IN THE COURT OF APPEALS OF IOWA

No. 8-633 / 97-2125

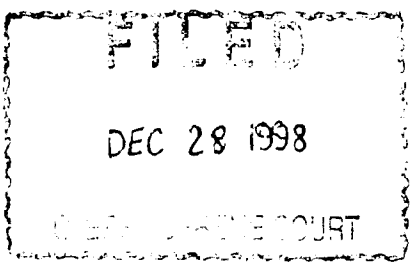
IN RE THE MARRIAGE OF WILLIAM H. HORSTMANN, JR. AND BARBARA L. HORSTMANN

Upon the Petition of
WILLIAM H. HORSTMANN, JR.,

Petitioner-Appellee,

And Concerning
BARBARA L. HORSTMANN,

Respondent-Appellant.



Appeal from the Iowa District Court for Clinton County, C. H. Pelton, Judge.

Petitioner appeals various economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Gary J. Rolfes of Mayer, Mayer, Lonergan & Rolfes, Clinton, for appellant.

M. Leanne Tyler of Soper & Tyler, P.C., Davenport, for appellee.

Heard by Sackett, C.J., and Huitink, Streit, Vogel, and Mahan, JJ.

SACKETT, C.J.

Petitioner-appellant William H. Horstmann, Jr. appeals from the economic provisions of the decree dissolving his marriage to respondent-appellee Barbara L. Horstmann. We affirm as modified.

William and Barbara married each other for the second time in 1985. Their first marriage in 1975 was dissolved after one year. No children were born to either marriage. At the time of trial, William was forty-nine years old and Barbara was forty-eight.

The district court divided the clothing and personal property and then valued the other property. The district court awarded Barbara her business and debts; William was awarded his business and debts. William was then ordered to pay Barbara $220,477 in four equal annual installments beginning in 1997, with the last installment due in 2000. Additionally, William was ordered to pay Barbara's trial attorney $3500. The court costs were taxed against him. William challenges the equity of the division.

We review de novo. Iowa R. App. P. 4. We examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

The partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989); *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). Iowa courts do not require an equal division or percentage distribution. *Id.* The determining factor is what is fair and equitable in each circumstance. *Id.* The distribution of the property should be made in consideration of the criteria codified in Iowa Code section 598.21(1). *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983). Precise percentage divisions are disfavored. Our goal is to arrive at an equitable and just award in a given set of circumstances. *In re Marriage of Cooper*, 225 N.W.2d 915, 919 (Iowa 1975).

Property which a party brings into the marriage is a factor to consider in making an equitable division. Iowa Code § 598.21(1)(b). In some instances, this factor may justify a full credit, but does not require it. Property brought to the marriage is not necessarily set aside as is gifted and inherited property. Instead, it is a factor to consider in making an equitable distribution.

At the time of the marriage, William had over $300,000 in net assets. William's assets included farmland. Some $300,000 of the parties' increase in net worth is the direct result of the appreciation in value of this real estate. At the time of the marriage, Barbara had net assets of about $17,000.

Our review of the record convinces us both parties in the first five years of marriage made reasonable efforts toward furthering the marriage and exhibited

kindness to the children each had in other marriages. Both were able to work in their chosen field. Neither made exceptional sacrifices. William's parents supplied the parties a home. Barbara's parents rented their farmland to William. While Barbara contends William was given a concession on the rent, there is nothing in the record to support her contention.

William, a high school graduate, is a farmer. He has farmed all of his adult life. He farms about 1000 acres -- of those, he owns about 385 acres, 337 of which are tillable. The district court concluded William earns an average income of $40,000 annually from farming. Barbara has a shop where she does manicures and pedicures. The district court concluded Barbara can earn approximately $20,000 annually. Both parties are in reasonably good health, though Barbara claims she has a gambling addiction that may have elevated to the extent it is a mental illness.

Five years into the marriage, Barbara became addicted to gambling and spent substantial time on gambling boats in Iowa and Illinois. She used money from joint accounts, credit lines, and a brokerage account. She obtained credit cards in William's name and incurred large balances without his knowledge. She borrowed money from an 82-year-old man and from William's mother. She ordered $37,000 worth of grain sold in December of 1996 and attempted to convert the money for her own use. William learned of her attempted deception and filed for dissolution on December 6, 1996. Between 1990 and the filing of the petition for dissolution, Barbara had lost nearly $150,000 gambling.

William contends the district court overvalued his assets and failed to give him sufficient credit for property he had at the time of the marriage. He further contends the district court did not treat him equitably in allocating to Barbara a substantial portion of his farm assets without giving him sufficient credit for the appreciation in value of the farmland he owned at the time of the marriage.

Our review of the record convinces us an April 14, 1997 balance sheet William filed with Farm Credit Services most accurately reflects his net worth. We find, therefore, he had current assets of $1,245,922 and debts of $464,896, for a net worth of $781,026. William's assets included real estate valued at $763,262, some $300,000 in excess of the value it held at the time of the marriage. The allocation made by the district court charged Barbara with some $143,000 for assets she used gambling. It gave her a business valued at about $32,000 and charged her with $65,000 in debt, most of which she incurred gambling.

We modify the cash payment William is to make to Barbara to $120,000 payable $30,000 a year as structured by the district court.

We award neither party attorneys fees. Costs on appeal shall be paid one-half by each party.

AFFIRMED AS MODIFIED.