had agreed on other amounts to be included in the 2010 grain proceeds, Judge Shipplett ruled that the gross income from grain sales was $171,578.20.[3]

¶ 12 Judge Shipplett also disallowed James's request for a credit against the 2010 crop proceeds for seed, fertilizer, chemicals, and repairs to equipment. In so ruling, Judge Shipplett noted that Rita objected to the credit because the cost of these materials had been advanced to James prior to the dissolution hearing (the FS debt) and therefore had been considered by Judge Stewart in the dissolution decision. Judge Shipplett further noted that an exhibit to James's dissolution brief had listed the FS debt and, accordingly, Judge Stewart considered that debt in arriving at the dissolution decision. Thus, Judge Shipplett found that James was not entitled to receive that credit a second time.

¶ 13 With regard to James's request for a $15,219.30 credit for repairs, Judge Shipplett found that some of that amount was included in the FS loan, some of it "was for 'parts/improvements' which would be capital items subject to depreciation," and some of it was for "labor" which was also included in the exhibit attached to James's dissolution brief. Thus, Judge Shipplett denied James's request for the credit.

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[3] By our calculations, the gross income from grain sales was $171,578.23—$165,933.23 of agreed amounts plus $5,645 for the government subsidy.

¶ 14 Lastly, Judge Shipplett addressed James's request that the amount he owed Rita for the 2010 crop proceeds should be added to the cumulative amount he owed Rita and amortized over 10 years. Judge Shipplett denied that request, however, finding that James had been "exceedingly spiteful in making (or not making payments [to Rita]." Judge Shipplett acknowledged that James may have had limited liquidity, but ordered James to pay to Rita her share of the 2010 crop proceeds in two installments—$39,186.17 by May 15, 2012, and the remaining balance plus 3.25% interest at any time but no later than March 15, 2013.

¶ 15 James filed a timely notice of appeal on April 12, 2012. As previously noted, James died during the pendency of this appeal and the executor of his estate has been substituted for him and is now the respondent in this appeal.

¶ 16 ANALYSIS

¶ 17 On appeal, the respondent argues that: (1) the circuit court erred when it calculated the 2010 crop proceeds; (2) the court erred when it required James to pay Rita's share of the 2010 crop proceeds in two payments; and (3) Judge Shipplett's order was an impermissible modification of Judge Stewart's first order.

¶ 18 First, the respondent argues that the circuit court erred when it calculated the 2010 crop proceeds. Specifically, the respondent contends that the government subsidy should not have been included because it was not part of the sale of the crop. The respondent also contends that he should have been credited with $55,689.29 in expenses.

¶ 19 The valuation of marital assets presents a question of fact, and we will not disturb a circuit court's valuation unless that decision was against the manifest weight of the evidence. *In re Marriage of Wojcik*, 362 Ill. App. 3d 144, 151-52 (2005).

¶ 20 Our review of the record reveals no error in Judge Shipplett's order. With regard to the government subsidy, the respondent's argument ignores the language of the dissolution order that James had to account for "all sales of 2010 crops and the proceeds received therefrom." At the hearing on the post-dissolution motions, the evidence—including James's own testimony—showed that the subsidy was paid to James for growing certain crops and was a variable amount based on grain prices. Accordingly, we find no error in the decision to include the subsidy in the calculation of the 2010 crop proceeds.

¶ 21 With regard to the credit the respondent requests as credit against the 2010 crop proceeds, there is nothing in the record to suggest that Judge Stewart did not consider the FS debt in arriving at his dissolution decision. The debt clearly existed prior to the dissolution hearing, and Judge Stewart specifically stated that he used James's exhibit when arriving at his dissolution decision. Further, given that section 503(d)(8) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/503(d)(8) (West 2008)) required the court to consider the parties' liabilities when dividing marital property, we agree with Judge Shipplett's ruling that to give the credit the respondent seeks would be to grant a double credit for those expenses. Accordingly, we find no error in the decision to disallow the respondent's requested credit.

¶ 22 Second, the respondent argues that the circuit court erred when it required James to pay Rita's share of the 2010 crop proceeds in two payments. The respondent asserts that Rita's share should have been included in the equalization payment and amortized over 10 years at 3.85% interest.

¶ 23 Initially, we note that the respondent has not supported this argument with citation to relevant authority. Accordingly, the respondent has forfeited this argument for appellate review.

Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); *People v. Ward*, 215 Ill. 2d 317, 332 (2005); *Adler v. Greenfield*, 2013 IL App (1st) 121066, ¶ 59.

¶ 24 Forfeiture notwithstanding, the respondent's argument is without merit. Paragraph H of the dissolution order contained no schedule for payment of Rita's share of the 2010 crop proceeds, and our review of the record reveals no abuse of discretion in Judge Shipplett's choice of payment schedule. See, *e.g.*, *In re Marriage of Harris*, 178 Ill. App. 3d 282, 287 (1988).

¶ 25 Third, the respondent argues that Judge Shipplett's order was an impermissible modification of Judge Stewart's first order. The respondent contends that because Judge Shipplett included the subsidy, disallowed James's requested credits, and instituted a payment plan not included in paragraph H of the dissolution order, Judge Shipplett's order impermissibly modified the parties' property rights as set out in Judge Stewart's order. We disagree.

¶ 26 The dissolution order clearly stated in paragraph H that Rita was to receive 55% of the 2010 crop proceeds, although that amount had yet to be calculated. Among the post-dissolution filings was James's own motion to calculate the 2010 crop proceeds and to determine the method for payment. We have already ruled that the court did not err in its rulings on the matters challenged by the respondent in this appeal, and given the nature of the language of paragraph H, we hold that Judge Shipplett's order did not "impermissibly modify" the dissolution order.

¶ 27 CONCLUSION

¶ 28 The judgment of the circuit court of Knox County is affirmed.

¶ 29 Affirmed.